

## REPORT OF INVESTIGATION

TO: The Vermont Agency of Human Services  
FROM: Downs Rachlin Martin, PLLC  
DATE: December 23, 2020  
RE: *Report Concerning Sexual Misconduct At The Chittenden Regional Correctional Facility*

### I. Introduction and Executive Summary

The Vermont Agency of Human Services (AHS) engaged Downs Rachlin Martin, PLLC (DRM) to conduct an independent investigation into the prevalence and policy implications of sexual abuse, sexual harassment, sexual misconduct, and sexual exploitation<sup>1</sup> at the Vermont Department of Correction (DOC) women's prison, the Chittenden Regional Correctional Facility

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<sup>1</sup> DOC Directives provide the following definitions:

**Sexual Abuse:** The use of debt, threats of physical harm, peer pressure, deceit, personal favors, or positional authority to force or cajole sexual favors from a person, including inmate-on-inmate or staff-on-inmate abusive sexual contacts, nonconsensual sexual acts or sexual harassments.

**Sexual Harassment:** Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of derogatory or offensive sexual nature by a person directed towards another. It also includes repeated verbal comments or gestures of a sexual nature to a person by another, including demeaning reference to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

**Sexual Misconduct:** Any behavior of a sexual nature committed by staff directed toward an inmate/offender that is prohibited by federal law, Vermont statute, AHS policies, DOC policies or DOC work rules.

**Sexual Exploitation:** Any abuse of a position of vulnerability, differential power, or trust for sexual purposes; this includes profiting monetarily, socially, or politically from the sexual exploitation of another. It also includes the solicitation of sexual favors from any person committed to the care and custody of the DOC from any staff person.

DOC Directive # 409.09, Prison Rape Elimination Act (PREA) & Staff Sexual Misconduct—Facilities; DOC Directive #118.02, Reporting and Investigating Unlawful Discrimination, Sexual Harassment. For purposes of this report, DRM has adopted these definitions. DRM understands and defines the term “sexual misconduct” to encompass sexual abuse, harassment and exploitation. For ease of reading, the report uses the term “sexual misconduct” to refer to conduct that may fall into one or more of the sexual abuse, harassment, and exploitation categories, unless the use of a more precise term is helpful. Directives 409.09 and 118.02 are Exhibits 1 and 2.

(CRCF) as those problems relate to the culture, policies, and practices at the facility. This report sets forth DRM's Investigatory Findings and concludes with a series of Recommendations intended to address ongoing and future issues with sexual abuse, sexual harassment, and sexual misconduct at CRCF, which can be summarized as follows.

- Reemphasize DOC's zero-tolerance standard for sexual abuse, sexual harassment and sexual misconduct.
- Review and strengthen rule and policy directives pertaining to contact between DOC staff and individuals under DOC supervision in and outside of the facility.
- Implement mandatory reporting protocols for staff-supervisee contact, and require training regarding such contacts.
- Seek amendment to strengthen the statute currently criminalizing sexual conduct with a DOC supervisee only when the DOC staff person is assigned as part of the staff person's caseload.
- Establish a Governor-appointed Monitoring Committee comprised of eminent adjudicators with deep familiarity with the Vermont criminal justice system and/or a cross section of stakeholder institutions to monitor implementation and impact of this Report's recommendations.
- Continue improvement of video technology in the facility to better monitor staff-resident interactions.
- Establish and implement staff on-duty body camera program to better monitor staff-resident interactions.
- Establish and implement a training and best practices program for gender-responsiveness in a women's prison and train all CRCF staff on gender-responsive corrections practices.
- Reestablish the position of Director of Women's Services to oversee this and related training programs.
- Institute mandatory, annual sexual harassment training for all DOC staff.
- Reemphasize and train on the existing DOC protocol that complainants of sexual assault, misconduct or harassment are entitled to receive a written response to their complaint.
- Discourage indeterminate or delayed resolutions of complaints.

- Seek legislative change permitting all corrections staff to be subject to mandatory, random drug testing, or implement a program of non-random drug testing as permitted under current state law.
- To address morale and retention issues, and address staffing shortages, invest in a recruitment campaign. Consider providing locality pay and periodic retention bonuses. Emphasize recognition of excellent service.
- Establish mentorship program among DOC staff to instill the types of conduct and practices DOC would like to encourage, and provide support and guidance for younger staff.
- Due to serious limitations in the physical condition and construct of the facility, consider allocating resources to build a new facility or change location.
- Emphasize and examine alternatives to incarceration and support for residents reentering the community to reduce recidivism and reduce pressure on current corrections resources.

## II. Scope of Investigation

AHS engaged DRM to investigate the culture, policies, and processes at CRCF as those factors pertain to sexual abuse, sexual harassment, sexual misconduct, and sexual exploitation. Prior to this engagement, reporter Paul Heintz published a long-form article in Seven Days detailing extensive allegations of sexual abuse at CRCF.<sup>2</sup> The Vermont Women’s Legislative Caucus also called for an investigation into the matter.<sup>3</sup> AHS and DOC committed to cooperate with DRM and pledged to allow DRM to determine the appropriate steps in the investigation and reach its conclusions and recommendations independently. AHS and DOC kept their commitment. DOC staff, from senior management to junior corrections officers, cooperated with this investigation. DRM was provided access to the facility to the extent it was possible and appropriate during the COVID-19 pandemic. DRM was provided access to all the documents it

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<sup>2</sup> Paul Heintz, *Guarded Secrets: Claims of Sexual Misconduct, Drug Use Plague a Vermont Prison for Women*, Seven Days, Dec. 4, 2019.

<sup>3</sup> *Women’s Legislative Caucus: Support investigation into women’s prison allegations*, Seven Days, Dec. 10, 2019.

deemed necessary to review. No one in state government made any effort to influence the course of the investigation or the conclusions and recommendations set forth in this report.<sup>4</sup>

In furtherance of this investigation, DRM took the following steps:

- Interviewed DOC staff, including current and former managers at CRCF, as well as corrections officers and case workers.
- Engaged as expert consultants The Moss Group, Inc. (TMG), a nationally recognized criminal justice consulting firm that specializes in assisting correctional departments and facilities to implement correctional best practices. TMG are experts in correctional best practices at women's facilities and have an extensive history working with DOC and its implementation of sexual safety standards and best practices in accordance with the Prison Rape Elimination Act (PREA). TMG facilitated a series of focus group meetings involving CRCF staff and women incarcerated at the facility<sup>5</sup>; aided in the review of policy material, and helped develop policy and culture assessments and recommendations.
- Organized round-table discussions and individual consultations with the principal community service providers who supply services and support to the women incarcerated at CRCF.
- Engaged private investigators to assist in interviewing women who are currently, or were previously, incarcerated at CRCF, as well as current and former DOC staff, regarding their experiences at the facility.
- Reviewed AHS and DOC documents, including policy materials and investigative reports.

Notably, DRM was at the early stages of its investigative process in early 2020 when the COVID-19 pandemic struck. Significant aspects of the investigation were delayed considerably due to the ramifications of COVID-19. Moreover, major aspects of DOC and CRCF's operations have been severely disrupted by COVID-19. It is difficult to overstate the impact of the pandemic on the facility's operations and the lives of the people who both live and work there. It is beyond the scope of DRM's investigation to assess how well CRCF has responded to

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<sup>4</sup> DRM agreed to provide a draft copy of its report to AHS and Vermont Department of Human Resources prior to its publication. DRM remains the arbiter of the contents of the final report.

<sup>5</sup> Throughout this report, DRM has endeavored to avoid the term "inmate" because it is potentially dehumanizing. In its place, the report uses phrases "women incarcerated in the facility" or "resident."

COVID-19. Therefore, although this report describes the changes the pandemic has forced on CRCF, to the extent possible the report attempts to distinguish between pandemic-related challenges, which presumably will be temporary, and the more persistent cultural and policy shortcomings that contribute to sexual misconduct.

DRM's role was not to serve as a substitute for the existing DOC procedures for reporting sexual misconduct and obtaining redress. It was beyond the scope of DRM's investigation to determine whether individual DOC staff members had violated DOC rules or engaged in criminal conduct. Any individual suspected of engaging in criminal activity has the right to an impartial investigation by an appropriate authority with the power and means to conduct a fair investigation. If charges are brought, such an individual has the right to the presumption of innocence and a prosecution that comports with due process. Similarly, DOC employees who are suspected of engaging in misconduct that could result in adverse employment actions have contractual and legal rights to a fair investigation and resolution process. Accordingly, allegations of misconduct that DRM encountered during the course of this investigation were examined to determine whether broader conclusions could be reached about the culture, policies and practices at CRCF. The pertinent material that DRM gathered in the course of its investigation has been turned over to the authorities for assessment of whether criminal or civil investigation and/or employment action is appropriate. Nothing in this report is intended to suggest DRM's opinions on those questions.

### **III. Background Information**

#### **A. Organization**

CRCF is a state-run prison managed by DOC, operating under the umbrella of AHS. CRCF supervisors and staff are State of Vermont employees, and represented by the Vermont State Employees' Association, Inc. (VSEA).

The CRCF physical plant infrastructure is maintained by the Department of Buildings and General Services. The facility itself was opened in 1972 and sits on a relatively small property in South Burlington. Its age and related dilapidation, as well the small size of its outdoor space, are well-documented challenges that are discussed in greater detail below.

CRCF is currently Vermont's only prison for women. The recent history of where Vermont women have been incarcerated is pertinent to this investigation. By way of summary, women were incarcerated at the Dale Correctional Facility in Waterbury until 2003. At that point, the women's facility was moved to the Southeast State Correctional Facility in Windsor, Vermont. In 2009, incarcerated women again were transferred to the Northwest Correctional Facility in St. Albans, Vermont where they remained until 2011, at which time they were moved to CRCF.

Currently, CRCF houses approximately 89 women. This is down from a population of approximately 120-130 prior to the COVID-19 pandemic. This reduction is in part a result of DOC's efforts to release incarcerated individuals who have served their minimum sentence and have been deemed a low risk to the community. The vast majority of the women incarcerated at CRCF have been sentenced to terms of imprisonment of five years or less.

The leadership at CRCF has experienced very significant turnover in recent years. Most importantly, the facility has had seven superintendents over approximately the last nine years.

The impact of these frequent changes in leadership is discussed below. The current Superintendent is Theresa (Stone) Messier, who has held the position since July of 2018.

Reporting directly to the Superintendent at CRCF are two Assistant Superintendents. Another key member of the facility's leadership structure is Chief of Security (COS), who is responsible for assisting the Superintendent and Deputy Superintendents with investigating allegations of misconduct and who serves as a critical liaison between the facility management and uniformed corrections officers.

Uniformed corrections officers (COs) work in three shifts at CRCF: First Shift from 7:30 AM to 3:30 PM, Second Shift from 3:30 PM to 11:30 PM, and Third Shift from 11:30 PM to 7:30 AM. The most junior COs are designated Correctional Officer I (COI) and more senior COs can be promoted to Correctional Officer II (COII). Each shift has a Correctional Facility Shift Supervisor (CFSS) who oversees the COIs and COIIs on duty.

In addition to uniformed COs, CRCF is staffed with caseworkers. Each woman incarcerated in CRCF has an assigned caseworker who is responsible for, among other things, assisting the incarcerated woman manage program and educational needs and planning for re-entry into the community.

Aside from DOC staff, a number of community service organizations work inside CRCF to provide critical services to the incarcerated women. Some of these organizations have employees who work full-time inside the facility while others spend time in CRCF on a regular basis. These organizations include Kids-A-Part, DIVAS, Vermont Works For Women, Mercy Connections, the Women's Justice and Freedom Initiative, and the Vermont Network, among others. Close collaboration between these organizations and DOC staff at all levels is essential.

## B. Prison Rape Elimination Act

DOC is subject to the requirements of the Prison Rape Elimination Act (PREA).<sup>6</sup> PREA is a federal law, enacted on September 4, 2003, which supports the prevention, reduction, and elimination of sexual assault and rape within corrections systems. The pertinent PREA mandates are discussed throughout this report, but an overview provides valuable context.

PREA marked a sea change in the way correctional departments in the United States understood and handled the problem of sexual misconduct in jails and prisons. Before PREA, there was no consistent, nationwide approach to identifying, quantifying, and addressing sexual misconduct within correctional systems. It is fair to state that, prior to PREA, many correctional departments across the country failed to respond to sexual misconduct in a serious and systemic manner. Since PREA's enactment, Vermont DOC has devoted very significant resources toward complying with PREA's mandates.

The principal provisions of PREA include the following:

- Adherence to a zero-tolerance standard for the incidence of resident sexual assault and rape;
- Development of standards for detection, prevention, reduction, and punishment of prison rape;
- Collection and dissemination of information on the incidence of prison rape; and
- Award of grant funds to help state and local governments implement the purposes of the Act.<sup>7</sup>

PREA applies to all public and private correctional institutions that house adults or juveniles offenders. It addresses both resident-on-resident sexual misconduct and staff-on-resident sexual misconduct. For purposes of DRM's investigation, several PREA-mandated

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<sup>6</sup> DOC administrative directive 409.09 implements PREA.

<sup>7</sup> National Institute of Corrections, PREA/Offender Sexual Abuse, available at: <https://nicic.gov/prea-offender-sexual-abuse>.

processes proved important to understanding DOC's approach to the problem of sexual misconduct.<sup>8</sup> First, upon booking or within a short proscribed time period thereafter, every new resident at a DOC facility, including CRCF, must be provided "PREA Orientation." During this orientation a staff member will do the following with the resident:

- Review the *You Have the Right to be Safe* brochure with the resident;<sup>9</sup>
- Review and inform the resident:
  - How to avoid risky situations;
  - How to call the hotline;
  - How to report an incident;
  - How to obtain medical/counseling/advocacy services;
  - Risks and consequences to engaging in sexual activity;
  - DOC's zero-tolerance policy and incident reporting protocol;
  - The resident's right to be free from sexual abuse, sexual harassment and retaliation related to sexual abuse;
- Confirm the resident's access to the inmate handbook.

Second, PREA sets forth certain requisite standards for a correctional department's processes for reporting and investigating allegations of sexual misconduct and ensuring that those who have reported such conduct are not subject to retaliation.

Third, PREA mandates that departments provide residents access to outside victim advocates for emotional support services related to sexual abuse. Fourth, PREA requires that

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<sup>8</sup> The PREA standards are publicly available in a Department of Justice document titled, *Prison Rape Elimination Act, Prisons and Jail Standards*, which is available on DOC's website: <https://doc.vermont.gov/prison-rape-elimination-act-prea>.

<sup>9</sup> PREA's *You Have The Right To Be Safe* brochures are available for both residents and staff. They are publicly available for review on DOC's website at <https://doc.vermont.gov/prison-rape-elimination-act-prea>. PREA posters, which provide residents reporting information and are posted in facilities, including CRCF, are also available for review on the same site.

departments report out qualifying incidents of alleged sexual misconduct to allow policymakers and stakeholders to assess the type and number of incidents occurring in a particular facility or department as compared to other facilities or departments nationwide.

