

# GRAND FORKS COUNTY CORRECTIONAL CENTER STANDARD OPERATING PROCEDURES MANUAL

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<i>Chapter:</i> <i>Subject:</i> (PREA) Prison Rape Elimination Act of 2003		
<i>ACA Standard/s:</i>		
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**I. AUTHORITY:** Authority for this policy with procedures is found in chapters 54-23.3 and 12-47 of the North Dakota Century Code and part 115 of Title 28 of the Code of Federal Regulations.

**II. APPLICABILITY:** All employees, volunteers, contractors and inmates of the Grand Forks County Correctional Center.

**III. DEFINITIONS:**

- 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.** Contractor: A person who provides services on a recurring basis pursuant to a contractual agreement with the agency.
- D.** Deoxyribonucleic Acid or DNA: A nucleic acid that contains the genetic instructions used in the development and functioning of all known living organisms.
- E.** 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.
- F.** Gender Non-Conforming: A person whose appearance or manner does not conform to traditional societal gender expectations.
- G.** Housing Unit: An area of the facility that houses inmates and due to architectural design and/or functional use is managed as a distinct housing unit.
- H.** Inmate/Detainee: A person housed at Grand Forks County Correctional Center.
- I.** Intersex: A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as

disorders of sex development.

- J. Medical Practitioner:** A health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified medical practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.
- K. Mental Health Practitioner:** A mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice, and who holds a license in North Dakota to practice mental health treatment; including substance use disorders. A “qualified mental health practitioner” refers to such a professional who has also successfully completed specialized training for treatment of sexual abuse victims.
- L. Prison Rape Elimination Act of 2003:** Federal law that prohibits and seeks to eliminate sexual assaults, sexual harassment, 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 checklists in compliance with Prison Rape Elimination Act standards.
- N. Sexual Abuse of an Inmate/Detainee by another Inmate/Detainee:** Includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse 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 anus, including penetration, however slight;
  - 2. Contact between the mouth and 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.
- O. Sexual Abuse of an Inmate/Detainee by a Staff Member, Contractor, or Volunteer:** Includes any of the following acts, with or without consent of the inmate:
  - 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 breast in the presence of an inmate/detainee; and
8. Voyeurism by a staff member, contractor, or volunteer.

**P. Sexual Harassment:** Includes:

1. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by an inmate/detainee directed toward another; and
2. Repeated and unwelcome verbal comments or gestures of a sexual nature to an inmate/detainee 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.

**Q. Sexually Transmitted Diseases:** Any of various diseases, including Chancroid, Chlamydia, Gonorrhea, and Syphilis, that are usually contracted through sexual intercourse or other intimate sexual contact.

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

**S. Transgender:** A person whose gender identity (internal sense of feeling male or female) is different from the person's assigned sex at birth.

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

**U. 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.

**V. Volunteer:** An individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.

**W. Volunteer and Contractor Inmate/Detainee Contact:** Any contact with inmates/detainees 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 Grand Forks County Correctional Center unescorted or unsupervised. Volunteer and contractor training acknowledgement forms shall be retained in the volunteer/contractor's file by designated facility staff.

**X. Voyeurism by a Staff Member, Contractor, or Volunteer:** An invasion of privacy of an inmate/detainee by staff for reasons unrelated to official duties, such as peering at an inmate/detainee who is using a toilet in his or her cell to perform bodily functions; requiring an inmate/detainee to expose their buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

#### **IV. ACRONYMS:**

- A.** ND DOCR: North Dakota Department of Corrections and Rehabilitation
- B.** DOJ: Department of Justice
- C.** GFCCC: Grand Forks County Correctional Center
- D.** GFSO: Grand Forks Sheriff's Office
- E.** HIV: Human Immunodeficiency Virus
- F.** PREA: Prison Rape Elimination Act of 2003

G. SAFE: Sexual Assault Forensic Examiner

H. SANE: Sexual Assault Nurse Examiner

I. STD: Sexually Transmitted Disease

V. **POLICY:** Grand Forks County Correctional Center will have written policy and procedures mandating **zero tolerance** towards all forms of sexual abuse, and sexual harassment and outlining GFCCC'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.

VI. **PROCEDURES:**

A. **Prevention Planning**

1. **§ 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA Coordinator**

- a. GFCCC has a zero tolerance policy toward all forms of sexual abuse and sexual harassment within its facility.
- b. This policy outlines how GFCCC will implement the agency's zero tolerance approach to preventing, detecting, and responding to sexual abuse and sexual harassment.
- c. GFCCC identifies disciplinary sanctions for those found to have participated in prohibited behaviors.
  - i. Disciplinary sanctions are identified under standards § 115.76, § 115.77, and § 115.78.
  - ii. Refer to the Inmate Handbook for information pertaining to disciplinary sanctions for inmates/detainees.
- d. GFCCC has a designated upper-level, facility PREA Coordinator who has sufficient time and authority, as well as authority to implement and oversee GFCCC efforts to comply with PREA standards in its facility.
  - i. The PREA Coordinator's responsibilities include, but are not limited to:
    - 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 and harassment.
    - 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) Keep GFCCC administration informed on PREA-related issues.
    - f) Maintain a memorandum of understanding for external victim advocacy or maintain documentation of attempts to enter into a memorandum of understanding.
    - g) Maintain PREA content for the department website, including publication of required information and documents.
    - h) Serve as the PREA liaison for GFCCC.
    - i) Coordinate training of PREA investigators at facility.
    - j) Create, provide and coordinate initial and bi-annual PREA training to volunteers and contractors.
    - k) Participate in administrative PREA investigations.
    - l) Maintain PREA investigation files and documents.
    - m) Monitor and provide technical resources to PREA Investigators.
    - n) Coordinate audit preparations.
    - o) Coordinate corrective action plans and ensure follow up.

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

- a. GFCCC does not contract with other entities to house inmates/detainees.