Finally, PREA requires that every facility be subject to regular audits by a DOJ-certified outside PREA auditor who visits the facility, conducts interviews, and reviews pertinent documents. This auditor drafts a report that contains detailed findings about whether defined PREA standards are, or are not, met within the facility. These PREA audit reports are public documents and DOC publishes them on its website. All PREA audit reports for CRCF are available on DOC's website.<sup>10</sup> The results of CRCF's two most recent PREA Audits are discussed below.

The point person for DOC compliance with PREA is the PREA Director. This is a DOC staff person who works from DOC headquarters in Waterbury, Vermont. The PREA Director is responsible for: developing, implementing, and overseeing DOC's plan to comply with the PREA standards; monitoring and assisting resident screening procedures, investigations, and mental and medical health treatment according to PREA standards; and overseeing DOC PREA data collections and compliance with PREA audits.

Another critical position is the PREA Coordinator. Each DOC facility, including CRCF, has a PREA Coordinator, who is a dedicated and trained staff person responsible for coordinating with the PREA Director regarding all PREA incidents that occur at their facility as well as coordinating the PREA intake requirements.

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<sup>10</sup> See <https://doc.vermont.gov/prison-rape-elimination-act-prea>.

#### IV. Investigatory Findings

In the following section, DRM sets forth its conclusions and determinations regarding a number of areas of concern identified during the course of this investigation.

##### A. Strengths

Although the conclusions in this report identify a number of shortcomings and problems at CRCF, it is also important to acknowledge some of the facility's many strengths and significant efforts at improvement that have occurred during the past two years. During the course of its investigation, DRM encountered numerous DOC staff at all levels, ranging from upper-level management to newly minted COs, who clearly demonstrated a commitment to providing the residents at CRCF a safe and healthy environment and thereby helping those residents return to the non-incarcerated Vermont community on a better footing than when they entered prison. It was particularly striking to DRM that, despite the intensely powerful media attention and accompanying public outcry, DOC staff did not respond to the DRM investigation defensively. To the contrary, the most commonly expressed sentiment was: "we want to improve here and we welcome any assistance we are offered." At a time when it was grappling with the COVID-19 pandemic, CRCF management and VSEA went out of its way to facilitate DRM and TMG's focus-group sessions, which occupied a significant amount of resources over the course of three days and required a member of DRM's investigation team to be present in the facility despite the pandemic. Although there were some initial reservations, DOC staff members at CRCF proved willing to participate enthusiastically in focus group sessions and appeared willing to speak candidly to DRM and TMG. The same was true for women incarcerated in the facility. All of this reflects positively on CRCF's management, staff, and residents.

## *1. Critical Services*

In order to provide an accurate understanding of what occurs at CRCF, it was necessary to review at least some of the critical services that CRCF, and the community-service providers with which it partners, offer to the women who live at the facility. Although many of these operations have been significantly hampered by COVID-19, it is expected (and hoped) that these interruptions will be temporary. The following is a list of such services:

### **Kids-A-Part (KAP)- Parenting**

KAP offers parent, caregiver and child support for CRCF. KAP's services include: community outreach and support to caregivers; parenting support and education to mothers; visitation and activities to children; partnership with the Children's Literacy Foundation to provide books, audio recordings of incarcerated mothers reading books and events; support through the pregnancy, birth, court proceedings and termination of rights processes; and assistance and access to the Vermont Department for Children and Families as needed.

### **Vermont Works for Women (VWW)- Employment Skills**

VWW provides programming for incarcerated women who want to find direction, purpose and fulfillment in their lives. This programming covers goal setting strategies, managing expectations, navigating obstacles, assertive communication, and giving and receiving feedback.

For women being released to Chittenden County, VWW provides a six-to-ten-week program called Step In to Work. This program offers life skills and job readiness classes, career assessments and job coaching, assistance in creating and updating cover letters/resumes, supervision and support through on-the-job work experiences, assistance in finding and keeping a job, and support during the interview process. VWW also creates opportunities for residents to

meet potential employers who can answer questions regarding employability, strategies, skills, and wisdom to aid women on their path to employment discovery.

### **Mercy Connections: Mentoring Program**

Mercy Connections collaborates with DOC to operate the Vermont Woman's Mentoring Program. This evidence-based program matches trained volunteer mentors to incarcerated women mentees both in the corrections institution and upon their reentry into the community. Through this program, mentors work side-by-side with their mentees to assist in navigating and connecting with resources and to provide support upon reentry. It is a restorative justice program that provides positive social capital to women aimed at success upon reentry. Mercy Connections also offers classes in hope and strength and other classes to women in the corrections facility aimed at supporting women through the challenges of incarceration and reentry.

### **Discussing Intimate Violence and Accessing Support (DIVAS): Sexual and Domestic Violence Advocacy**

DIVAS is a program administered by the Vermont Network Against Domestic and Sexual Violence. Its staff are crisis workers, meaning they can have confidential conversations about sexual assault, domestic violence, and safety with CRCF residents. DIVAS provides survivor-centered advocacy, support, and education to residents. Its programming includes: individual and group advocacy and education about domestic and sexual violence; service coordination, planning, and support from the time of an individuals' incarceration to the time of their release; and training and technical assistance for service providers about issues of domestic and sexual violence experienced by people involved in criminal justice and corrections systems.

## **University of Vermont (UVM)**

In 2017, UVM partnered with DOC to bring residents and college students together in a classroom setting. Since its inception, the UVM program has offered non-credit classes in classics, literature/mythology, English/composition, and statistics.

## **Risk Reduction Program**

DOC provides the Risk Reduction Program, which is an evidence-based intervention that reduces recidivism risk through a structured program design, based upon risk assessment.

### *2. Recent Efforts At Improvement*

It is also important to acknowledge that many of the allegations detailed in the Seven Days article and encountered during the course of DRM's investigation involved conduct that occurred before the current Superintendent, Theresa Messier, took that position in 2018. Not surprisingly, opinions varied among residents and staff regarding the strengths and shortcomings of CRCF's current leadership. Notably, a number of residents who had been incarcerated under previous superintendents praised Superintendent Messier's efforts at improving the conditions at CRCF overall and specifically the culture regarding sexual misconduct. Many staff also praised the current leadership along similar lines, although some expressed concern that resident discipline has recently been given short shrift and that facility security could be compromised as result.

More specific efforts at improvement in recent years include the following:

- Facility management, security and case management staff have attended the National Institute of Corrections (NIC) training on the management of women's facilities. To date, seven staff members have attended.
- DOC has delivered curriculum to staff written by TMG, that pertains to sexual safety, boundaries, investigations and reporting.

- DOC staff have received training from the Vermont Task Force on Human Trafficking to inform staff on what to look for when identifying potential victims of human trafficking.
- DOC staff have received training from advocates at DIVAS covering trauma informed practices, gender responsive strategies, women's pathways, sexual and domestic violence.

In 2018, the Women's Legislative Caucus made the issue of women's incarceration and justice-involvement its central policy consideration and raised specific concerns about the conditions at CRCF. In April 2019, UVM professor, Kathryn J. Fox, Ph.D., and former Commissioner Touchette collaborated on a grant application for the Urban Institute's Prison Research Innovation Network (PRIN). The result was a research-practice partnership between UVM and DOC, in collaboration with PRIN focused on improving prison environments and culture.

During the summer of 2019, Dr. Fox and Superintendent Messier visited Southern Maine Women's Re-entry Center (SMRC) in Windham, Maine. SMRC "is designed to give women the skills and experience they need to successfully live as positive citizens and employees after they transition from state correctional facilities into their home communities. An emphasis is placed on reducing their risks of re-offending and on increasing their positive outcomes."<sup>11</sup> Dr. Fox and Superintendent Messier are currently part of a Learning Community with SMRC management and CRCF management on gender responsivity, trauma, and training.

In the Fall of 2020, DOC made a very significant improvement with respect to its "hotline" for reporting abuse at CRCF. DOC had long-struggled to identify an appropriate non-DOC recipient for complaints communicated through this hotline and the issue had been the subject of serious concern. The concerns related to the adequacy of the transmission of

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<sup>11</sup> <https://www.maine.gov/corrections/adult-facilities/southern-maine-womens-reentry-center> (last visited December 8, 2020).

complaints, and ensuring they were presented to independent law enforcement authorities. DOC has now established a reporting hotline that goes to directly to the Vermont State Police.

In sum, this report would present an inaccurate picture and do a significant disservice to the DOC staff and their partners among the community service providers if it failed to acknowledge the work that is currently being done on behalf of the women incarcerated at the facility. Although changes and additional reforms are urgently needed, any future improvement must be anchored to the existing efforts. It is important not to underestimate the many good things going on at CRCF.

#### B. Staff-On-Resident Sexual Misconduct

Notwithstanding the strengths and improvements detailed above, DRM's investigation encountered allegations of sexual abuse, sexual harassment, sexual misconduct and sexual exploitation at CRCF. Most, but not all, of these allegations had been reported to DOC, and if so, DOC generally adhered to the investigative procedures required by DOC policies. Some allegations had not been reported to DOC by the victim for reasons discussed in Section IV.B.4. It is beyond the scope of this investigation for DRM to re-adjudicate previously reported allegations, or make final determinations on newly identified ones. Rather, as noted, the pertinent material that DRM gathered in the course of its investigation has been referred for possible criminal and civil investigation.

Resident-on-resident sexual misconduct is clearly a significant concern in any prison. Consistent with PREA, DOC has extensive policies in place to facilitate the reporting and investigation of such behavior. The allegations that DRM encountered during this investigation, however, did not fall into this category of conduct but instead involved staff-on-resident or staff-on-staff behavior. This is not proof that resident-on-resident sexual misconduct never occurs at

CRCF. Nevertheless, this report focuses on the two predominate categories of sexual misconduct reported during the course of the investigation: staff-on-resident and staff-on-staff. The following summaries are representative of the types of misconduct allegations DRM encountered and are offered as context for findings and recommendation set forth below.<sup>12</sup>

*1. Governing Law and DOC Policy*

All types of sexual misconduct are abhorrent and unacceptable. Yet sexual misconduct involving DOC staff and the residents of CRCF raises unique concerns. The power imbalance between residents on the one hand, and COs and other staff on the other, simply cannot be overstated. At CRCF, as with any prison, COs have control over the residents' lives to a degree that would be unimaginable to someone unfamiliar with prison. Thus, the women living at CRCF are particularly vulnerable to predation. This vulnerability is enhanced by two factors, which were frequently mentioned to DRM by residents and staff alike. First, many of the women at CRCF arrive at the facility having already experienced sexual violence and trauma during the course of their lives. Second, many of the women at CRCF suffer from either mental health issues, substance abuse, or both. These factors not only make the residents of CRCF more vulnerable to potential sexual predation by staff, but also render the consequences of that predation more harmful, both to the victims and the greater community.

Any assessment of sexual misconduct involving DOC staff and residents must begin with recognizing that it is a criminal offense for any DOC staff person to engage in sexual activity with anyone under DOC custody or supervision. Vermont law provides as follows:

- (a) No correctional employee, contractor, or other person providing services to offenders on behalf of the Department of Corrections or pursuant to a court order or in accordance with a condition of parole, probation, supervised community

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<sup>12</sup> Identifiable information has not been used in this report, regardless of whether the information has previously been made public.

sentence, or furlough shall engage in a sexual act with a person who the employee, contractor, or other person providing services knows:

(1) is confined to a correctional facility; or

(2) is being supervised by the Department of Corrections while on parole, probation, supervised community sentence, or furlough, where the employee, contractor, or other service provider is currently engaged in a direct supervisory relationship with the person being supervised. For purposes of this subdivision, a person is engaged in a direct supervisory relationship with a supervisee if the supervisee is assigned to the caseload of that person.<sup>13</sup>

This is a felony statute and anyone convicted of violating it can be imprisoned for up to five years. A person incarcerated at CRCF, or any DOC facility, is, as a matter of law, *incapable of consenting* to sexual activity with a DOC staff person. The criminal statute reflects the dramatic power imbalance between staff and residents.

DOC policy is also quite clear on this point. In pertinent part, that policy reads as follows:

DOC is committed to the safety of any individual in custody or incarcerated in a correctional facility. DOC has a zero-tolerance standard for sexual abuse, sexual harassment and/or sexual misconduct. *Inmates in the custody of DOC are never regarded as being able to consent to any kind of sexual relationship.* No matter who initiates the contact or how "mutual" the relationship is, it is considered a rule violation by inmates and an abuse of power by staff to engage in any sexual relationship within a facility. DOC will respond to verbal, written, anonymous, and third party reports of sexualized behavior or abuse as nonconsensual, regardless of perception, rumor, appearance, or participant disclosure. The DOC will respond to, investigate, and support the prosecution of sexual abuse within Vermont's correctional system and externally in partnership with law enforcement. Through continual education of staff and inmates, the DOC will increase awareness of safe reporting mechanisms and available services to victims, thereby creating an institutional culture that discourages prison sexual abuse.<sup>14</sup>

In sum, due to the vast control which DOC staff exert over the residents of CRCF and those residents' unique vulnerability to predation, both Vermont criminal law and DOC policy appropriately recognize that residents are incapable of consenting to sexual conduct with staff. For

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<sup>13</sup> 13 V.S.A. § 3257.

<sup>14</sup> DOC Directive # 409.09, Prison Rape Elimination Act (PREA) & Staff Sexual Misconduct—Facilities (emphasis added).

a DOC staff member to engage in such conduct is an egregious breach of his or her duties and a violation of the public trust.

## 2. *Exemplary Allegations*

For the reasons set forth above, it would have been of significant concern if DRM had encountered even one allegation of sexual misconduct involving a staff member and a resident. Instead, DRM encountered many such allegations. The following descriptions are representative examples. This is not intended as an exhaustive list of the allegations of sexual misconduct DRM encountered during this investigation.<sup>15</sup>

- In January 2020, a resident reported being sexually assaulted in 2016 by a CO who, at the time of the report, was no longer employed at CRCF. She stated that the CO entered her cell while she was sleeping and grabbed her breast and inner thigh. The resident stated that she did not come forward in 2016 for fear of retaliation. In addition to the resident who reported this conduct in January 2020, there were rumors about this particular CO having a sexual relationship with a different resident while he was still employed at CRCF. The second resident was asked about the relationship and denied it. After the second resident was released and the CO left employment with DOC, CRCF learned that this resident and the CO were engaged. Current residents are aware of this relationship and reported to this investigation that this CO had relationships with other residents while he was still working at CRCF.
- In 2020, it was alleged that a CO sent Facebook messages and pictures of himself to a former resident. These communications were described as not “overly sexual, but inappropriate.” The CO would ask the former resident, who was out on supervision, to hang out. The resident reported this communication when she went back to CRCF. Another CO reportedly told her that she should not have reported the first CO, because “he’s a great guy.” The subject CO is no longer working at CRCF.
- In 2020, a resident alleged that she was sexually assaulted during a routine pat down search.
- In March 2019, a CO was arrested for sexual assault, simple assault, and procuring prostitution. The CO had known the accuser from high school and during her incarceration at CRCF. The affidavit of probable cause does not identify any offenses occurring inside CRCF. The CO was temporarily relieved from duty, during which period he resigned. The criminal charges were dropped after the accuser died of a drug overdose in October 2019.