**3. § 115.13 Supervision and Monitoring**

- a. GFCCC 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/detainees against sexual abuse.
- b. Each time the staffing plan is not complied with, the facility documents and justifies all deviations from the staffing plan.
  - i. The security shift supervisors will update the duty rosters to ensure staff is assigned to each fixed post.
  - ii. It is the responsibility of the security shift supervisor to keep their duty roster updated.
  - iii. There will be written justification for all deviations from the staffing plan.
- c. At least once every year the facility administrator, in collaboration with the PREA Coordinator, will review, determine, and document whether any adjustments are needed to:
  - i. The staffing plan established pursuant to paragraph a. of this section;
    - a) In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:
      - 1) Generally accepted detention and correctional practices
      - 2) Any judicial findings of inadequacy
      - 3) Any findings of inadequacy from federal investigative agencies
      - 4) All components of the facility's physical plant (including "blind spots" or areas where staff or inmates/detainees may be isolated)
      - 5) The composition of the inmate population
      - 6) The number and placement of supervisory staff
      - 7) Institutional programs occurring on a particular shift
      - 8) Any applicable state or local laws, regulations or standards
      - 9) The prevalence of substantiated and unsubstantiated incidents of sexual abuse
      - 10) Any other relevant factors
    - ii. GFCCC's deployment of video monitoring systems and other monitoring technologies; and
    - iii. The resources GFCCC has available to commit to ensure adherence to the staffing plan.
  - d. Intermediate or high level supervisors will conduct unannounced rounds of the facility to identify and deter staff sexual abuse and sexual harassment.
    - i. Unannounced, sporadic, supervisor rounds will be conducted on both the day and night shifts and will be documented in the electronic facility log.
    - ii. 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. Youthful inmates are not housed at GFCCC.

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

- a. GFCCC staff will not conduct cross-gender unclothed searches or cross-gender

visual body cavity searches (anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

- b. GFCCC shall not permit cross-gender pat-down searches of female inmates/detainees, absent exigent circumstances. GFCCC will not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.
- c. Staff will document in the electronic facility log all cross-gender searches (pat-down, unclothed, and visual body cavity) along with the exigent circumstances for the search.
- d. Inmates/detainees 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/unit checks.
- e. All opposite gender staff, uniformed and non-uniformed, will consistently announce their presence denoted by staff gender, when entering an inmate housing unit where inmates may be seen using the shower, toilet, or different stages of undress.
  - i. When an opposite gender staff is posted in a housing unit, said staff shall announce at the beginning of each shift notifying inmates that staff of the opposite gender will enter or be present in the housing unit during the shift.
  - ii. When the gender of the staff in the housing unit changes, a notification will be made to inmates announcing the staff member's presence in the housing unit.
  - iii. The exception to this policy is observation cells, where inmates may be on frequent check status.
- f. Staff will not search or physically examine a transgender or intersex inmate/detainee for the sole purpose of determining the inmate's genital status.
  - i. If the inmate's genital status is unknown, it may be determined through conversation with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.
- g. Security staff members are trained to conduct cross-gender pat-down searches and searches of transgender and intersex inmates/detainees in a professional and respectful manner and in the least intrusive manner possible, consistent with security needs.

**6. § 115.16 Inmate with disabilities and inmates who are limited English proficient**

- a. GFCCC shall take appropriate steps to ensure that inmates with disabilities (including, for example, inmates who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of GFCCC's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include, when necessary to ensure effective communication with inmates who are deaf or hard of hearing, providing access to either interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary or communications through written form for those able to effectively communicate in this manner. In addition, GFCCC shall ensure that materials are provided in formats or through methods that ensure effective communication with inmates with disabilities, including inmates who have intellectual disabilities, limited reading skills, or who are blind or have low vision. GFCCC is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under Title II of the Americans with Disabilities Act, 28 CFR 35.164.
- b. GFCCC shall take reasonable steps to ensure meaningful access to all aspects of



## **8. § 115.18 Upgrades to Facilities and Technologies**

- a.** GFCCC 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.
  - i.** GFCCC Administration 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 Administrator or designee will conduct an assessment to determine technology capabilities to further protect inmates from sexual abuse.
  - i.** When conducting an assessment, the Administrator or designee will give consideration to cost, functionality, findings of inadequacy from judicial or federal investigative agencies, blind spots throughout the facility, and the prevalence of sexual abuse.

## **B. RESPONSIVE PLANNING**

### **1. § 115.21 Evidence Protocol and Forensic Medical Examinations**

- a.** To the extent that GFCCC is responsible for investigating allegations of sexual abuse, GFCCC shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
  - i.** GFCCC is responsible for conducting administrative investigations into allegations of sexual abuse.
  - ii.** Grand Forks County Sheriff's Office conducts criminal investigations of sexual abuse for GFCCC.
- b.** All victims of sexual abuse will be offered access to forensic medical examinations, where medically or evidentiarily appropriate.
  - i.** Forensic medical examinations will be offered without financial cost to the victim. Forensic examinations will be conducted at Altru Health System (Grand Forks).
- c.** Forensic medical exams are conducted by a SAFE or SANE within 120 hours of the incident.
  - i.** When a SAFE or SANE is not available, the examination may be performed by other qualified medical practitioners. The GFCCC medical staff will document its efforts to provide a SAFE or SANE.
- d.** GFCCC will attempt to make a victim advocate from a rape crisis center available to the victim in person or by other means.
  - i.** 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.
- e.** 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.
- f.** 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 while providing emotional support, crisis intervention, information, and referrals.
- g.** For the purpose of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for

appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

**2. § 115.22 Policies to ensure referrals of allegations for investigations**

- a. GFCCC will ensure an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.
  - i. For procedures see § 115.71 Criminal and Administrative Agency Investigations
- b. GFCCC will ensure criminal allegations of sexual abuse or sexual harassment are referred to the Grand Forks County Sheriff's Office unless the allegation does not involve potentially criminal behavior.
  - i. The PREA investigator will document all referrals to the GFCSO in the investigative report. This information will be forwarded to the PREA Coordinator.
- c. GFCCC PREA Policy is available on the department website. GFCCC PREA statistics will be posted annually.