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<sup>15</sup> All allegations encountered by DRM during this investigation have been referred for possible criminal or civil investigation.

- In October 2019, a CRCF resident accused a CO of taking her and another woman to a camp and forcing her to engage in sex and drug use when she was out of prison on supervision in July 2019. The accuser reported the assault to CRCF's Security and Operations Supervisor. The CO was temporarily relieved from duty. The report was referred to the Vermont State Police for a criminal investigation. The Chittenden County State's Attorney concluded there was insufficient evidence to prove a criminal charge beyond a reasonable doubt and no charges were brought.
- In January 2018, AHS investigatory<sup>16</sup> unit determined that a CO had violated boundary issues with a CRCF resident during the CO's original probationary period of employment. The CO was terminated for failing to meet the expectations of a Corrections Officer.
- In November 2017, a CO was accused of engaging in sexual misconduct with a female resident. A resident interviewed by this investigation described the assault as "forcible rape." The assault was referred to VSP for a criminal investigation. The CO was interviewed as part of an AHS investigation. He resigned following the interview.
- In 2014, several residents accused a CO of engaging in sex acts with them while they were incarcerated at CRCF. DOC referred the matters to the Vermont State Police. The CO was charged with sexual exploitation of a resident. He resigned from state employment in January 2015. He was acquitted of the charge at a criminal trial in March 2016. In October 2016, the Chittenden County State's Attorney brought additional charges against him based on accusations by two additional female residents. These charges were subsequently dropped.
- A former resident at CRCF discussed being contacted by a CO after she was released from prison. These communications occurred over text message and Facebook. The CO reportedly asked her to hang out. She stopped talking to him, and believes that due to this rebuff, he retaliated against her when she went back to CRCF.
- Another witness reported being solicited for sex through SexFinders.com by a CO when she was out on supervision. This witness believes she was retaliated against by the CO when she went back to CRCF.

### 3. *DOC's Reporting Process*

DOC procedure creates two distinct protocols for the reporting of staff-on-resident sexual misconduct, one for "sexual harassment" and another for "sexual abuse."<sup>17</sup> These protocols are

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<sup>16</sup> The Investigation Unit (IU) was previously under AHS. This transition has created some confusion among witnesses interviewed by the investigation.

<sup>17</sup> For the definitions of these terms *see supra* n.1.

very detailed and lengthy. For purposes of this report, DRM has combined both protocols and summarized the most salient features as follows.

When any allegation of staff-on-resident sexual misconduct is made, either by another staff member, the victim, or another resident/witness, DOC staff create an incident report, submit the report to the Shift Supervisor and report up the facility chain of command that includes the Chief of Security, Assistant Superintendents, and the Superintendent. An Assistant Superintendent, in coordination with others, including the Chief of Security and the Superintendent, will conduct a preliminary investigation, which includes securing the scene, preserving any evidence—including video surveillance evidence—and speaking with witnesses. Both the facility's PREA Coordinator and DOC's PREA Director must be notified and included in the process to ensure PREA compliance and reporting occur. Importantly, the PREA Coordinator is responsible for working with management to ensure that the alleged victim and any witnesses are separated from the alleged perpetrator, referred to medical and mental health services, and do not suffer retaliation.

Facility management must also notify the DOC Director of Facilities and General Counsel. These decisionmakers will assess and determine whether the accused DOC staff member should be placed on temporary relief from duty pending the outcome of the investigation. Assuming that the preliminary stages of the investigation do not immediately disprove the allegations, facility management, including the Assistant Superintendent and Superintendent must coordinate with the DOC Director of Facilities and General Counsel to review the circumstances of the allegation and help determine next steps. If the allegations involve potential criminal conduct, the matter is referred to the Vermont State Police (VSP) for investigation. Facility management and the DOC Director of Facilities will coordinate and assist

VSP, but VSP is responsible for determining the course and duration of its investigation and for deciding whether to refer the matter to a prosecutorial authority who, in turn, is responsible for deciding whether there is sufficient evidence to bring criminal charges against the accused DOC staff person.

If the allegations involve misconduct that does not rise to the level of criminal conduct, then the matter is referred to the Department of Human Resources Investigative Unit (DHR-IU). DHR-IU will still investigate matters involving potential criminal conduct by a DOC staff person, but DHR-IU will defer such an investigation until the criminal investigation is completed.

DHR-IU will make its own determination if the allegation constitutes misconduct and whether there are sufficient facts to determine if an investigation is warranted. Facility management and the DOC Director of Facilities coordinate with DHR-IU in the investigations, but DHR-IU, not DOC, is ultimately responsible for determining the scope and pace of the investigation. Because it is an investigation of potential staff misconduct and therefore a personnel matter, pursuant to DOC policy, matters related to the investigation are considered confidential and the Superintendent and other facility managers are prohibited from sharing or discussing aspects related to the investigation with other staff except under narrow circumstances.

Pursuant to PREA standards, there are three possible resolutions to an allegation of sexual misconduct in a prison:

- **Substantiated:** An allegation that was investigated and determined to have occurred.
- **Unfounded:** An allegation that was investigated and determined not to have occurred.

- **Unsubstantiated:** An allegation that was investigated and the investigation produced insufficient evidence as to whether or not the event occurred.

Regardless of the outcome, the PREA Coordinator for the facility and DOC's PREA Director are responsible for ensuring that the results of the investigation are reported as required by PREA. With respect to employee discipline, if DHR-IU determines that the staff person has engaged in misconduct, then DOC is responsible for determining what discipline is warranted. However, DHR will provide advice on appropriate discipline. DRM found that this stage of the process was less than transparent, however. The accused employee has due process rights to written notice and an opportunity to be heard. And settlement discussions involving the employee, his or her attorney, VSEA, DOC and DHR/AHS occur and at times result in mutually agreed-upon confidential settlements instead of publicly visible discipline such as suspension, demotion, or termination.

#### 4. *Findings*

In the representative cases DRM reviewed, it appears DOC followed the requisite investigative procedures. That is consistent with the findings of the 2020 PREA Audit. *See* Section IV.C. Notably, when the alleged misconduct involved potentially criminal behavior, the matter was referred to law enforcement for investigation. In these situations, the DOC investigation was suspended to avoid interfering with the criminal investigation. However, this process is lengthy and lacks transparency, which can lead to assumptions of guilt and the perception among staff and residents that the offending corrections officer is not being held accountable.

As noted, DRM encountered a number of allegations of sexual misconduct allegedly perpetuated between staff and residents. While even a single instance is intolerable, this

misconduct occurred to a disturbing degree. DOC's investigation and disciplinary process must reflect its zero-tolerance policy for sexual abuse, sexual harassment, and sexual misconduct.

Moreover, although reporting and investigative procedures were adhered to, it is clear that not all incidents are reported. There are several reasons for this. Some incidents are not reported because the residents fear retaliation. Others are not reported because the resident considers herself to be in a consensual sexual or romantic relationship with an officer, despite the clear prohibition of these types of relationships in the DOC policies. For example, several residents interviewed by the investigation referred to a relationship between a specific former CO and a resident as "dating." Yet another resident interviewed by the investigation reported that a former CO became engaged to a former resident after the relationship began at CRCF. These reports are extremely troublesome not only at the micro level, but as indicators of problematic cultural and boundary issues within the facility. It is also noteworthy that these types of incidents are well known among the other residents at the facility.

Some witnesses reported frustration with a lengthy investigation process after an allegation is reported. Allegations of sexual misconduct are extremely serious and investigations need to be completed quickly and by a team knowledgeable about corrections and invested in the outcome. A lengthy process, with little or no information being provided to impacted individuals during the interim, creates anxiety and distrust within the facility. Those involved—staff and residents alike—perceive that nothing is happening. If the accused staff is relieved from duty (RFD) during the pendency of the investigation without explanation, this can contribute to anxiety in the facility and the sense that there is no transparency. From the perspective of residents and other staff, the person has disappeared. Rumors perpetuate, and residents and staff do not have a clear picture of what has occurred and will occur.

A lack of transparency concerning the conclusions of an investigation also creates problematic perceptions among both residents and staff. For example, residents may believe an individual has committed misconduct, but for reasons that are not disclosed to the residents (or other staff for that matter), the corrections officer continues to be employed at CRCF. Many witnesses interviewed by this investigation believe that corrections officers are rarely held accountable for their actions. A process that lacks transparency can also lead to the dissemination of misinformation and implications of false guilt. Both perceptions lead to misinformation and lower morale throughout the facility.

The perception that there is a lack of accountability is not limited to the residents. Staff report inappropriate behavior through the proper methods and assume no action is taken when the inappropriate behaviors continue. Residents and staff recounted instances of retaliation and fear of retaliation which were commonly seen as impediments to the process of fair adjudication of misconduct. Staff noted the presence of favoritism amongst staff and leadership as well as staff cliques. Cliques are reportedly formed based on race, popularity, rank, position, and generational ties to the local community and Vermont. DOC must work to ensure that these cliques do not further favoritism and retaliation. This is important in fostering accountability, improving morale, and building trust.

Importantly, it was also reported to the investigation that there is a lack of transparency at the DHR-IU level of the process, such that CRCF management does not always know what has happened with the allegation. After a matter is referred to DHR-IU, DHR-IU can decline to investigate and there is no formalized mechanism to challenge this determination. It does not appear that DHR-IU is required to document the basis for this conclusion. Similarly, if the DHR-IU review of the investigation determines that there is insufficient evidence to warrant a

response, there appears to be no consistently applied process by which management can provide this information to the initial complainants. This too can lead to the perception that management is doing nothing, even when that is not the case. Both management and staff expressed considerable frustration with this state of affairs. There is also a perception by some that it is difficult to terminate problematic staff due to legal and labor issues. These concerns must, however, be considered in light of important confidentiality rights that prevent management from discussing personnel and potential disciplinary issues with other staff and residents.

Finally, the exemplary allegations support the perspective by some staff that reports are not taken seriously. In one of the examples, there is reason to conclude that the disciplinary action (e.g. 2-day work suspension and 3 hours of sexual harassment training), did not appropriately account for the ongoing interaction between a supervisor who allegedly made degrading sexual remarks about a lower-level CO and that CO. In that situation, it was reported by the individual that the response to her allegations made her reluctant to report further harassment. Thus, it is important to highlight that when reporting declines, it is not necessarily indicative of a decrease in occurrences of actionable behavior, instead it may be attributed to mistrust or a lack of confidence in the system itself.

### C. PREA Audit Results

The PREA Standards require that all covered confinement facilities be audited at least once during a three-year audit cycle by a certified PREA auditor. The purpose of the audit is to assess compliance of written policies in discrete areas including reporting, screening processes, training, education and certain hiring decisions.

It is important to point out that a successful PREA audit does not guarantee that sexual harassment or sexual abuse is not happening within a facility. Nor does it guarantee a positive

facility culture, or compliance by staff with facility policies and procedures. The Audit serves a specific and useful purpose, but should not be considered a definitive analysis of sexual safety within the facility. Although the auditor will review investigations during the course of the audit, specifics on the actual investigations reviewed are not provided in the Final Audit. Instead, the Audits only indicate whether investigations are handled in accordance with PREA requirements.

The limitations of the audit process are evident from the successful audit results of the last two audit cycles as compared to the continued reporting of allegations of sexual misconduct at CRCF, such as those and other concerns identified in this Report.

Out of a total of 45 audited Standards, the Final 2017 Audit concluded that all Standards were either met or exceeded (after corrective action). The following is the list of Standards the Auditor found were exceeded, i.e. defined as substantially exceeding the requirement of the standard: 115.22 (Policies to ensure referrals of allegations for investigation); 115.31 (employee training); 115.32 (Volunteer and contractor training); 115.33 (Inmate education); and 115.42 (Use of screening information). The Standards requiring corrective action were 115.52 (Exhaustion of administrative remedies); 115.67 (Agency protection against retaliation); 115.86 (Sexual abuse incident reviews).

The 2020 Audit Findings also concluded that all standards were either met or exceeded (after corrective action). The list of Standards found to be exceeded in the recent Audit are: 115.21 (Evidence protocol and forensic medical examinations); 115.32 (Volunteer and contractor training); 115.42 (Use of screening information); and 115.53 (Inmate access to outside confidential support services). The Standards requiring corrective action were 115.41 (Screening for risk of victimization and abusiveness); 115.63 (Reporting to other confinement facilities);

115.64 (Staff first responder duties); 115.73 (Reporting to inmates); 115.86 (Sexual abuse incident reviews); 115.88 (Data review for corrective action); and 115.89 (Data storage, publication and destruction).

Select 2020 Audit Findings are excerpted at a high-level as follows. These are generally consistent with the 2017 Audit Findings:

Interviews were conducted on site with the PREA compliance Manager and Superintendent to confirm the facilities' efforts to prevent, detect and respond to sexual abuse and sexual harassment. It was also apparent through the facility walk through that the facility takes sexual safety seriously through the observation of PREA posters, PREA Newsletters, informational pamphlets, and also through educational programs. (115.11 p. 20).

The facility has 133 cameras that are monitored by control staff to aid in supervision. There were no blind spots identified in the areas where inmates have access. (115.13 p. 24).

CRCF has added multiple cameras to the video monitoring system since the last audit, at the suggestion of the auditor.... Documentation of how the technology could enhance the agency's ability to protect inmates from sexual abuse was provided. Video technology is recorded and maintained for approximately thirty days, depending on the activity or movement within the facility. (115.18 p. 33).

[DOC] conducts a reasonable investigation into the background of prospective employees, contractors, and volunteers, who, by the nature of the position to be filled, will have access to sensitive information, facilities, computer systems, clients, detainees, inmates, procedures, and/or reports. (115.17 p. 31).

[DOC] ensures that an Administrative and Criminal investigation is conducted for all allegations of sexual abuse and sexual harassment. This is required in policy 409.09.... This auditor reviewed all PREA allegations for compliance with the standards and found that the facility ensures the cases are referred to the proper authorities. The agency documents all referrals of allegations of sexual abuse or sexual harassment for criminal investigation. Documentation was verified upon review of investigative case files. (115.22 p. 36-37).

Interviews of staff members demonstrated an understanding of the agency's zero tolerance policy; the agency policy and procedures for prevention, reporting and response to a sexual assault or sexual harassment incident, the dynamics of sexual abuse and harassment in a confinement setting [etc.] (115.31 p. 38-39). The agency provides multiple mechanisms for reporting sexual harassment and sexual abuse.... Most inmates indicated that they would tell an officer or their

caseworker. The offenders feel comfortable with reporting directly to the officers in this facility.... (115.51 p. 52).

Interviews with a random sample of staff confirm that they are required to report [] knowledge, suspicion or information regarding sexual harassment or sexual abuse, retaliation or staff neglect. (115.54 p. 59).

The facility has designated an Assistant Superintendent as the Retaliation Monitor for CRCF. The agency has also created a Retaliation Monitoring Form to use to assist the monitor in keeping track and notes of the monitoring. (115.67 p. 70).

The VTDOC has a policy to investigate all crimes related to sexual abuse and sexual harassment in their facilities... Once an incident appears to be criminal in nature, the case is forwarded to the Vermont State Policy (VSP) for investigation. (115.71 p. 74).

Notably, the Interim Audit Reports in 2017 and 2020 required corrective action to find compliance with Standard 115.86, entitled Sexual abuse incident reviews. This Standard requires the facility to conduct a sexual abuse incident review within 30 days of the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. Although the agency has a policy to conduct incident reviews consistent with Standard 115.86, it was noted during both audit cycles that there were cases where the required Incident Review did not occur within 30 days due to staffing issues. The corrective action in 2017 was a new Protocol requiring adherence to this timeframe, and updated investigations. Nonetheless, the 2020 Interim Audit found that there were several Incident Reviews that were not completed within the required 30 day time-period. The corrective action was the same in 2020. At the time of the Final 2020 Audit Report, additional reviews of cases were completed.

TMG reviewed the 2017 and 2020 Final Audits in connection with this investigation. With respect to the 2017 Audit, TMG concluded that the 2017 audit showed a typical audit with typical results, with nothing unusual or deficient. The 2020 Final Audit results were similar to

2017. Once again, there was little or no information about the actual sexual abuse investigations reviewed as part of the Audits.

#### D. TMG Focus Groups

TMG assisted the investigation in conducting a series of focus groups at CRCF during the three-day period of September 29-October 1, 2020. The focus group-format was not a substitute for other interviews, but was in addition to the witness interviews conducted throughout this investigation. The purpose of the focus groups was to further identify issues, including policy, leadership, culture, training, safety, retaliation, and reporting.

TMG structured the focus groups from samplings of the staff and resident population using TMG's evidence-based methodology. Supervisors, staff, and residents were separated into their own groups. In compliance with Covid-19 requirements and safety practices, the groups were conducted virtually by a TMG consultant with a member of this investigation present in the facility during the group interviews and discussions. Participation was optional, however it is notable that both CRCF staff and residents willingly and enthusiastically participated in the focus group discussions.

Information collected through the focus group process factored into the investigation's Conclusions and Recommendations discussed throughout this report.

It is important to note that the majority of participating staff and residents from the focus group sampling reported feeling emotionally, physically, and sexually safe in the facility. This was also the case as it pertains to reporting incidents, with the majority of participating staff and residents stating that they understood the process for, and felt comfortable with reporting incidents of misconduct. That said, it was clear from the discussions that facility morale is low for the reasons discussed in Sections IV.B.4 and IV.J of this Report.

In particular, the focus group discussions revealed significant distrust and concern among both groups regarding staff accountability. Many staff and residents do not believe that staff are held accountable or appropriately disciplined once misconduct is reported. In such cases, staff and residents discussed reporting misconduct, but assuming that no action was taken when either the inappropriate behavior continues or it does not appear that there was any disciplinary action. This, in part, may be attributed to transparency issues discussed in other sections of this report. It is also the inevitable outcome from repeated reports of misconduct (e.g. drug use) against certain staff that did not result in disciplinary action.

It was also reported during the focus groups that there is a culture in the facility of blurring professional boundaries. There were several references to the size of the state, which can create a scenario in which staff know a resident prior to her incarceration. Similarly, as in the case of reported incidents, there is inevitable geographic proximity between the staff and residents after the residents are no longer incarcerated. Connections are further facilitated by social media, which makes it relatively easy for a corrections officer to communicate with a former resident.

Both staff and residents mentioned the need for stricter criteria for hiring staff to ensure they can handle corrections and working with incarcerated women in the facility. In addition, it was reported that Correctional Academy training has been significantly reduced in order to place staff in facilities quicker. Further, staff reported on-the-job training to be inadequate and new staff are put on challenging shifts too soon without proper direction or supervision, which results in some staff resigning within days.

#### E. Reporting Hotline

Although a component of both the CRCF reporting process and the PREA standards, the challenges related to the Reporting Hotline are sufficiently complex and important to warrant special attention. DOC has long provided a “hotline” which a resident should be able to use to report sexual misconduct. CRCF management, residents, and community service providers all identified the confusion and difficulty regarding DOC’s hotline as a source of concern.

Federal PREA standard Section 115.51, entitled “Inmate reporting,” requires a way for residents to report sexual abuse or harassment to a public or private entity or office that is not part DOC and that is able to receive and immediately forward reports of sexual abuse or sexual harassment to DOC officials, while allowing the reporting resident to remain anonymous upon request. The “hotline” as it existed at the time of the 2017 and 2020 PREA Audits did not satisfy this criteria.

The Final 2017 Facility PREA Audit and Interim 2020 Facility PREA Audit for CRCF instead identify one reporting mechanism that does satisfy 155.51. The Audits state that residents could write a letter to the Vermont Prisoners’ Rights Office (“PRO”), or call PRO, and PRO would promptly forward all information to DOC officials. PRO is a division of the Office of the Defender General.

DOC’s representation in the 2017 and 2020 PREA Audits that PRO served the role required in Section 155.51 is incorrect in light of PRO’s ethical obligations as attorneys who represent persons in the custody of DOC. As attorneys who must maintain client confidences and loyalties, PRO cannot serve as DOC’s third-party PREA reporter. PRO informed this investigation that this was clearly communicated to DOC as early as 2014 and that PRO expressly declined to accept the reporting role in 155.51 for those reasons. PRO again

communicated this to DOC on July 29, 2020, after which DOC did alert the PREA Auditor. PRO was surprised by DOC's representation again in 2020 that PRO occupied this role. This was a weakness in DOC's reporting structure.

As of December 2019, residents could also report grievances, sexual abuse, or sexual harassment via an internal reporting hotline (referred to as the "55 Line"). The 55 Line went directly to a voicemail system managed by DOC, which created a strong sense of distrust in the efficacy of the 55 Line. Residents voiced concerns in this investigation that reports made to the 55 Line had been deleted by DOC staff before the reports were investigated. The investigation did not determine if this was the case, but it was a legitimate and serious concern, which should not have taken years to resolve. It is easy to see how a resident, in the custody of DOC, who fears retaliation and perceives an insular system lacking in transparency, would fear that reports made directly to a DOC-managed hotline would be deleted and go unanswered.

There have been two significant upgrades to the process for external reporting over the past few months. First, a September 28, 2020 Memorandum of Understanding between AHS and DOC provides that AHS will receive and forward resident reports of sexual abuse and sexual harassment to agency officials. CRCF residents were alerted to the new process and provided with a mailing address for AHS Central Office.

Second, the hotline issue itself has recently been resolved via a reporting hotline for the residents to contact the Vermont State Police directly. The residents have been notified of this change, and posters providing information for making reports through this hotline have been placed throughout the facility and on the residents' tablets with instructions on how to direct dial the VSP. The residents may still contact AHS Central Office via mail.

## F. Staff-On-Staff Sexual Misconduct

The second type of allegation that DRM encountered in its investigation involved alleged conduct between CRCF staff members. Generally speaking, this alleged conduct can be described as sexual harassment as that term is defined by DOC protocols.

From its discussions with DOC staff and its review of the pertinent policy documents, DRM has determined that DOC does not have a *per se* prohibition on inter-staff dating. Numerous staff members told DRM that dating occurs among COs and other staff with some degree of frequency at CRCF. This, of course, is hardly unique to CRCF as a workplace. It is also worth noting that, to a greater degree than most professions, DOC staff work very long and often unpredictable hours. Therefore, they spend a great deal of time with one another and relationships outside of work, romantic or otherwise, can be a challenge to develop and maintain.

Yet there are aspects of correctional work that make navigating a workplace romantic or sexual relationship particularly difficult. DOC staff, and COs in particular, operate in a hierarchical and almost paramilitary type command structure with COIs following orders from COIIs, who follow orders from Shift Supervisors and so on up the chain of command to the Superintendent. This kind of chain-of-command and “follow orders” system can create significant power imbalances among staff which can contribute to an abusive power dynamic. Such a dynamic can manifest in a myriad of ways. For example, a Shift Supervisor may overlook the shortcomings of a CO whom he is dating, to the detriment of other officers. Or a new COI may feel pressured to agree to date a more senior officer.

### 1. *Governing DOC Policy*

Given these circumstances, one would expect DOC to have a robust sexual harassment training program in place. As discussed below, however, that is not the case. DOC policy does prohibit sexual harassment:

The Vermont Department of Corrections is opposed to and prohibits without qualification the harassment of anyone on the basis of gender, unlawful discrimination, and any retaliation arising from such behavior.<sup>18</sup>

## 2. *Exemplary Allegations*

Notwithstanding the policy, DRM encountered a significant number of allegations of sexual harassment among staff. The following descriptions are representative examples.

- In July 2018, a CO was accused of requesting that two female CRCF staff members send him nude photographs of themselves using Facebook and Snapchat. The CO denied that he made these requests. The matters were referred for misconduct investigations. The CO resigned his position in August 2018 during the pendency of the investigation.
- In September 2015, a female CRCF Correction Officer alleged that she was sexually harassed and retaliated against by a male CO II at CRCF. The female CO overheard the male CO II tell another supervisor that the female CO was “a butterface” and he would “f\*\* anything but her face.” This comment was allegedly made during a Use of Force Training in which the male CO II and the other supervisor were co-instructors of the training. The male CO II denied the allegations but admitted to making a comment that the female CO had gained weight. An AHS investigation was commenced and aspects of the allegations were substantiated by the investigation. DOC imposed a written reprimand on the male CO II for “requesting work from [the female CO] that was unwarranted.” The Written Reprimand stated that he was to attend Sexual Harassment training at the Vermont Correctional Academy. Three weeks later the VSEA filed a Step II Grievance claiming that DOC lacked just cause to impose the Written Reprimand. DOC and VSEA subsequently entered into a Stipulation and Agreement concerning the male CO II’s employment pursuant to which the male CO II would accept a two (2) day work suspension and attend a 3-hour sexual harassment training. The female CO sued DOC in 2017 based on this exchange and others. The state settled that lawsuit for \$85,000. The female CO reported to this investigation that after she made a formal complaint, “the harassment got so bad that [she concluded] I am never reporting anything again.”
- A DOC staff member reported to DRM that he/she was speaking with a male DOC staff member at another facility regarding a personnel/hiring matter. During the course of the

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<sup>18</sup> DOC Directive #118.02, Reporting and Investigating Unlawful Discrimination, Sexual Harassment. The term “sexual harassment” is defined above. *See supra* n.1.

conversation, the male DOC staff member demanded a sexual act from him/her as quid pro quo. Although the DOC staff member reported the incident to the then-Superintendent and other members of DOC leadership, he/she was told that the male DOC staff member would not be disciplined because he was close to retirement.

- In 2015, a female CO reported potential staff misconduct between a male CO and a resident. The female CO walked into a strip room where she observed a male CO sitting on the counter with his legs open facing a female resident and the female resident bending over the counter facing the male CO. The male CO and female resident allegedly jumped away from each other when the female CO entered the room. The female CO suspected this position was related to a sexual act. The female CO reported what she saw to a CRCF supervisor. A CRCF supervisor told her to reenact what she observed with another male CRCF supervisor. The female CO would play the role of the female resident. This reenactment was photographed by a CRCF supervisor. The female CO reported feeling very uncomfortable, objectified, and demoralized by her superior. The CRCF supervisor who took the photograph believed that the female CO did not observe a sexual act, but a boundary issue between the male CO and the resident. The male CO admitted to the boundary issue and it was addressed a performance issue not sexual misconduct. The female CO filed a complaint with the Vermont Human Rights Commission against the supervisor who had requested the reenactment. An investigation was conducted by AHS, which included interviews with the participants. The photograph of the reenactment is part of the investigation report. AHS concluded that the female CO's allegations were unfounded and DOC did not take any action on the complaint.

### 3. *DOC's Reporting Process*

DOC's protocol for reporting allegations of staff-on-staff sexual misconduct, specifically sexual harassment, are summarized as follows. Any DOC employee who believes he or she has been the subject of sexual harassment shall report the allegations to: his or her immediate supervisor; any DOC management staff; any support coordinator; the DHR administrator assigned to DOC; any member of the Department of Personnel Labor Relations staff.<sup>19</sup> The following process steps must then occur:

- a) All complaints received by supervisors, managers or DHR staff pertaining to unlawful discrimination, sexual harassment, or retaliation will be referred immediately to the DHR administrator assigned to the DOC who will coordinate with the appointing authority to ensure that a timely and complete review of the complaint is made. A report of any investigation will be provided to the appointing authority and the Commissioner of the

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<sup>19</sup> DOC Directive #118.02, Reporting and Investigating Unlawful Discrimination, Sexual Harassment, Exhibit 2.

Vermont Department of Corrections or designee. The appointing authority, after consultation with the DHR administrator assigned to the DOC, will identify and take steps to promptly remedy the unlawful discrimination, sexual harassment or retaliation and prevent its recurrence.

- b) The appointing authority or designee shall issue a written response to the complainant acknowledging the complaint and providing notice if applicable, that any prohibited activity is expected to cease (a copy of the response shall be provided to the Personnel Administrator). An investigation will be done promptly and a written response will normally take place within thirty (30) days.
- c) Complainants should be notified that confidentiality cannot be guaranteed if a complaint results in a grievance, discipline, or other litigation of the complainant.
- d) The DHR and appointing authorities shall ensure that an investigation is conducted when any instance of sexual harassment comes to their attention, even in the absence of a complaint.
- e) If the appointing authority or any member of the agency/department personnel unit is named in the complaint, the complainant or his or her representative shall bring the complaint to the attention of the DHR administrator assigned to DOC who shall notify the Secretary of Administration or Commissioner of DHR to determine the appropriate personnel to be responsible for investigating the charge. Any intimidation, harassment or interference for filing a complaint or assisting in an investigation and/or intentionally filing a false complaint of sexual harassment will be subject to appropriate discipline, up to and including dismissal.<sup>20</sup>

Although the protocol does not make it clear, presumably if an investigation is initiated, it would follow the same process with DHR-IU as described *supra*.

#### 4. Findings

DRM's investigation revealed shortcomings in the understanding and implementation of the processes for reporting staff-on-staff sexual misconduct. As detailed above, a DOC staff member reported a clear allegation of sexual misconduct to supervisors and, from his/her perspective, no meaningful investigation or discipline occurred. According to the staff member,

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<sup>20</sup> DOC Directive #118.02, Reporting and Investigating Unlawful Discrimination, Sexual Harassment, Exhibit 2.

he/she did not receive a written response to her complaint as required by the protocols described above.

With respect to the 2018 allegations, the investigation appears to have been forestalled by the accused employee's resignation. Such a resolution fails to send the appropriate message to DOC staff regarding the seriousness of sexual harassment in the workplace. The impact such indeterminate or delayed resolutions have on staff professionalism and morale, and resident trust, could be extreme. While in some cases, clear factual determinations, articulated on the record that are consistent with just outcomes may not be possible, there is a cost to the lack of a finding. Such indeterminate resolutions should be avoided if possible, and other measures (e.g. body cameras) employed to limit circumstances where there is an inadequate evidentiary record. Similar considerations apply to significant delays in reaching a resolution of a complaint.

DRM concludes that the sexual harassment of staff is a serious concern at CRCF and DOC needs to take immediate steps to address this issue.