**C. TRAINING AND EDUCATION**

**1. § 115.31 Employee Training**

- a. GFCCC trains all employees during orientation prior to independent inmate contact, and every two years thereafter, on the following matters:
  - i. Zero tolerance policy for sexual abuse and sexual harassment;
  - ii. How to fulfill employee responsibilities under GFCCC's sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
  - iii. Inmates' right to be free from sexual abuse and sexual harassment;
  - iv. The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
  - v. The dynamics of sexual abuse and sexual harassment in confinement;
  - vi. The common reactions of sexual abuse and sexual harassment victims;
  - vii. How to detect and respond to signs of threatened and actual sexual abuse;
  - viii. How to avoid inappropriate relationships with inmates;
  - ix. How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and
  - x. 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.
- c. Employees are provided with information about current policies regarding sexual abuse and sexual harassment policies through:
  - i. GFCCC online PREA training
  - ii. Annual policy review
  - iii. Interim PREA trainings which may occur during the year opposite biannual PREA trainings.
- d. GFCCC documents that employees understand the training they have received through employee signature or electronic verification.

**2. § 115.32 Volunteer and Contractor Training**

- a. GFCCC will ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities regarding GFCCC's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.
  - i. The type and level of training provided to volunteers and contractors is based on the services they provide and the level of contact they have with

inmates, but all volunteers and contractors who have contact with inmates shall be notified of GFCCC's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

- a) Unescorted or unsupervised contractors and all volunteers will receive classroom training on PREA, prior to contact with inmates.
      - b) Escorted or supervised contractors will review and acknowledge understanding of the agency's zero tolerance policy regarding sexual abuse and sexual harassment and information on how to report such incidents by signing the PREA Acknowledgement Form.
    - ii. Training is approved by the PREA Coordinator and is conducted in a classroom environment. The Training Director will track and retain this information.
  - b. Volunteers will be trained on policy and procedures relative to PREA. This training will be repeated every two years.
  - c. GFCCC shall maintain documentation confirming volunteers and contractors understand the training they have received.

### 3. § 115.33 Inmate Education

- a. A GFCCC inmate/detainee who is deemed unstable by the shift supervisor because of level of intoxication/detoxification, combative behavior, suicidal status, or display of significant degree of mental illness, such as psychosis will be placed in a holding cell, where the inmate may be under an intense level of observation consisting of frequent staff checks and video surveillance camera monitoring. The intake/booking process will occur upon stabilization of the inmate.
- b. During the booking process, upon reasonable stabilization, inmates/detainees shall receive information explaining GFCCC's zero tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment. Prior to being placed in general population and after completion of the PREA Intake and Initial Assessment (the vulnerability/aggression screening tool), the inmate is issued the Inmate PREA Brochure and the Inmate Handbook.
- c. Within 30 days of the intake/booking, facility staff will provide comprehensive education to all inmates/detainees by showing the video, 'PREA: What You Need to Know', in either group or individual sessions. The comprehensive education will explain the following:
  - i. GFCCC's zero tolerance policy regarding sexual abuse and sexual harassment;
  - ii. Their right to be free from sexual abuse or sexual harassment;
  - iii. How to report incidents or suspicions of sexual abuse or sexual harassment;
  - iv. Their right to be free from retaliation;
  - v. The agency's policies and procedures for responding to such incidents.
  - vi. An Inmate Orientation PREA Information fact sheet is provided to each inmate in the inmate's property box, with information on definitions and reporting methods.
- d. 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.
  - i. Deaf or hearing impaired – Education is available through print or closed captioning.
  - ii. Visually impaired – Training is available through audio, bold, larger print, and/or GFCCC staff will read materials to the inmate in need.
  - iii. Limited English proficiency – Interpreter services provided.
    - a) Telelanguage Interpreter Services at: 1-800-514-9237
    - b) Access Number: 5820

- c) Specify the language needed
- iv. Otherwise disabled or limited reading skills – PREA education is provided through GFCCC staff.
- e. GFCCC shall maintain documentation of inmate participation in these education sessions.
- f. GFCCC ensures key information is continuously and readily available or visible to inmates through posters, Inmate Handbooks, and the Inmate PREA Brochure.

**4. § 115.34 Specialized Training: Investigations**

- a. In addition to the general training provided to all employees pursuant to § 115.31, GFCCC shall ensure that, to the extent GFCCC itself conducts sexual abuse investigations, its PREA Investigators who investigate allegations of sexual abuse are trained in conducting sexual abuse investigations in confinement settings. This includes:
  - i. Department of Justice approved PREA investigator training.
    - 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.
  - b. The GFCCC Training Director maintains documentation that the agency PREA investigators have completed the required specialized training in conducting sexual abuse investigations.

**5. § 115.35 Specialized Training: Medical, Behavioral Health Care, and Mental Health Care**

- a. GFCCC will ensure that all full- and part-time medical and mental health care practitioners who work regularly in the facility have been trained in:
  - i. How to detect and assess signs of sexual abuse and sexual harassment;
  - ii. How to preserve physical evidence of sexual abuse;
  - iii. How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
  - iv. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.
- b. Forensic exams will be conducted at Altru Health System (Grand Forks).
- c. GFCCC’s Training Director maintains documentation that medical and mental health practitioners have received the training referenced in this standard.
- d. Medical and mental health care practitioners shall also receive the training mandated for employees under §115.31 or for contractors and volunteers under § 115.32, depending upon the practitioner’s status at the GFCCC.

**D. SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS**

**1. § 115.41 Screening for risk of sexual victimization and abusiveness**

- a. All inmates/detainees shall be assessed during an intake screening for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.
- b. During the booking process, which is usually within 24 hours of intake into GFCCC, or upon reasonable stabilization, an inmate/detainee will receive an initial assessment for risk of being sexually abused by other inmates or being sexually abusive toward other inmates, prior to placement in general population. Housing assignments are made accordingly.
- c. A GFCCC Correctional Officer will conduct this initial assessment using the GFCCC PREA Intake and Initial Assessment.