#### G. Gender Responsivity and Best Correctional Practices

There is a well-established body of professional resources available to correctional professionals regarding how to establish and maintain a gender responsive and trauma informed correctional environment that best responds to the needs of incarcerated women. Proper training in these areas would, of course, address the dynamics that underlie potential staff-on-resident sexual misconduct and provide staff with the tools necessary to deal with those dynamics in a professional and positive manner.

When the women's facility was moved to Windsor in 2003, TMG provided extensive training for corrections officers and staff about how to prepare for the incoming female residents and best practices with respect to gender-informed correctional strategies. A number of the

witnesses DRM interviewed stated that this training was well-received at Windsor and that it had a positive impact on the facility's practices. And yet neither TMG nor any other outside organization was invited to provide similar training for staff at CRCF when the women were moved there. Instead, any training that has occurred appears to have been somewhat ad hoc and confined to small numbers of individual staff members.

Similarly, although new DOC COs attend a five-week training at the Correctional Academy, DRM was informed that only approximately half-a-day was devoted to studying issues specific to a female population. COs who are assigned to CRCF are expected to learn "on the job" during their probationary period at the facility.

During the focus groups and interviews, most CRCF staff stated that they understand the needs of incarcerated women are different than those of men and are comfortable working with the population. Nevertheless, it was unclear if most staff actually knew the basic principles of gender-responsive practices. DOC's Gender Responsivity Directive is limited to two pages in length, which according to TMG, is atypically brief compared to gender-responsive policies around the country. CRCF staff at all levels in the hierarchy expressed a desire for more robust and thorough training on how best to run a prison for women. Some CRCF staff members had heard how effective the TMG had been from other DOC staff member who participated and questioned why they had not been provided similar resources.

DRM finds that DOC has provided inadequate training to both existing and incoming CRCF staff on the basic principles of gender-responsive correctional practices. This is a significant oversight in corrections training. The resources to obtain this type of training exist; DOC knows they exist and where to find them. The State of Vermont has charged DOC with incarcerating the women who live at CRCF and preparing those women to return to the non-

incarcerated community, which most of them will do. It is therefore incumbent on DOC to ensure that CRCF staff are appropriately trained according to the best practices.

#### H. Substance Abuse by Staff

The illegal use of controlled substances on or off duty, and the use of alcohol while on duty, is clearly incompatible with the effective performance of DOC staff's critical duties and is unacceptable rule breaking. In pertinent part, DOC rules provide:

No employee shall report to work under the influence of alcohol or with the odor of alcohol on the breath or possess or use alcohol while on duty. No employee shall report to work under the influence of or in the possession of any regulated drug, which is unprescribed by his/her physician.

Although not strictly within the ambit of DRM's investigation, DRM did encounter some allegations of substance abuse among DOC staff. Because this alleged misconduct was closely related to allegations of sexual misconduct, DRM has included conclusions and recommendations regarding this area of concern in this report. Because many of the women incarcerated at CRCF suffer from addiction, it is reasonable to expect that some will, at times, engage in drug-seeking behavior. If a DOC staff person is also using controlled substances, this can easily create a toxic mix that will increase the likelihood of misconduct, including sexual misconduct.

During its investigation, DRM encountered allegations of alcohol or substance abuse by staff:

- A CO was suspected of alcohol use or intoxication on the job on three occasions between 2018 and 2019. Multiple staff reported smelling alcohol on the officer's breath. The correction officer was relieved of duty for unrelated reasons in 2019.
- DOC received at least four reports, verbally and in writing, concerning suspected drug use (cocaine and other stimulants) by a CRCF Shift Supervisor beginning in 2017. The reports state that staff observed white powder on the brim of the supervisors' nose and behavior consistent with stimulant use. One such report was submitted to the Deputy Commissioner on June 27, 2017. A second witness has provided the investigation with

two additional written reports from 2017 in which DOC was again advised of suspected drug use by this supervisor. According to one report, the individual's "suspected drug use is so prominent throughout the facility that it is almost generally accepted by staff and is constantly brought up by inmates." A witness interviewed for this investigation stated that he observed the individual constantly sniffing, wiping his nose, and on occasion exhibiting strange, hyper-active behavior that the witness and other staff attributed to the individual being under the influence of drugs. Other witnesses interviewed by this investigation, including current DOC employees, stated that aside from the reports just mentioned, there was no physical evidence of drug use. There was no disciplinary action related to these allegations.

Although a critical component of a widely publicized allegation, DRM did not encounter many reports of substance abuse by DOC staff. The people interviewed during this investigation did not believe it is widespread. Any instance is unacceptable, however, and puts the security of the facility, staff, and residents at risk.

During focus groups and interviews, a number of DOC staff expressed frustration that fellow staff members had reported suspicions of the shift supervisors' substance use repeatedly over a lengthy period of time and yet, from their perspective, management failed to take action. For their part, current and former managers reported to DRM that efforts had been made to substantiate or disprove concerns regarding this individual's alleged substance abuse, but those efforts were inconclusive and therefore no action could be taken unless and until additional evidence was acquired. This led to the impression that nothing was being done.

It is important to note that DOC staff are not subject to mandatory urinalysis tests for substance use. If that were the policy, proving or disproving whether a particular staff person is illegally using controlled substances would be a more straightforward endeavor.

DRM finds that, although not a pervasive problem, potential substance abuse by DOC staff is a risk at CRCF that needs to be addressed.

## I. Cameras

The video monitoring system at CRCF was recently upgraded this year to increase the number of cameras from 63 to 133. The video recording is maintained for approximately thirty (30) days. This update was a critical enhancement for the prevention and/or identification of incidents of sexual abuse.

Notwithstanding this improvement, PRO notified this investigation of two incidents—one alleging sexual abuse against a resident and another alleging excessive force—which may have been detected by a more sophisticated video system. According to PRO, requests were made for the video recording, which were produced to and reviewed by PRO. In both cases, the cameras captured portions, but not the full interactions between staff and residents. The explanation provided was that the cameras are triggered by a requisite amount of motion. Thus, while the incidents occurred in a location equipped with the video monitoring system, the cameras did not record the critical moment of the alleged incidents.

These situations demonstrate that the video monitoring system is still not adequate to protect the residents as it is intended. In particular, as law enforcement becomes more adept with the use and implementation of body cameras, and the real-time record of sometimes complex interactions which could be subject to varying, sometimes biased, witness statements, DOC should use these technologies. This is particularly pertinent, given that DOC's data indicates that half of all incidents occur in the victim's cell. Use of body cameras by corrections officers would provide clear-cut responses to allegations of misconduct, and provide disincentives toward misconduct.

## J. Culture and Morale

DRM's investigation encountered many professionals at CRCF who expressed pride in the work that they performed and a commitment to improvement. Nevertheless, DRM also encountered at CRCF a facility with considerable challenges to morale.

Some of this was clearly attributable to COVID-19, which has suspended a significant portion of routine activity and placed a tremendous strain on residents and staff alike. Yet the low morale at CRCF is not solely attributable to the pandemic.

It was observed and reported in focus groups that facility morale is low and dependent upon the shift—with some staff reporting low morale and a stagnant, toxic, retaliatory culture. Some staff indicated feeling that they are often pitted against one another and decisions by some in management are often made based on emotion instead of based on consistency and in alignment with best practice. Staff also highlighted that the department can be a place to grow a long-term career with many opportunities for advancement, but is reportedly largely dependent on how he or she is favored by management. Some staff are concerned about termination and lack trust in the department.

Imperfect working conditions and low morale do not, of course, make someone into a sexual predator. Nevertheless, these culture and morale issues are related to misconduct, including sexual misconduct. If staff lack pride in their workplace, faith in DOC, and a fully developed sense of mission, then they are less willing and able to adhere to rules and best practices. If staff are afraid of retaliation, they are less likely to report misconduct, including sexual misconduct. Simply put, the problem of sexual misconduct at CRCF cannot be fully addressed unless DOC takes proactive and sustained measures to improve the facility's culture and morale. DRM's investigation has identified some specific issues underlying the morale problem that are worthy of consideration.

### *1. Fallout from the Media Attention*

Both residents and staff discussed the impact that the Seven Days article and subsequent media attention had on the facility. Some staff expressed that they felt heavily scrutinized and critiqued following the publishing of the article. Staff relayed anecdotes of women in the facility leveraging the article against COs by, for example, threatening to call the media and report sexual misconduct if a CO enforced a rule or wrote a disciplinary ticket. There were other anecdotal reports from staff that COs were concerned about being seen in uniform before and after work because a stigma was now attached to their positions. Other staff expressed that they welcomed the attention and were eager to make CRCF the best facility possible.

Some of the women in the facility reported frustration that DOC and CRCF only began to take CRCF's longstanding problems seriously as a result of the media attention. Nevertheless, the general sentiment from the women in the facility was that conditions had improved under Superintendent Messier's leadership beginning in 2018. In addition to the media attention, witnesses also credited the impetus for these changes to, among other things, (1) a March 2019 demonstration outside of CRCF hosted by the Vermont Women's March, the American Civil Liberties Union of Vermont, and the Peace and Justice Center, which advocated for better living conditions and transparency; and (2) concerns raised in 2018 by the Vermont Women's Legislative Caucus.

### *2. Staffing and Retention*

CRCF staff at all levels, from upper management to new COs, noted that staffing and retention is a significant source of stress at the facility. CRCF has reported very low retention rates for new COs. A number of COs informed the investigation that very few of officers with whom they graduated from the Correctional Academy remained at CRCF for a sustained length

of time. It was widely expressed that DOC was spending large amounts of money to provide the Correctional Academy to new officers, only to see them quit DOC soon after beginning work.

There was a general sentiment that new COs are not provided adequate support as they transition into their professional lives in corrections. COs are assigned Field Training Officers (FTOs) when they first arrive at the facility. But a number of staff reported that the FTO arrangement is inadequate for a variety of reasons, including the fact that FTOs must also perform all the functions of a CO while also providing training and support to new COs. A number of COs, both senior and more junior, stated that they believed a more robust mentorship and career-development process would greatly benefit CRCF and lower the rate of staff turnover. Several CRCF staff noted that salaries in DOC are not adjusted for cost of living and that Chittenden County is considerably more expensive than other counties where DOC facilities are located. It was suggested that this dynamic also contributed to high staff turnover.

One issue which was almost universally cited as contributing to high turnover was the issue of overtime. Because CRCF, like all DOC facilities, must maintain minimum staffing levels at all times, COs can be compelled to work consecutive shifts if there is a staffing shortage due to the absence of another officer. Compelled overtime occurs very frequently at CRCF and COs are very often required, without warning, to work 16-hour periods (two back-to-back shifts), which takes a physical and emotional toll and makes managing a work-life-family balance almost impossible. Although some COs reported that the opportunity to earn more money was welcome, many reported that forced overtime was a very significant stressor and contributed to low morale. CRCF management has a complex arrangement for determining who, on any given shift, is next in line for forced overtime. It was beyond the scope of DRM's investigation to determine whether this system is administered fairly. Nevertheless, there was a clear sentiment

among some COs that the system was opaque and therefore a potential avenue for management to retaliate against disfavored COs.

It was widely acknowledged that the problem of officer retention and forced overtime presented a circular “chicken and egg” dilemma and this is self-evident. Regularly being forced to work 16-hour shifts will cause COs, particularly newer COs who are unaccustomed to the regime, to burn out quickly and seek employment elsewhere. This, in turn, worsens the staffing shortage which requires the remaining officers to work still more overtime.

Finally, CRCF’s problem with sexual harassment, discussed above, is also a likely contributor to staff turnover. It takes only a single incident of sexual harassment, which is perceived to have been ignored or mishandled by management, to create the impression that an institution is a hostile place to work. If new COs receive that impression at CRCF, they are less likely to choose to stay and make a career at corrections.

### 3. *Communication With Management And Management Turnover*

Some staff reported that the overall culture of CRCF is one rooted in poor and untimely or mis-sequenced communication between leadership and staff, which contributes to an overall reported mistrust in facility leadership. While efforts have been made to improve communication, such as inter-disciplinary meetings, it was widely reported that efforts are insufficient and more is needed to improve communication.

This communication gap is, in part, attributable to the remarkable amount of turnover that CRCF has experienced at the superintendent-level. As noted, CRCF has had seven superintendents since 2011. It is difficult to overstate the impact of this level of turnover. Numerous CRCF staff reported that it was disorienting to have so many leadership changes over such a short timeframe. Regardless of any given staff member’s opinion regarding the relative

strengths and weaknesses of one superintendent compared to another, it was almost universally acknowledged that regularly needing to adjust to a new superintendent's ideas and styles was very challenging.

For example, a previous superintendent at CRCF had sought to adjust the facility's approach to discipline by emphasizing that COs should routinely write minor disciplinary tickets for low level infractions rather than wait until a situation escalated and therefore required a major disciplinary ticket. This former-superintendent described this as a type of "broken windows" approach to discipline, the theory being that, if officers reliably respond to small infractions it will make more serious infractions less frequent. Under this superintendent, COs became accustomed to writing minor disciplinary tickets for small infractions. But, when the superintendent was replaced by a new superintendent with a different approach to facility discipline, COs felt they were discouraged from writing minor disciplinary tickets for small infractions. Thus, officers felt a type of policy "whiplash" which was frustrating and undermined their overall confidence in DOC leadership.

Not surprisingly, staff reported that the frequent leadership changes decreased their enthusiasm for investing the time and energy needed to fully partner with a new superintendent. Instead, the feeling has developed among some staff that they are better off just "waiting it out" because whomever the current superintendent is, he or she will soon be replaced.

#### *4. Physical Facility*

The problems associated with CRCF's outdated facility are well-documented. These include: the small outdoor space available for residents; the limited facility space available for vocational programming similar to what is available at the men's facilities; dilapidated living conditions for residents that include sanitary problems in bathrooms and showers. It is beyond

the scope of this report to examine these issues in detail. Sufficed to say, however, that it was a nearly universal sentiment among CRCF staff and residents that the poor condition of the physical facility greatly contributed to low morale and interfered with best correctional practices and the residents' efforts at rehabilitation.

## V. Recommendations

### A. Staff-On-Resident Sexual Misconduct at CRCF

Any sexual misconduct involving CRCF staff and the facility's residents is intolerable. The number of allegations concerning this type of conduct that have been raised at CRCF since it has become a women's facility demonstrate that DOC needs to take further action immediately to ensure that the women who are incarcerated at CRCF remain safe and are treated with the dignity to which they are entitled. DRM recommends the following.

First, as noted above, a number of the allegations of sexual misconduct involved conduct that occurred, not within the walls of CRCF, but while women were on some form of supervised release. This is a troubling pattern. DOC should immediately review, strengthen, and develop its rules and directives pertaining to contact between DOC's staff and individuals under DOC supervision. DOC should ensure that its policies make it clear that unauthorized contact between staff and supervisees, including but not limited to, sexual contact, is prohibited. DOC should develop and implement clear mandatory protocols for reporting when a DOC staff member does have an encounter or communication with a supervisee. Having reviewed, strengthened, and developed its rules and directives on this subject DOC should launch a comprehensive effort to train all CRCF staff on compliance with these policies. An analogous training should be implemented at the Correctional Academy. Refresher training should occur annually. If adopted, this course would ensure that every CO understands that initiating an unauthorized

contact with a DOC supervisee is prohibited and that unsolicited or even accidental contacts must be reported and documented.

Second, the Legislature should amend the statute that criminalizes sexual contact between DOC staff and DOC supervisees. As presently written, the statute makes it a criminal offense for DOC staff to engage in sexual contact with a supervisee only when the DOC staff person “is currently engaged in a direct supervisory relationship with the person being supervised.”<sup>21</sup> This prohibition is too narrow. Given the immense power differential between DOC staff and supervisees and the possibility that a supervisee may return to incarceration, sexual contact between a DOC staff person and *any* supervisee should be a crime, regardless of whether the DOC staff person is in a “supervisory relationship” with the supervisee or not.

Third, a rule prohibiting contact between DOC staff and former residents who are no longer under DOC supervision may be inequitable and unenforceable. Nevertheless, a number of the residents and former residents whom DRM encountered during the course of this investigation had been in and out of CRCF on more than one occasion. Although deeply unfortunate, this is unsurprising given how many women incarcerated at CRCF suffer from substance addictions, mental health problems, or both. It is widely recognized that these challenges lead to high rates of re-incarceration. Given this reality, if a DOC staff member engages in a personal relationship with someone recently released from CRCF and/or DOC supervision, there is a significant risk that the two will, at some point in the future, encounter one another in a correctional setting. As part of its gender-informed training process (discussed below), DOC should, at the very least, educate its staff members about this risk and encourage

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<sup>21</sup> 13 V.S.A. § 3257.

them to consider whether engaging in a relationship with someone recently released from DOC custody and/or supervision is consistent with best practices and DOC's overall mission.

Fourth, during the course of this investigation, it became clear to DRM that CRCF did not have a robust and clearly understood mechanism for staff to report to management when a woman booked into CRCF is someone with whom the staff person had a previous relationship, sexual or otherwise. Understandably, residents and former residents recounted their discomfort and fear about returning to custody to be supervised by a DOC staff person with whom she has had a previous relationship. The potential for this situation is, of course, exacerbated by Vermont's small size. To ameliorate this problem, DOC should review, strengthen, and develop its rules and directives to make clear a DOC staff member's obligation when someone enters CRCF (or any facility) with whom that staff member has had a previous relationship of any type. At the very least, the DOC staff member should be required to report the potential conflict to someone in senior management in writing. In response, management should be required to draft and implement a staffing and supervision plan to ameliorate any harm the potential conflict may cause at the facility. The plan should include check-ins at regular intervals by management to ensure it has been implemented and no harmful dynamic has developed. No responsible police department would permit a detective to investigate that detective's ex-romantic partner or close friend. Nor should DOC permit a CO to supervise a person with whom that CO has had a previous relationship. To do otherwise is to create fertile ground for abuse.

## B. Reporting and Accountability

### I. *Monitoring Committee*

A strong process that is credible and is seen as having integrity is essential to the sense of justice that is appropriate in DOC. Accountability for inappropriate or even illegal behavior will

improve morale among DOC staff and improve relations with residents, which in turn will improve the professionalism and effectiveness of DOC staff in their dealings with residents on behalf of the Vermont public. The integrity of the process and outcomes would be strengthened by consistent independent review of the process and outcomes. Accordingly, DRM recommends that a Monitoring Committee of appropriate stakeholders be established to periodically monitor reporting of sexual misconduct, anti-retaliation policy, policy implementation and effectiveness, transparency, accountability, cultural impact of agency decisions, and to ensure that the determination of findings and, if any disciplinary action, is just and as intended. The Monitoring Committee should be limited in size (5-6 members), and be comprised of institutional cross-agency stakeholders with broad perspectives, which must include some experienced in primary corrections. It is also recommended that the Committee consider including a former judge with knowledge of the criminal justice system.

### 2. *DOC/DHR-IU Liaison*

DOC and DHR should identify a DOC liaison between DOC and DHR-IU to improve transparency in the DHR-IU process.

### 3. *Hotline*

The new hotline providing a direct line to VSP represents a significant improvement in external reporting. DOC should ensure that this hotline to VSP continues to be provided to residents for external reporting.

### C. Gender Responsivity and Best Correctional Practices

As noted, there is a vast array of professional resources available to train correctional professionals in the best practices for a gender-responsive women's prison. DOC did not provide thorough and comprehensive training to the staff at CRCF when the women's prison

population was transferred there in 2011. Had that occurred, the history of CRCF as a women's facility might look much different. DOC should remedy this failure immediately.

Accordingly, DRM recommends that DOC partner with a qualified outside organization, be it TMG and/or DIVAS or another group and provide all CRCF staff rigorous and thorough training on gender responsive correctional practices. This training should be at scale similar to the intensive training that TMG provided when the women were moved to the Windsor facility. Obviously, such intense and in-depth training will create logistical problems because CRCF needs to remain open and adequately staffed while the training occurs. Nevertheless, DOC should make it a priority and draw resources from facilities other than CRCF if necessary to make it happen.

Once the entire current CRCF staff has been re-trained, DOC should make rigorous annual refresher training a mandatory component of every staff person's "core" annual training requirements.

DOC should partner with a qualified outside organization to overhaul the curriculum for gender responsive training provided at the Corrections Academy and seriously consider outsourcing that training entirely to a qualified organization. It is clear that the current level of training that new COs receive is inadequate. DRM recognizes that many students in any given Academy class are destined to work at one of DOC's male facilities and that this creates a challenge. But this is not an excuse for failing to provide sufficient training for the COs who will work with Vermont's incarcerated women.

Of course, huge amounts of a corrections officer's training is informal and gained by experience on the job. To enhance and optimize that experience, DRM recommends that a DOC staff mentorship program be adopted. This would allow DOC to shape, guide and promote the

types of corrections job performance it wishes to instill. For such a program to work most effectively, incentivizing engagement by leading corrections staff, e.g., through increased salary incentives, time off, shift selection or other benefits, would be worthwhile.

Finally, during the course of its investigation, DRM learned that for many years DOC had a position titled Director of Women's Services. This official was charged with coordinating and overseeing the provision of all women's services and related training across DOC. For reasons DRM did not learn, this position was eliminated in recent years. DOC should replace it and thereby make one DOC official accountable for ensuring that appropriate services and training are provided.

#### D. Staff-On-Staff Sexual Misconduct

As discussed, even a single incident of sexual harassment is too many and its impact is particularly harmful to an organization if leadership is perceived to have responded inadequately. At CRCF, which already faces challenges as the result of low morale and high staff turnover, it is imperative that a zero-tolerance culture regarding sexual harassment be developed and that any instances of sexual harassment be dealt with as vigorously and transparently as possible. No one who works at CRCF should fear unwanted sexual advances, regardless of gender.

Although CRCF provides sexual harassment training to its staff, DRM learned that such training is not a mandatory "core" component of staff's annual training regime. DOC should immediately partner with a qualified outside organization to develop and implement a rigorous sexual harassment training curriculum. All staff should be required to take such training on an annual basis. Management should also be re-trained in best practices about how to respond to, and investigate, allegations of sexual harassment. Such training should emphasize that, pursuant to DOC protocol, a complainant is entitled to receive a *written* response to his or her sexual

harassment complaint acknowledging that the complaint has been received and under investigation. From DRM's investigation, it is unclear whether this obligation is widely understood among staff.

Indeterminate resolutions of credible complaints should be discouraged, and more of a priority placed on informing the complainant of the resolution and findings, recognizing that balancing privacy interests and accountability is still necessary. Moreover, delayed adjudications, while sometime necessary, should be avoided. The monitoring committee can oversee case disposition times and push to establish reasonably fast overall dispositions. The State should consider whether changes in the law are necessary to provide increased transparency in correctional work, particularly with respect to reports and investigations where substantiated findings are made concerning sexual misconduct.

#### E. Substance Abuse

Although not reported to DRM as a pervasive problem, there does appear to be at least a risk that a CRCF staff person's substance abuse could go undetected. As discussed above, CRCF's staff's perception (regardless of whether that perception was completely accurate) that their reports of a specific shift supervisor's suspected substance abuse were ignored, has caused considerable anger at the facility and has contributed to a distrust of management and DOC leadership in general. Correctional staff simply have too important a job to risk that they will be abusing substances while at work. They perform a critical public safety role and exercise vast authority over the women who live at CRCF. The Legislature should pass, and the Governor should sign, a law requiring that all corrections staff be subject to mandatory random drug testing, or implement a program of non-random drug- testing as permitted under state law.

## F. Culture and Morale

### 1. *Staffing and Retention*

To improve morale at CRCF, DOC must address the facility's critical staffing shortage, which requires its officers to work far too many forced overtime shifts. DOC should invest additional funding in a recruitment campaign that emphasizes the many positive aspects of a career in Vermont corrections. DOC should also consider providing locality pay to staff to account for the cost-of-living differences across Vermont counties. Given how high turnover is among new COs, DOC should explore whether it is feasible to provide modest retention bonuses to officers who remain on the job and in good standing after defined intervals of time.

CRCF management should carefully consider whether it is providing sufficient positive reinforcement to staff members for their good work. A number of staff members recounted to DRM that, although management seemed quick to call staff out for mistakes, instances of excellent, even heroic work, went unrecognized.

CRCF management should also consider overhauling its field training process for new officers. It was clear from DRM's discussions that new COs are not receiving adequate support from the current FTO model. Several COs—both newer and more experienced—expressed that they wished they had a mentor within DOC to talk to about the challenges they face on the job and their career track within DOC. It is worth noting that DRM encountered a number of individuals who had successfully navigated DOC and built satisfying careers either remaining as officers or moving their way through the ranks to become caseworkers or facility managers. A strong mentorship program for new COs would help them see, and plan for, the career development opportunities available to them within DOC.

In addition, some degree of ongoing training by corrections staff would improve professionalism and performance. That is a core requirement of other types of professional occupations; it is reasonable that it be part of this important profession as well.

## 2. *Facility*

Again, a full assessment of the CRCF facility's many serious shortcomings is beyond the scope of this report. Nevertheless, it is worth emphasizing that many staff mentioned that the decrepit and inadequate facility contributed to their lack of a sense of pride in the workplace. Numerous women in the facility also pointed out to DRM that the facility was woefully inadequate and unhygienic. Community services providers were unanimous in their assessment that the CRCF facility did not provide sufficient indoor and outdoor space for needed programming and that, as a result, incarcerated women received fewer vocational and other opportunities than their male counterparts.

The Legislature and Governor should seriously consider allocating resources to build a new facility for incarcerated women in Vermont. As long as women continue to be housed in a facility as old, outdated, and inadequate as CRCF, their prospects at rehabilitation and successful re-integration in the non-incarcerated Vermont community will remain hampered.

### G. Recording of Staff-Resident Interactions: Effective In-facility and Body Cameras

The investigation revealed that accurate records of what occurred in a particular staff-resident interaction is particularly important. Too often, such an accurate record could eliminate controversy over what actually occurred in such an interaction. To that end, DRM strongly recommends that steps be taken to better ensure such interactions be documented. As discussed above, the recent steps CRCF has taken to improve coverage by in-facility surveillance cameras

is an excellent step in the right direction. DOC should continue to improve the video technology and motion sensitivity to avoid time gaps.

DRM also recommends that a body camera program similar to that used by foot patrol community police officers be implemented. Such a recording can often, although not always, end a debate about what occurred in an interpersonal exchange, lending credibility and accuracy of any follow up disciplinary or other process.

#### H. The Importance of Alternatives to Incarceration and Reentry Efforts Generally

It is important to state that the challenges with sexual assault and sexual misconduct in prisons flow from many factors that exist due to the incarceration of women. Therefore, prosecutorial and judicial programs that effectively promote alternatives to incarceration, and in particular that address the many challenges and pressures of women reentering the community after serving sentences, play a critical role in reducing recidivism. Such programs also keep the number of women subject to incarceration lower, thereby reducing the stress on staffing and the level of misconduct..

### VI. Conclusion

The authors of this report will close by emphasizing that women in the facility at CRCF are members of our community. They are our neighbors, our friends, our co-workers, fellow parents of our community's children, people who work in businesses and provide valuable community services, and people who patronize our places of work or businesses. Almost all of the women will rejoin the non-incarcerated community in a short period of time. In short, they are fellow Vermonters and part of the fabric of our community.

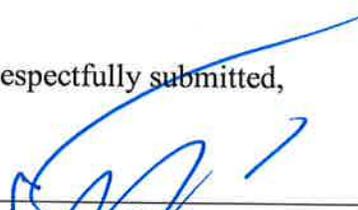
That said, while serving a corrections sentence deemed necessary for our community by a judge in our criminal justice system, it is imperative that they be treated with dignity and respect.

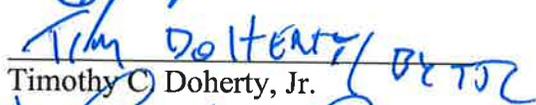
Our community must commit to the bedrock-essential that the correctional facility is safe, and free from sexual abuse and sexual misconduct, examples of which are described in this report.

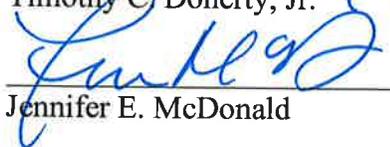
The far-and-away majority of DOC's staff understand and strongly support this mission. That said, their job, due to the challenging circumstances of dealing with at-times challenging prison population, limited resources and training, and a difficult physical facility, is extremely difficult. It is small wonder, faced with such challenges, that keeping morale and institutional faith alive is a constant struggle. Our Vermont public owes our corrections professionals a huge debt of gratitude for their willingness to persevere and endure.

It is hoped that the recommendations in this report will help make some changes that improve the conditions of residents at CRCF going forward, better protect their safety, and increase justice in the facility. At the same time, it is hoped the recommendations recognize the challenging and essential role corrections officers play on behalf of our public, and will improve their ability to serve our community with professionalism, adequate resources to do the job and with appropriate gratitude. These issues did not develop immediately, and they will not be resolved immediately. It is hoped that these recommendations establish a framework for continued dialogue and improvements as our community grows and evolves.

Respectfully submitted,

  
\_\_\_\_\_  
Tristram J. Coffin

  
\_\_\_\_\_  
Timothy C. Doherty, Jr.

  
\_\_\_\_\_  
Jennifer E. McDonald

DOWNNS RACHLIN MARTIN, PLLC

# EXHIBIT 1

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|---|---|---|
| <b>STATE OF VERMONT</b><br><b>AGENCY OF HUMAN SERVICES</b><br><b>DEPARTMENT OF CORRECTIONS</b>  | <b>Title:</b><br><b>PRISON RAPE ELIMINATION ACT</b><br><b>(PREA) &amp; STAFF SEXUAL</b><br><b>MISCONDUCT – FACILITIES</b> | Page 1 of 23                                    |
| <b>Chapter:</b><br><b>Security and Supervision</b>  | <b># 409.09</b>   | Supersedes DOC Directive 409.09 dated 6/2/2014. |
| <b>Attachments, Forms &amp; Companion Documents:</b><br>1. All PREA forms and companion documents are available on the DOC website.   |   |   |
| <b>Local Procedure(s) Required:</b> No<br><b>Applicability:</b> All staff (including contractors and volunteers)<br><b>Security Level:</b> "B" – Anyone may have access to this document. |   |   |
| <b>Approved:</b><br><br>_____<br><b>Andrew A. Pallito, Commissioner</b>                                  |   |   |
| _____<br><b>Date Signed</b>   |   | _____<br><b>Date Effective</b>                  |

## PURPOSE

The purpose of this administrative directive is to implement the federal *Prison Rape Elimination Act (PREA)* in order to eliminate sexual abuse of inmates in custody of the Vermont Department of Corrections (DOC). This directive provides uniform guidelines and procedures to reduce the risk of prison sexual abuse, and to promote the policy of sexual safety.