- i. The Correctional Officer completing the GFCCC PREA Intake and Initial Assessment shall immediately notify the shift supervisor when an inmate's scores and self-disclosure indicate potential vulnerability to or predation of sexual aggression in order to make appropriate housing decisions.
- d. The GFCCC PREA Intake and Initial Assessment considers the following criteria to assess inmates for risk of sexual victimization and sexual abusiveness:
  - i. Whether the inmate has a mental, physical, or developmental disability;
  - ii. The age of the inmate;
  - iii. The physical build of the inmate;
  - iv. Whether the inmate has previously been incarcerated;
  - v. Whether the inmate's criminal history is exclusively nonviolent;
  - vi. Whether the inmate has prior convictions for sex offenses against an adult or child;
  - vii. Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
  - viii. Whether the inmate has previously experienced sexual victimization;
  - ix. The inmate's own perception of vulnerability; and
  - x. Whether the inmate is detained solely for civil immigration purposes.
- e. The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to GFCCC, in assessing inmates for risk of being sexually abusive.
- f. Within 30 days of an inmate/detainee's arrival at GFCCC, the inmate will be reassessed for risk of victimization or abusiveness based upon any additional relevant information received since the intake screening.
- g. 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.
- h. Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(i), (d)(vii), (d)(viii), or (d)(ix) of this section.
- i. GFCCC shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

## 2. § 115.42 Use of Screening Information

- a. GFCCC will use information gathered in the GFCCC PREA Intake and Initial Assessment to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.
- b. Using all available information, the facility staff shall make individualized determinations about how to ensure the safety of each inmate.
- c. When making housing and programming assignments for transgender or intersex inmates, GFCCC 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.
- d. Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.
- e. A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.
- f. Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
  - i. Inmates who identify themselves as transgender or intersex during the Intake Screening will be advised they can request the opportunity to shower

separately from other inmates.

- g.** GFCCC shall not place lesbian, gay, bisexual, transgender, or intersex inmates 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.

### **3. § 115.43 Protective Custody**

- a.** Inmates at high risk for sexual victimization shall 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 inmate may be held in involuntary segregated housing for less than 24 hours while assigned staff completes the assessment.
- b.** Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If access to programs, privileges, education, or work opportunities are restricted, GFCCC staff shall document:
  - i.** The opportunities that have been limited;
  - ii.** The duration of the limitation; and
  - iii.** 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, and such an assignment shall not ordinarily exceed a period of 30 days.
  - i.** Every effort shall be made to keep the victim in the victim's normal housing unit to prevent re-traumatization.
- d.** If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, staff shall clearly document:
  - i.** The basis for the concern for the inmate's safety; and
  - ii.** The reason why no alternative means of separation can be arranged.
- e.** Every 30 days, GFCCC shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.

## **E. REPORTING**

### **1. § 115.51 Inmate Reporting**

- a.** GFCCC provides multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents. Inmates can report in the following ways:
  - i.** Verbal reporting to any staff member
  - ii.** Third party reporting
  - iii.** Inmate request forms
  - iv.** Inmate grievance forms
  - v.** Medical complaint forms
- b.** GFCCC allows for inmates to report sexual abuse or sexual harassment to a public or private entity or office that is not part of the GFCCC in the following ways:
  - i.** Grand Forks Police Department: (701) 787-8000
  - ii.** Grand Forks County Sheriff's Office: (701) 780-8280
  - iii.** Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security. DHS OIG Hotline: (800) 323-8603
- c.** Staff shall accept reports made verbally, in writing, anonymously, and from third

- parties and shall promptly document any verbal reports.
- d. GFCCC provides a method for staff to privately report sexual abuse and sexual harassment of inmates.
    - i. Reports may be made by sending an e-mail to: preareport@gfcounty.org

## 2. § 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.
- b. GFCCC ensures that:
  - i. An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and
  - ii. Such grievance is not referred to a staff member who is the subject of the complaint.
- c. The GFCCC Administrator or designee will issue a final decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.
  - i. Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.
- d. The GFCCC Administrator or designee 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.
  - i. The investigating officer shall notify the inmate, in writing, of any such extension and provide a date by which a decision will be made.
  - ii. At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.
- 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.
  - i. If a third party files a request on behalf of an inmate, the alleged victim must agree to have the request filed on his or her behalf.
  - ii. The alleged victim must also agree to personally pursue any subsequent steps in the administrative remedy process.
  - iii. If the inmate declines to have the request processed on their behalf, the investigator shall document the inmate's decision and verify by inmate signature.
- f. An inmate may file an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse.
  - i. Once received, staff shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to the Administrator, or designee, for which immediate corrective action may be taken.
  - ii. The Administrator, or designee, will provide an initial response within 48 hours.
  - iii. The Administrator, or designee, will issue a final decision within five calendar days.
  - iv. The initial response and final decision will document GFCCC's determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.
  - v. After an agency's decision is made, a copy of the emergency grievance and all responses will be forwarded to the PREA Coordinator.

- g. 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.

**3. § 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, including toll-free hotline numbers to the organizations listed below.
  - i. Community Violence Intervention Center – Office Line(701)746-0405 or 24-hour Crisis Line (701) 746-8900
  - ii. Write to: Just Detention International, 3325 Wilshire Blvd., Suite 340, Los Angeles, CA 90010
- b. National Sexual Abuse Hotline – 1-800-656-4673 (toll-free, non-recorded line).GFCCC 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.
- c. GFCCC will maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. GFCCC shall maintain copies of these agreements or documentation showing attempts to enter into such agreements.