## POLICY

DOC is committed to the safety of any individual in custody or incarcerated in a correctional facility. DOC has a zero-tolerance standard for sexual abuse, sexual harassment and/or sexual misconduct.<sup>1</sup> Inmates in the custody of DOC are never regarded as being able to consent to any kind of sexual relationship. No matter who initiates the contact or how "mutual" the relationship is, it is considered a rule violation by inmates and an abuse of power by staff to engage in any sexual relationship within a facility. DOC will respond to verbal, written, anonymous, and third party reports of sexualized behavior or abuse as nonconsensual, regardless of perception, rumor, appearance, or participant disclosure.

The DOC will respond to, investigate, and support the prosecution of sexual abuse within Vermont's correctional system and externally in partnership with law enforcement. Through continual education of staff and inmates, the DOC will increase awareness of safe reporting mechanisms and available services to victims, thereby creating an institutional culture that discourages prison sexual abuse. Through classification and housing assignment, the DOC will identify opportunities to separate and carefully monitor sexually predatory inmates and vulnerable inmates to reduce the incidence of prison sexual abuse. DOC will utilize data collection systems to accurately track sexual abuse and

<sup>1</sup> 28 C.F.R. §115.11(a).

sexualized behavior; facilitate identification of the causal factors; and annually incorporate 'lessons learned' into improved operations, services and training toward a zero-tolerance standard.<sup>2</sup>

DOC will, to the degree possible within investigation protocol, limited resources and applicable laws:

1. Protect all inmates from sexual abuse;
2. Take immediate action to protect inmates that are subject to a substantial risk of imminent sexual abuse;
3. Protect staff and inmates from retaliation from the perpetrator or others, beginning when the allegation is made until the threat has passed as determined through the investigation process;
4. Protect staff and inmates by ensuring that information obtained through the investigation is only shared with staff who are involved in the investigation or case management of the involved parties;
5. Use the least restrictive level of segregation until the investigation is complete;<sup>3</sup>
6. Protect the victim's regarding incidents of substantiated or unsubstantiated staff-on-inmate sexual misconduct or sexual harassment. Case notes will only list the PREA Incident number;
7. Not include any specific information in the DOC database regarding staff member(s) who have been identified as alleged perpetrators of staff sexual abuse;
8. Work with local law enforcement to pursue criminal charges on behalf of victims of criminal sexualized behavior and sexual abuse;<sup>4</sup>
9. Thoroughly investigate staff sexual abuse regardless of whether the alleged perpetrator is terminated or resigns;
10. Provide inmates with a method to report sexual abuse and sexual harassment to a private or public entity or office that is not part of the DOC, and that is able to receive and immediately forward inmate reports to DOC officials;
11. Provide a method for friends and family to report allegations of sexual abuse and sexual harassment;
12. Promptly, thoroughly, and objectively investigate verbal, written, anonymous, and third party reports of sexual harassment/abuse.

All DOC staff members must understand their responsibility in the prevention, detection, reporting and monitoring for retaliation in all incidents of sexual abuse. Professional, trained staff will help prevent incidents of prison sexual abuse by following the guidelines below during the performance of their duties:

1. Know and enforce rules regarding sexual abuse and sexualized behavior;
2. Use professional language;
3. Treat all allegations seriously and follow appropriate reporting procedures;
4. Recognize that incidents can occur virtually anywhere, especially in areas that are not directly supervised at all times;
5. Conducting frequent, random area and cell checks, providing direct staff supervision whenever possible;

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<sup>2</sup> 28 C.F.R. §115.11(a)

<sup>3</sup> 28 C.F.R. §115.68(a)

<sup>4</sup> 28 C.F.R. §115.22(b).

6. Maintain an open line of communication with inmates;
7. Recognize that first-time, youthful, elderly, seriously functionally impaired, developmentally disabled, homosexual, transgender, intersex, gender nonconforming, and/or inmates who have committed sexual offenses are at an increased risk for prison sexual abuse;
8. Be aware of possible warning signs that might indicate that an inmate has been sexually abused or is in fear of being sexually abused; (Warning signs include, but are not limited to, isolation, depression, lashing out at others, refusing to shower, suicidal thoughts or actions, seeking protective custody, or refusing to leave segregation.)
9. Be aware of potential sexually aggressive behavior. The sexual aggressor may be known by the general population. (Characteristics or warning signs may include a prior history of sexual violence, history of institutional violence, use of strong arm tactics (extortion), associating or pairing up with inmates who meet the profile of a potential victim, exhibiting voyeuristic/exhibitionistic behavior, and demonstrated inability to control anger.)

Inmates are encouraged to report all allegations of sexual abuse and/or sexualized behavior regardless of when the incident may have occurred. Access to services for the victim of sexual abuse will not be dependent on their willingness to report allegations or provide testimony. In large measure, however, reporting of alleged sexual abuse by inmates is critical to the timely delivery of necessary services to the victim and to holding perpetrators accountable. Verbal, written, anonymous, and third party reports will be investigated regardless of the person's status whether staff or inmate and within the limitations of information provided and the willingness of inmates and/or others to provide testimony. When the victim of a PREA incident can be identified, they will be offered access to necessary services (per incident protocols) available through DOC and its community partners.

#### **AUTHORITY**

42 U.S.C. §147 (2003); 28 C.F.R. §115 (2012); 13 V.S.A. § 3257; 28 VSA § 102 (b)(2), (c)(5) and (c)(6).

#### **REFERENCE**

American Correctional Association, Final Standards for Adult Correctional Facilities, 4th edition, January 2003, Standard 4-4406. DOC Administrative Directives: #126 Sexual Misconduct; #306.01 Incapacitated Persons; #320.01 Inmate Grievance System for Field & Facilities; #406.01 Inmate Instate Transportation; #403.03 Security Manual; #409.08 Crime Scene Preservation & Evidence Collection-facility; and #410.01 Facility Rules & Inmate Discipline; DOC Work Rules (1997). Health Insurance Portability & Accountability Act (HIPAA – Privacy Rule) 1996.

#### **DEFINITIONS**

Chain of Custody: A process to control and document security and handling of contraband and criminal physical evidence.

Consent: Words or actions by a person indicating a voluntary agreement to engage in a sexual act.<sup>5</sup>

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<sup>5</sup> It is the policy of the DOC that incarcerated persons have no ability to consent to any sexual act which takes place within Vermont correctional facility.

Detainee: A person committed to the Commissioner of Corrections by the court or other authorized person or entity, who is confined in a correctional facility until he/she is sentenced or released.

DOC Staff: For the purpose of this directive, staff includes all DOC employees, volunteers, and contracted personnel working within the physical building or directly with an inmate and/or offender in any kind of official capacity.

False Allegation: Through the investigative process, evidence proves that an assertion of sexual abuse is not true.

Identifier Designation: A term, either confirmed or potential “vulnerable” or “predatory,” given to an inmate after conducting the *Sexual Violence Screening Tool*. The *Sexual Violence Screening Tool* is designed to determine if an inmate may be vulnerable to sexual abuse or be a possible perpetrator of sexual abuse while incarcerated.

Incapacitated (INCAP): When a person, as a result of his or her use of alcohol and/or other drugs, is in a state of intoxication, or mental confusion resulting from withdrawal, such that the person:

1. Appears to need medical care or supervision by approved substance abuse treatment personnel, as defined in statute, to ensure his or her safety; or,
2. Appears to present a direct active or passive threat to the safety of others.

Inmate: includes any and all of the following:

1. An individual in physical custody in a confinement facility;
2. An incarcerated person, including detainees and sentenced detainees, as well as an INCAP.

Intersex: A person whose sexual or reproductive anatomy and chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sexual development.

Investigative Outcome: When an investigation is concluded, it will be labeled one of the following:

1. Substantiated<sup>6</sup> – An allegation that was investigated and determined to have occurred;
2. Unsubstantiated – An allegation that was investigated and the investigation produced insufficient evidence as to whether or not the event occurred;
3. Unfounded – An allegation that was investigated and determined not to have occurred.

Medical Confidentiality: The legal privilege and ethical obligation which a physician and/or other medical professional can invoke to protect their patient’s medical information. The exception to medical confidentiality is when an inmate notifies a health care provider that they have engaged in sexual activity and/or sexual contact. Upon becoming aware of the situation the health care provider must follow proper reporting standards to report the contact and/or activity.

Multi-disciplinary Approach: The approach takes into consideration education needs, medical, mental health, programming needs, security and volunteer services to develop a facility plan for designated inmates.

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<sup>6</sup> An incident is substantiated if it is proven by the preponderance of the evidence.

Mutual: An agreement between persons to engage in a sexual relationship or the idea of a sexual relationship with each other.

Need-to-Know: A criterion for limiting access of certain sensitive information to individuals who require the information to make decisions or take action with regard to an inmate/offender's safety or treatment, or to the investigative process.

Perpetrator: For the purposes of this directive, an individual committing any form of sexual abuse.

Post-exposure Prophylaxis (PEP): Any prophylactic treatment administered by medical personnel started immediately after exposure to a pathogen (such as a disease-causing virus), in order to prevent infection by the pathogen and the development of disease.

Prison Rape Elimination Act (PREA): The federal law, enacted on September 4, 2003, which supports the prevention, reduction, and elimination of sexual assault and rape within corrections systems; mandates national data collection efforts; provides funding for program development and research; creates a national commission to develop standards and accountability measures; and applies to all federal, state, and local prisons, jails, police lock-ups, private facilities, and community settings such as residential facilities.

PREA Coordinator: Designated facility staff person responsible for coordinating with the PREA Director regarding PREA incidents at their local site, as well as overseeing the PREA inmate orientation process.<sup>7</sup>

PREA Designation: Using *the Sexual Violence Screening Tool (SVS)*, determining whether an inmate may potentially be vulnerable, predatory, both, or neither in relation to sexual abuse. This may include separating inmates involved in a PREA incident for the safe and orderly running of the institution.

PREA Incident: Any incident of inmate sexualized behavior, or staff-on-inmate or inmate-on-inmate sexual abuse.

PREA Office: Office comprised of a permanent PREA Director and other presently funded positions. The office is responsible for allegations, audits, orientation, and trainings as they relate to PREA. The PREA Office can be contacted via email at [AHS.DOCPREA@state.vt.us](mailto:AHS.DOCPREA@state.vt.us).

1. PREA Director: The staff person responsible to develop, implement, and oversee the DOC's plan to comply with the PREA standards; ensure the completion of the PREA standards assessment checklist; develop and implement a training plan to fulfill the PREA training standards; monitor inmate screening procedures, investigations, and medical and mental health treatment according to the PREA standards; oversee the DOC's PREA data collection; and provide appropriate access and materials to auditors.<sup>8</sup>

Predatory Inmate: An inmate whose institutional behavior indicates they are prone to victimize other inmates, especially in regard to sexual behavior.

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<sup>7</sup> 28 C.F.R. §115.11(b).

<sup>8</sup> 28 C.F.R. §115.11(c).

Qualified Health Care Professional (QHCP): Any person who by virtue of their education, credentials and experience is permitted by law to evaluate and care for patients. This includes, but is not necessarily limited to, physicians, physician's assistants, nurses, nurse practitioners, dentists, and mental health professionals.

Qualified Mental Health Professional (QMHP): Any person with professional training, experience, and demonstrated competence in the treatment of mental illness, who is a physician, psychiatrist, psychologist, social worker, nurse, psychiatric nurse practitioner, or other qualified person eligible for licensure in the State of Vermont as a mental health clinician and approved by the Health Services Director to provide mental health services.

SAFE: Sexual Assault Forensic Examiner.

Sexual Abuse: The use of debt, threats of physical harm, peer pressure, deceit, personal favors, or positional authority to force or cajole sexual favors from a person, including inmate-on-inmate or staff-on-inmate abusive sexual contacts, nonconsensual sexual acts, or sexual harassment.

1. Inmate-on-Inmate Sexual Abuse: Includes any of the following acts, if the inmate, detainee or resident does not consent, is coerced into such act by overt or implicit threats of violence or is unable to consent or refuse:
  - Abusive Sexual Contact: Intentional non-penetrative touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, excluding contact incidental to a physical altercation.
  - Nonconsensual Sexual Acts: Contact between the penis and the vulva or the penis and the anus, including penetration, however slight; contact between the mouth and the penis, vulva, or anus; or penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument.
  - Sexual Harassment: Repeated and unwelcome sexual advances, requests for sexual favors, verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed toward another.
  
2. Staff-on-Inmate Sexual Abuse: Includes any of the following acts, with or without consent of an inmate, detainee or resident by a staff member, contractor, or volunteer.
  - Abusive Sexual Contact: Any attempt, threat, request, or intentional contact between the mouth and any body part, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or buttocks, that is unrelated to official duties or where the staff member has the intent to abuse, arouse, or gratify sexual desire.
  - Nonconsensual Sexual Acts: Any attempt, threat, request, or intentional contact between the penis and the vulva or the penis and the anus, including penetration, however slight; contact between the mouth and the penis, vulva, or anus; or penetration of the anal or

genital opening of another person, however slight, by a hand, finger, object, or other instrument.

- **Indecent Exposure:** The display by a staff member of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate.
- **Voyeurism:** Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.
- **Sexual Harassment:** Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

**Sexual Assault Nurse Examiner (SANE):** A registered nurse (R.N.) who has advanced education and clinical preparation in forensic examination of sexual assault victims. "SANEs offer victims prompt, compassionate care and comprehensive forensic evidence collection. In addition to helping preserve the victim's dignity and reduce psychological trauma, SANE programs enhance evidence collection for more effective investigations and better prosecutions."<sup>9</sup>

**Sexual Exploitation:** "Any abuse of a position of vulnerability, differential power, or trust for sexual purposes; this includes profiting monetarily, socially, or politically from the sexual exploitation of another."<sup>10</sup>) It also includes the solicitation of sexual favors from any person committed to the care and custody of the DOC or from any staff person.

**Sexual Misconduct:** Any behavior of a sexual nature committed by staff directed toward an inmate/offender that is prohibited by federal law, Vermont statute, Agency of Human Services (AHS) policies, DOC policies, or DOC work rules.