**4. § 115.54 Third-Party Reporting**

- a. GFCCC shall receive verbal, written and anonymous third-party reports of sexual abuse and sexual harassment.
  - i. Reports may be made through e-mail at [preareport@gfcounty.org](mailto:preareport@gfcounty.org)
- b. GFCCC publicly distributes, on its website, information on how to report inmate sexual abuse or sexual harassment on behalf of inmates.

**5. § 115.61 Staff and agency reporting duties**

- a. All GFCCC 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 GFCCC; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
  - i. Staff, volunteers, and contractors shall accept reports of sexual abuse and sexual harassment made: verbally, in writing, anonymously, and from third parties.
  - ii. Staff, volunteers, and contractors shall immediately notify the shift supervisor of any verbal report of sexual abuse or sexual harassment against inmates or staff. Documentation of inmate verbal reports will be completed and turned in to the shift supervisor by the end of shift.
  - iii. All GFCCC employees, volunteers, and contractors shall immediately report any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or sexual harassment or retaliation.
  - iv. GFCCC employees, volunteers, or contractors may privately report sexual abuse and sexual harassment of inmates to their supervisor or any other facility supervisor.
    - a) For response procedures see § 115.65 Coordinated Response
- b. Apart from reporting to designated supervisors or officials, GFCCC staff, volunteers, and contractors 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.
- c. Unless otherwise precluded by federal, state, or local law, GFCCC medical, mental health, 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.
  - d. If the alleged victim is considered a vulnerable adult under a state or local vulnerable persons' statute, GFCCC shall report the allegation to the ND Department of Human Services under applicable mandatory reporting laws.
  - e. The PREA Coordinator, Administrator, or designee, shall assign an investigator for all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports.

**6. § 115.62 Agency Protection Duties**

- a. When facility staff learns an inmate is subject to a substantial risk of imminent sexual abuse, staff shall take immediate action to protect the inmate.
  - i. Initiate § 115.65 Coordinated Response, as applicable

**7. § 115.63 Reporting to other confinement facilities**

- a. Upon receiving an allegation that an inmate was sexually abused, or sexually harassed, while confined at another facility, the Administrator, or designee, shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.
- b. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
- c. GFCCC shall document that it has provided such notification.
- d. The facility Administrator or PREA Coordinator that receives such notification shall ensure that the allegation is investigated in accordance with this policy.

**8. § 115.65 Coordinated Response – Investigations of sexual abuse or sexual harassment**

- a. GFCCC shall use this procedure as a plan to coordinate actions taken in response to an incident of sexual abuse and sexual harassment, among staff first responders, medical, mental health, and behavioral health practitioners, investigators, and facility leadership.
- b. When a report is received of possible sexual abuse or sexual harassment, the Administrator or designee shall ensure an investigation is conducted.
- c. **Sexual Abuse by an inmate, staff member, contractor, or volunteer:**
  - i. **First Responder:**
    - a) The first security staff member responding to an allegation of sexual abuse must separate the alleged victim from the alleged abuser.
    - b) Notify the shift supervisor of the alleged incident.
    - c) Preserve and protect any potential crime scene until appropriate steps can be taken to collect evidence.
    - d) If the alleged abuse occurred within the past 120 hours, request that the alleged victim not take any action that could destroy physical evidence including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, eating, or drinking.
    - e) Refrain from asking the alleged victim detailed questions about the incident.
    - f) If the alleged abuse occurred within the past 120 hours, staff will ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing,

brushing teeth, changing clothes, urinating, defecating, smoking, eating, or drinking.

- g) If the first receiver of the incident is not a security staff member, the receiver shall be required to request that the alleged victim not take any actions that could destroy physical evidence and then notify security staff.

**ii. Shift Supervisor:**

- a) Notify the Administrator of the incident (in cases of staff, contractor, or volunteer).
  - 1) The Administrator will consult with Human Resources
  - 2) The Administrator will consult with the PREA Coordinator, who will assign an investigator.
  - 3) The Administrator or designee will notify the North Dakota DOCR PREA Coordinator/Jail Inspector of the incident, if appropriate.
- b) The shift supervisor shall ensure that an investigator is assigned to investigate the incident (in cases of inmate on inmate abuse).
- c) Ensure duties of first responder are completed.
- d) The shift supervisor may order a facility, or location, lock-down status at any time.
- e) Preserve and protect any potential crime scene until appropriate steps can be taken to collect evidence. This area will remain secured as a potential crime scene until released by the PREA Investigator or in the event of a criminal investigation, the Grand Forks County Sheriff's Office.
- f) Assign one officer to supervise each inmate (alleged victim and alleged offender), with the expectation the alleged victim will be in the presence of staff until such time the alleged victim is placed in the care of another staff member.
- g) If the alleged abuser is a staff member, contractor, or volunteer, escort them outside of the secure area and refer to law enforcement.
- h) If directed by the Administrator or designee, contact the Grand Forks County Sheriff's Office and requests a sexual assault/abuse criminal investigation.
- i) If the alleged abuse occurred within 120 hours, the shift supervisor will make arrangements for the alleged victim to be transported to Altru Health System for a sexual assault exam, which will be conducted by a trained SANE or SAFE.
  - 1) All evidence will be collected at the hospital.
- j) Ensure that all necessary reports are completed.

**iii. PREA Coordinator:**

- a) Notify the Administrator of the name of the assigned investigator (in cases of inmate on inmate abuse).
- b) Monitor and provide assistance and technical resources to the PREA Investigator.

**iv. Medical Staff:**

- a) Reassure the alleged victim that medical staff is 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 process of a sexual assault examination to the victim. Sexual assault examinations must be performed by a trained SANE or SAFE when available. 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, staff shall document the refusal and have the inmate sign an Against Medical Advice Release from Responsibility form.
- d) In the event transportation is necessary, medical staff will work with the shift supervisor to make arrangements for transporting the inmate to the hospital. If possible, Altru Health System will be notified of the inmate who will be transported for a sexual assault exam. All transports will be conducted in accordance with the transport policy.
- e) Document all actions taken and communications with the inmate in the medical record.
- f) Ensure STD testing has occurred and prophylactic treatment is completed.
- g) Ensure pre- and post-HIV counseling has been conducted.
  - 1) Ensure follow-up infectious disease testing is completed and that infectious disease testing is completed on the abuser if the allegation is substantiated.

**v. Final Determination of Allegation:**

- a) The allegation will be considered substantiated if a preponderance (more than 50 percent) of the evidence supports this finding.
- b) If the evidence 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, GFCCC 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 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.

**vi. PREA Investigator:**

- a) If it is determined a crime may have been committed, the PREA Investigator shall request a referral be made to the Grand Forks County Sheriff's Office for a criminal investigation.
  - 1) As the GFSO conducts their criminal investigation, the PREA Coordinator or designee will become the liaison between GFCCC and the GFSO, and will inform the alleged victim and GFCCC Administration of progress and outcomes of the criminal investigation.
- b) At the completion of the investigation, the staff investigator will compile all documentation, including the investigative report, any recorded interviews, evidence which includes any surveillance camera reviews that are preserved, incident reports with disposition, medical and counseling findings, recommendations for post-release treatment, and send this information to the PREA Coordinator.
  - 1) The hard copy PREA Investigation file will be maintained in a secure filing cabinet in a Lieutenant's office.

- 2) The electronic PREA Investigation file will be uploaded on the secure server.

**d. Sexual Harassment by an inmate:**

**i. First Responder:**

- a) The first staff member responding to an allegation of sexual harassment must separate the alleged victim from the alleged abuser and stop the harassment immediately.
- b) Notify the shift supervisor of the alleged incident.
- c) Complete an incident report.

**ii. Shift Supervisor:**

- a) Ensure duties of the first responder are completed.
- b) Offer the alleged victim the opportunity to speak with the PREA Coordinator, medical staff, or behavioral health staff for counseling.
- c) Ensure an investigation into the alleged incident is initiated.
- d) Ensure that an investigator is assigned to investigate the incident.

**iii. PREA Coordinator:**

- a) Determine if the alleged sexual harassment allegation meets the definition as applied to PREA standards.
- b) If determined the definition is met:
  - 1) Notify the Administrator of the name of the investigator (in cases of inmate on inmate abuse).
  - 2) Monitor and provide assistance and technical resources to the PREA Investigator.

**iv. PREA Investigator:**

- a) At the completion of the investigation, the staff investigator will compile all documentation, including the investigative report, any recorded interviews, evidence which includes any surveillance camera reviews that are preserved, incident reports with disposition, medical and counseling findings, recommendations for post-release treatment, and send this information to the PREA Coordinator.
  - 1) The hard copy PREA Investigation file will be maintained in a secure filing cabinet in a Lieutenant's office.
  - 2) The electronic PREA Investigation file will be uploaded on the secure server.

**v. Final determination of allegation:**

- a) The allegation will be considered substantiated if a preponderance (more than 50 percent) of the evidence supports this finding.
- 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 that the incident did not occur, the allegation will be considered unfounded.
- d) If an inmate is determined to have committed sexual harassment against another inmate, the inmate will be subject to appropriate disciplinary action.
- e) Following the investigation, the PREA Investigator, or a staff member designated by the PREA Investigator, will inform the inmate or inmates verbally whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. The investigator or designated staff member will deliver, in person, a statement of findings 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.

- e. **Sexual Harassment by a staff member, contractor, or volunteer:**
- i. All allegations of staff sexual harassment will be handled internally unless it's determined a crime has been committed.
  - ii. Any employee who receives information about staff sexual harassment directed to an inmate will immediately inform their shift supervisor. The shift supervisor shall immediately notify the Administrator and PREA Coordinator. Information may include rumors from staff or inmates. Failure to report information about staff sexual harassment may result in disciplinary action, up to and including termination.
  - iii. The Administrator or designee will:
    - a) Notify the North Dakota DOCR PREA Coordinator of the incident and select an investigator.
    - b) The Administrator and investigator shall ensure there is separation between the inmate and the affected staff during the investigation. This separation does not represent a form of punishment for the inmate or affected staff.
  - iv. The staff investigator will meet with the inmate and review the inmate's statement.
    - a) If it is determined a crime may have been committed, the staff investigator shall consult with the Administrator prior to requesting assistance from the GFSO and work as a liaison with the investigative agency in the investigation.
    - b) If it is determined a crime has not been committed, the investigator shall interview the staff member.
    - c) During the investigation, employees shall cooperate fully by providing all pertinent information. Failure of an employee to answer any inquiry will be grounds for disciplinary action.
    - d) Employees interviewed or implicated may not make any attempt to contact the inmate victim from the time the allegation is first made until completion of the investigation.
    - e) Employees are prohibited from any form of retaliation against an inmate who makes an allegation of staff sexual misconduct or staff sexual harassment.
  - v. False accusations:
    - a) If the investigation reveals an inmate made a false allegation, disciplinary action may be imposed.
    - b) Employees, contractors, volunteers, official visitors, or agency representatives who are found to have committed staff sexual harassment as defined in these procedures will be subject to internal discipline in accordance with GFCCC personnel policies, and § 115.76 and § 115.77.
  - vi. Final determination of allegation:
    - a) The allegation will be considered substantiated if a preponderance (more than 50 percent) of the evidence supports this finding.
    - 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 that the incident did not occur, the allegation will be considered unfounded.
    - d) Following the investigation, the PREA Investigator, or a staff member designated by the PREA Investigator, will inform the inmate or inmates verbally whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. The investigator or designated staff member will deliver, in person, a statement of findings 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.

**vii. PREA Investigator**

- a) At the completion of the investigation, the staff investigator will compile all documentation, including the investigative report, any recorded interviews, evidence which includes any surveillance camera reviews that are preserved, incident reports with disposition, medical and counseling findings, recommendations for post-release treatment, and send this information to the PREA Coordinator.
  - 1) The hard copy PREA Investigation file will be maintained in a secure filing cabinet in a Lieutenant's office.
  - 2) The electronic PREA Investigation file will be uploaded on the secure server.

**9. § 115.66 Preservation of ability to protect inmates from contact with abusers**

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

**10. § 115.67 Agency Protection against Retaliation**

- a. The GFCCC PREA Coordinator shall ensure protection of 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.
- b. The PREA Coordinator, in conjunction with the Administrator, shall ensure multiple protection measures are available, including housing changes or transfers 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.
- c. For at least 90 days following a report of sexual abuse or sexual harassment, the PREA Coordinator shall ensure monitoring of the conduct and treatment of inmates who reported the sexual abuse or sexual harassment of inmates who were reported to have suffered sexual abuse or sexual harassment to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. In the case of staff, the Administrator will assign a supervisory level staff member to monitor for retaliation against staff that reported or provided information regarding inmate sexual abuse or sexual harassment.
  - i. Items the facility should monitor for inmates include disciplinary reports, housing, or program changes. GFCCC shall continue monitoring beyond the 90 days if the initial monitoring indicates a continuing need.
  - ii. Items the facility should monitor for staff include, but are not limited to, performance reviews, absentee from work, a change in work performance, requests to move shifts and/or reassignment of duties or shifts. GFCCC shall continue monitoring beyond the 90 days if the initial monitoring indicates a continuing need.
- d. In the case of inmates, such monitoring shall also include periodic status checks.
- e. If any other individual who cooperates with an investigation expresses a fear of retaliation, GFCCC shall take appropriate measures to protect that individual against retaliation.
- f. GFCCC's obligation to monitor shall terminate if GFCCC determines that the allegation is unfounded.

**11. § 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.

## **F. INVESTIGATIONS**

### **1. § 115.71 Criminal and Administrative Agency Investigations**

- a. When GFCCC conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall initiate a prompt, thorough and objective investigation for all allegations, including third-party and anonymous reports.
- b. Where sexual abuse is alleged, GFCCC shall utilize PREA investigators who have received Department of Justice approved sexual abuse investigation training.
- c. PREA Investigators shall:
  - i. Gather and preserve direct and circumstantial evidence, including available physical and DNA evidence and available electronic monitoring data;
  - ii. Shall interview alleged victims, suspected perpetrators, and witnesses; and
  - iii. Shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- d. When the quality of evidence appears to support criminal prosecution, the GFCCC investigator will stop the administrative investigation while the criminal investigation is being conducted, unless otherwise directed by the Administrator. GFCCC shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- 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. GFCCC 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.
- f. Administrative investigations:
  - i. Must include an effort to determine whether staff actions or failures to act contributed to the abuse; and
  - ii. Must be documented in written reports that include a description of the physical and testimonial evidence, the 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.
- h. Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.
- i. GFCCC 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.
- j. Investigations are completed regardless of employee status or inmate custody status; the departure of the alleged abuser or victim from the employment or control of the GFCCC shall not provide a basis for terminating an investigation.
- k. When the Grand Forks County Sheriff's Office investigates sexual abuse, GFCCC PREA Investigators shall cooperate with outside investigators and shall remain informed about the progress of the investigation.

### **2. § 115.72 Evidentiary standard for administrative investigations**

- a. GFCCC 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.

**3. § 115.73 Reporting to inmates**

- a.** Following an investigation, the PREA Investigator or staff member designated by 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.
- b.** If the GFSO conducts an investigation, GFCCC shall request the relevant information in order to inform the inmate of the outcome of the investigation.
- c.** If there has been a substantiated or unsubstantiated complaint of sexual abuse committed by a staff member against an inmate, the PREA Coordinator will inform the inmate whenever:
  - i.** The staff member is no longer posted within the inmate's unit;
  - ii.** The staff member is no longer employed at the facility;
  - iii.** The agency learns that the staff member has been charged with an offense related to sexual abuse within the facility;
  - iv.** The agency learns that the staff member has been convicted of an offense related to sexual abuse within the facility.
- d.** Following an inmate's allegation of sexual abuse by another inmate, the PREA Coordinator will inform the alleged victim whenever:
  - i.** The agency learns that the alleged abuser has been charged with an offense related to sexual abuse within the facility; or
  - ii.** The agency learns that the alleged abuser has been convicted of an offense related to sexual abuse within the facility.
- e.** All such notifications or attempted notifications shall be documented.
- f.** GFCCC's obligation to report under this standard terminates if the inmate is released from GFCCC's custody.

**G. DISCIPLINE:** Any sexual contact or sexual harassment between staff and inmate, volunteer and inmate, or contract personnel and inmate, regardless of consent, is prohibited and subject to administrative disciplinary and criminal sanctions.

**1. § 115.76 Disciplinary sanctions for GFCCC staff**

- a.** Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.
  - i.** Employees shall cooperate fully by providing all pertinent information during an 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 or ward of the state of North Dakota.
- c.** Disciplinary sanctions for violations of GFCCC 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 other staff with similar histories.
- d.** All terminations for violations of GFCCC 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.

**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.
- b. GFCCC shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of GFCCC sexual abuse or sexual harassment policies by a contractor or volunteer.

**3. § 115.78 Disciplinary sanctions for inmates**

- a. Inmates shall be subject to disciplinary sanctions pursuant to the GFCCC disciplinary process following an administrative or criminal finding of guilt that the inmate engaged in inmate-on-inmate sexual abuse.
- 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.
- 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 sanction, if any, should be imposed.
- d. GFCCC shall consider, as a condition of access to programming or other benefits, whether to require the offending inmate to participate in therapy, counseling or other interventions designed to address and correct underlying reasons or motivations for the abuse.
- e. GFCCC may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
- f. 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.
- g. GFCCC prohibits all sexual activity between inmates and may discipline inmates for such activity. GFCCC will not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

**H. MEDICAL AND MENTAL HEALTH CARE**

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

- a. If the GFCCC PREA Intake and Initial Assessment indicates an inmate has experienced prior sexual victimization or perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure the inmate is offered a follow-up meeting with a mental health, medical or behavioral health practitioner within 14 days of the intake screening.
- b. Disclosure of information related to sexual victimization or abusiveness that occurred in an institutional setting must 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 required by federal, state, or local law.
- c. Medical, Mental Health, and Behavioral Health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting.

**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 of which are determined by medical, mental and behavioral health practitioners according to their professional judgment.
- b. If qualified medical, mental or behavioral 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, mental and behavioral health practitioners.

- 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.
- d. Treatment services shall be provided to the victim and abuser without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

### **3. § 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers**

- a. GFCCC 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.
- b. The evaluation and treatment of such victims shall 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.
- c. GFCCC shall provide such victims with medical and mental health services consistent with the community level of care.
- d. Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.
- e. If pregnancy results from the conduct described in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.
- f. Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.
- g. Treatment 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.

## **I. DATA COLLECTION AND REVIEW**

### **1. § 115.86 Sexual abuse incident reviews**

- a. GFCCC 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.
- b. Such review shall ordinarily occur within 30 days of the conclusion of the investigation.
- c. The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
- d. The review team shall:
  - i. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
  - ii. 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;
  - iii. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
  - iv. Assess the adequacy of staffing levels in that area during different shifts;
  - v. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
  - vi. Prepare a report of its findings, including determinations made pursuant to

paragraphs (d)(i) through (d)(v) of this section, and any recommendations for improvement and submit such report to the GFCCC Administrator.

- vii. GFCCC shall implement the recommendations for improvement, or shall document its reason for not doing so.

## **2. § 115.87 Data collection**

- a. GFCCC shall collect accurate, uniform data for every allegation of sexual abuse at its facility using a standardized instrument and set of definitions.
  - i. GFCCC utilizes the Department of Justice, Bureau of Justice Statistics form SSV-2, Survey of Sexual Violence, if provided.
- b. The GFCCC PREA Coordinator shall aggregate the incident based sexual abuse data at least annually.
  - i. The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.
- c. GFCCC shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
  - i. The PREA Coordinator will ensure the documents are uploaded onto the secure server.
  - ii. 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, GFCCC shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

## **3. § 115.88 Data review for corrective action**

- a. GFCCC 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:
  - i. Identifying problem areas;
  - ii. Taking corrective action on an ongoing basis; and
  - iii. Preparing an annual report of its findings and corrective actions.
- b. Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.
- c. The GFCCC's report shall be approved by the Administrator and made readily available to the public through its website or other means.
- d. GFCCC may redact specific material from the reports when publication presents a clear and specific threat to the safety and security of the facility, but must indicate the nature of the material redacted.

## **4. §115.89 Data storage, publication, and destruction**

- a. GFCCC ensures that data collected pursuant to §115.87 are securely retained on the secure server.
- b. GFCCC shall make all aggregated sexual abuse data readily available to the public at least annually through its website or by other means.
- c. Before making aggregated sexual abuse data publicly available, GFCCC shall remove all personal identifiers.
- d. GFCCC 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.

- e. All case records associated with claims of sexual abuse, including incident reports, investigation reports, inmate information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and counseling will be retained in accordance with North Dakota statute.

## **J. AUDITS**

### **1. § 115.93 Audits of standards**

- a. GFCCC shall conduct audits pursuant to § 115.401 through § 115.405.
- b. GFCCC will comply with all audit requirements from the DOJ.

### **2. § 115.401 Frequency and scope of audits**

- a. Effective August 20, 2013 and during each three-year period thereafter, GFCCC shall be audited at least once.
- b. GFCCC will utilize an audit instrument developed by the Department of Justice to provide guidance on the conduct of and contents of the audit.
- c. The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for the facility.
- 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.
- e. The auditor shall have access to, and shall observe, all areas of the facility.
- f. The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).
- 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 DOJ upon request.
- h. The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators.
- 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.
- j. The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees.
- 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.
- l. Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.

### **3. § 115.402 Auditor qualifications**

- a. An audit shall be conducted by:
  - i. A member of a correctional monitoring body that is not part of, or under the authority of, the GFCCC but may be part of, or authorized by, North Dakota state or local government;
  - ii. A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the GFCCC; or
  - iii. Other outside individuals with relevant experience.
- b. All auditors shall be certified by the Department of Justice. The DOJ shall develop and issue procedures regarding the certification process, which shall include training requirements.
- c. No audit may be conducted by an auditor who has received financial compensation from GFCCC (except for compensation received for conducting prior PREA audits) within the three years prior to GFCCC's retention of the auditor.
- d. GFCCC shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to GFCCC's retention of the auditor, with the

exception of contracting for subsequent PREA audits.

**4. § 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 his or her ability to conduct an audit of GFCCC.
- b. Audit reports shall state whether GFCCC policies and procedures comply with relevant PREA standards.
- c. For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings:
  - i. Exceeds Standard:
    - a) Substantially exceeds requirement of standard.
  - ii. Meets Standard:
    - a) Substantial compliance; complies in all material ways with the standard for the relevant review period.
  - iii. Does Not Meet Standard:
    - a) Requires corrective action.
- d. The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.
- e. 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.
- f. Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to GFCCC upon request, and may provide such information to the Department of Justice.
- g. GFCCC shall ensure that the auditor's final report is published on the GFCCC website or provide other means so the report is readily available to the public.

**5. § 115.404 Audit corrective action plan**

- a. A finding of "Does Not Meet Standard" with one or more standards shall trigger a 180-day corrective action period.
- b. The auditor and GFCCC shall jointly develop a corrective action plan to achieve compliance.
- 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.
- 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.
- e. If GFCCC does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

**6. § 115.405 Audit appeal**

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

**7. § 115.501 State determination and certification of full compliance**

- a. In determining pursuant to 42 U.S.C. 15607(c)(2) whether GFCCC is in full

compliance with the PREA standards, the Governor shall consider the results of the most recent GFCCC audits.

- 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.