**Sexual Violence Screening Tool (SVS):** An objective screening assessment tool used to identify the risk of an inmate being sexually abused by other inmates or sexually abusive toward other inmates. Assessments are conducted within seventy-two hours of intake, again within thirty days of inmate's arrival to the facility. A new assessment is completed when warranted<sup>11</sup> 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.<sup>12</sup>

**Sexualized Behavior:** Sexual contact intended or committed by an inmate including, but not limited to, kissing or fondling of another person, (excluding all examples listed under Abusive Sexual Contacts) in a manner which produces or is intended to produce sexual stimulation or gratification

<sup>9</sup> Department of Justice, Office of Justice Programs, *Implementing SANE Programs in Rural Communities*, (June, 2008), [http://ojp.gov/ovc/publications/infores/WVA\\_Mobile\\_SANE\\_guide/pfv.html#othernurses](http://ojp.gov/ovc/publications/infores/WVA_Mobile_SANE_guide/pfv.html#othernurses).

<sup>10</sup> Human Rights Watch, *Glossary*, (2003), [www.hrw.org/reports/2003/nepal0903/3.htm](http://www.hrw.org/reports/2003/nepal0903/3.htm).

<sup>11</sup> This includes when an inmate is transferred to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates per 28 C.F.R. §115.41(a).

<sup>12</sup> 28 C.F.R. §115.41(a-g).

where force is not substantiated. Individual behaviors include, but are not limited to, massages, indecent exposure, ejaculating on property, and fondling oneself in the presence of others.

SFI-designated Inmate: An inmate designated by the DOC Chief of Mental Health Services to be severely functionally impaired, based on an inmate's diagnosis and functioning during incarceration and the recommendation of DOC medical and mental health providers.

Survey on Sexual Violence (SSV): Annual data of sexual assault within U.S. correctional facilities collected by the federal Bureau of Justice Statistics (BJS) as mandated by the federal PREA.

Incident Report: An official report written by a DOC employee and documented electronically for incidents occurring within the DOC and any of its operations. The incident report is utilized to record events of an unusual nature (such as a medical emergency, disturbance, found contraband, etc.) violations or alleged violations of federal/state law, an event as required by DOC administrative directive, or for an incident that might lead to a criminal/internal investigation.

Victim: For the purposes of this directive, an inmate, who is harmed, adversely affected by, and/or exploited into sexualized behavior or abuse.

Vulnerable Inmate: For the purposes of this directive, an inmate who is at high risk to become a victim of sexual abuse by another inmate(s) due to actual or perceived characteristics related to age, physical stature, criminal history, sexual orientation, gender identity, and physical or mental disabilities, or past history of being victimized.

## PROCEDURAL GUIDELINES

### 1. Rights and Responsibilities

- a. Inmates whether victim, perpetrator, witness, or reporter have the following rights:
  - i. To serve their incarceration free of sexual abuse;
  - ii. To be free from retaliation, beginning when the allegation is made until the threat has passed as determined through the investigation process, to the degree possible within limited resources and applicable laws;
  - iii. To access any services (per incident protocol) regardless of their willingness to disclose information relevant to the investigation;
  - iv. To be notified that the information of alleged sexual abuse reported to staff will immediately be reported to a CFSS or higher ranking staff member;
  - v. To be informed by staff of any limits to confidentiality prior to conducting any interview;
  - vi. To be assured that information obtained through the investigation is only shared with staff who are involved in the investigation or case management of the involved parties, to the degree possible within limited resources and applicable laws;
  - vii. To medical or mental health confidentiality unless the information is in relation to a PREA incident;
  - viii. To have their protected if the victim of substantiated staff-on-inmate sexual abuse, to the degree possible within investigation protocol and applicable laws;
  - ix. To documentation of their innocence in all unfounded incidents;

- x. To the least restrictive level of segregation until the investigation is complete.
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- b. DOC Staff Members are responsible for the following:
    - i. Immediately reporting any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation towards inmates or staff who reported such an incident; any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation to a CFSS or higher ranking staff member.
    - ii. For reporting to outside agencies as mandated by applicable state laws, Agency of Human Services (AHS) and DOC policies and directives;
    - iii. Maintaining appropriate professional boundaries at all times with inmates/offenders, visitors, and staff;
    - iv. Comporting themselves in a manner which fosters a safe and secure workplace;
    - v. Maintaining confidentiality during a PREA investigation by sharing only relevant information on a need to know basis only;
    - vi. Informing inmates of any limits to confidentiality prior to conducting any interview;
    - vii. Documenting all unfounded incidents against alleged perpetrators in DOC electronic case notes, as relevant;
    - viii. Holding inmates accountable through all means available to the DOC, for any substantiated incident<sup>13</sup> of sexual abuse;
    - ix. Holding inmates accountable through all means available who allege sexual abuse, and whose allegations are proven by investigators to be unfounded and made in malice;
    - x. Intermediate level or higher level supervisors are required to make and enter in the unit logbook unannounced facility rounds for night shifts as well as day shifts to identify and deter employee sexual abuse and sexual harassment;<sup>14</sup>
    - xi. Staff is prohibited from alerting other staff that supervisory and above tours are occurring unless such announcement is related to the legitimate operational functions of the facility.
  - c. DOC staff members have the following rights to the degree possible within limited resources and applicable laws:
    - i. To be free from retaliation, beginning when the allegation is made until the threat has passed as determined through the investigation process;
    - ii. To be assured that information obtained through the investigation is only shared with staff who are involved in the investigation or case management of the involved parties;
    - iii. To have their identity protected if they are victims of unfounded allegations of staff-on-inmate sexual misconduct or sexual harassment;

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<sup>13</sup> An incident is substantiated by the preponderance of the evidence.

<sup>14</sup> 28 C.F.R. §115.13(d).

- iv. To documentation of their innocence as an alleged perpetrator in all unfounded incidents.

d. The PREA Office will:

- i. Coordinate between facilities, field offices, law enforcement, local advocates, personnel, victims services, and State's Attorneys throughout the investigative process as necessary following incident response protocol;
- ii. Collaborate with and supervise information distribution to and from, the DOC, law enforcement, and the State's Attorney regarding ongoing criminal allegations;
- iii. Coordinate with the Director of Facility Operations to ensure that annual audits include inspection of areas and situations where sexual abuse may be likely to occur, and recommend mitigation for those areas and situations;
- iv. Collect and compile data of sexual abuse allegations to be distributed quarterly to the Deputy Commissioner, Director of Facilities Operations, Facility Superintendents, and Administrative Services Director;
- v. Produce an annual summary for the Commissioner, and facility superintendents on the frequency and severity of sexual abuse allegations within DOC, including trends during the year and comparisons to previous years. This report will be made public information, with information redacted that may threaten facility safety or security, through the DOC's website or other means. The nature of the redacted material must be indicated.
- vi. Ensure DOC review of aggregated sexual abuse allegations data collected in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training.
- vii. Develop training standards in response to sexual abuse allegations<sup>15</sup>;
- viii. Coordinate with the Vermont Corrections Academy in the development and implementation of lesson plans for new employee orientation and staff in-service training;
- ix. Participate in annual DOC discussions regarding facility staffing plans and video monitoring updates/upgrades.
- x. Develop and distribute to each facility material with key information on updates in the DOC's PREA policies as well as reminders on how to report sexual abuse and sexual harassment
- xi. Securely retain all sexual abuse allegations data collected for a minimum of ten years after the initial collection date unless otherwise specified.

## 2. Inmate Orientation

- a. Relevant staff will give an appropriate orientation to all inmates. (Refer to the *PREA Inmate Orientation Form*) This information is designed to inform all inmates that the

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<sup>15</sup> These training standards will be implemented in order to meet the required trainings of 28 C.F.R. §115.

DOC has a zero-tolerance policy toward sexual abuse, and that all inmates are encouraged to report any and all such incidents.<sup>16</sup>

- b. In the event an inmate has difficulty understanding provided information and/or procedures outlined in this policy, the facility must ensure that such information is effectively communicated to such inmates on an individual basis.
  - i. Auxiliary aids that are reasonable, effective, and appropriate to the needs of the inmate shall be provided when simple written or oral communication is not effective.<sup>17</sup>
  - ii. Inmates will not be relied upon to provide interpretation services, act as readers, or provide other types of communication assistance except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first responder's duties, or the investigation of the inmate's allegation.<sup>18</sup>
- c. During the initial intake process the Booking Officer must do the following:
  - i. Hand out the PREA brochure, "*You Have the Right to be Safe: A Guide for Inmates/Offenders about Sexual Abuse in Corrections – Know Your Rights and Responsibilities*;"
  - ii. Inform the inmate that they can report incidents of sexual abuse or behavior to any DOC staff member;
  - iii. Inform the inmate of the zero-tolerance policy of sexual abuse and/or sexual harassment whether staff or inmate;
  - iv. Upon completion of Part I of the PREA orientation, sign and date the *PREA Inmate Orientation Form*, and give it to the Case Work Supervisor (CWS)/Living Unit Supervisor (LUS) who will then give it to the assigned Corrections Service Specialist (CSS).<sup>19</sup>
- d. As part of the inmate medical screening process, medical personnel must provide the following:
  - i. Review all questions on the *Inmate Guide to Medical Services*;
  - ii. Have the inmate sign the form and place it in their medical file;
  - iii. Ask questions and record the answers in *Section II* of the Sexual Violence Screening Tool (SVS).
- e. As part of the inmate orientation process by the assigned Caseworker, within 5 business days of incarceration the Caseworker must<sup>20</sup>:
  - i. Provide how to avoid risky situations related to sexual abuse;
  - ii. Provide dialing instructions for the Offender Reporting line;

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<sup>16</sup> 28 C.F.R. §115.33(a).

<sup>17</sup> 28 C.F.R. §115.33(d).

<sup>18</sup> 28 C.F.R. §115.16(c).

<sup>19</sup> 28 C.F.R. §115.33(e).

<sup>20</sup> 28 C.F.R. §115.33(b).

- iii. Inform how to report an incident;
  - iv. Inform how to obtain medical assistance and/or counseling services if victimized;
  - v. Inform of the risks & potential consequences of engaging in any sexual activity;
  - vi. Inform of the DOC's policies and procedures for responding to incidents with a sexual component;
  - vii. Inform of the right to be free from sexual abuse, sexual harassment and to be free from retaliation for reporting such incidents;
  - viii. Put the completed *Orientation Form* in the inmate file.
- f. Released inmates who have been in the community for less than 90 days and have returned to a facility will be oriented by the Booking Officer only.
  - g. Inmates that are transferred in from another facility and have a signed orientation form in their file will not be reoriented.
  - h. The Facility Superintendent is responsible for ensuring that:
    - i. The brochure "*You Have the Right to be Safe*", and any other designated materials, are made available in all living units and common areas;<sup>21</sup>
    - ii. Policies and procedures are in place that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.<sup>22</sup>
    - iii. There is a method in place for staff to privately report sexual abuse or incidents of alleged retaliation.
    - iv. There is a referral to the Vermont State Police in the event there is a criminal element to the incident.<sup>23</sup>

### 3. Sexual Violence Screening<sup>24</sup>

- a. During the booking process, but no longer than seventy-two hours after arrival, staff will complete the *SVS* in order to ensure that potential victims and/or predators are identified.
- b. The inmate may not be punished for refusing to answer questions on the screening tool.
- c. During the booking process, the booking officer will *complete Sections I of the SVS*. The booking officer will use the inmate's file, electronic database, observed behavior, information from the transporting staff, information provided by the inmate, and prior information to complete the form before giving it to a QHCP.

<sup>21</sup> 28 C.F.R. §115.33(f).

<sup>22</sup> 28 C.F.R. §115.15(d).

<sup>23</sup> 28 C.F.R. §115.22(c).

<sup>24</sup> 28 C.F.R. §115.41(a-h).

- d. In a private area<sup>25</sup>, the QHCP will ask the inmate the questions in *Section II* of the *SVS*.
- e. If while conducting the screening it is discovered that an inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow up meeting with a medical and mental health practitioner within fourteen days of the intake screening.
- f. If while conducting the screening it is discovered that an inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow up meeting with a mental health practitioner within fourteen days of the intake screening.
- g. A mental health staff member, or contractor, will attempt to conduct a full mental health evaluation of all known inmate-on-inmate abusers within sixty days of learning such a history and offer treatment when deemed appropriate by mental health practitioners.
- h. Upon completion of Section II of the *SVS*, the QHCP signs and dates the *SVS* before returning it to the booking officer for completion.
- i. Potential Predator/Victim Designation:
  - i. Any inmate with a check next to the identified (\*) questions will receive an automatic potential victim and/or perpetrator designation.
  - ii. For any inmate scoring three (“yes” or “check”) or more in each designation the booking officer will fill out the Designation section with either or both “*Inmate identified has exhibited characteristics of being a potential target for victimization*” or “*Inmate identified has exhibited characteristics of predatory behavior.*”
  - iii. The booking officer will sign and date the form and give the completed form to the CFSS.
  - iv. The CFSS will review, sign, and submit the form to the Casework Supervisor/Living Unit Supervisor (CWS/LUS) and give a copy to the PREA Coordinator. The CWS/LUS will review, sign, and give the form to the CSS to be filed in the inmate file.
  - v. Within five business days, the staff assigning housing will use a multidisciplinary approach to develop a facility plan. The goal of the facility plan is to keep separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive. The facility plan will be forwarded to the CWS/LUS and the assigned CSS.<sup>26</sup>
  - vi. DOC shall make individualized determinations about how to ensure the safety of each inmate.<sup>27</sup>

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<sup>25</sup> 28 C.F.R. §115.41(i).

<sup>26</sup> 28 C.F.R. §115.42(a).

<sup>27</sup> 28 C.F.R. §115.42(b).

- vii. The assigned caseworker will enter an electronic case note indicating the designation of the inmate and the facility plan. The assigned case worker will then notify the facility PREA coordinator and the PREA Office.
- j. No Exhibited Characteristics Indicated:
  - i. Any inmate with less than three (“yes” or “check”) for each designation will receive, “*Inmate identified does not exhibit characteristics of either a potential victim or predator.*”
  - ii. The Booking Officer will forward the completed form to the CFSS for signature.
  - iii. The CFSS will review, sign, and submit the form to the CWS/LUS and give a copy to the PREA Coordinator. The CWS/LUS will review, sign, and give the form to the CSS to be filed in the inmate file.
  - iv. If the staff member completing the assessment believes that the appropriate designation did not occur, they will notify the CFSS. The CFSS shall submit a written request with rationale, to the PREA Coordinator, CWS/LUS, and PREA Director. A determination will be made and, if necessary, the assigned CSS will follow the process listed below under, “*Other Assessments.*”
  - v. The Facility PREA Coordinator is responsible for submitting a monthly PREA Designation List to their Superintendent, and the PREA Director.
  - vi. The PREA Office is responsible for communicating the DOC PREA Designation List monthly to the Director of Classification and Facility Designation, Out of State Classification Administrator Casework Supervisor, Director of Facilities Operations, and Deputy Commissioner.
- k. Transfer Cases
  - i. If the inmate is a transfer case from another institution the booking officer will refer to the previously completed assessment when completing a new assessment and follow the process.
- l. Mandatory Thirty Day/Other Assessments
  - i. In a private setting, within thirty days of intake, the assigned Facility Caseworker will reassess each inmate by completing all sections of the *Sexual Violence Screening Tool*. The CSS will sign and date the form and follow any other necessary procedures.
  - ii. New assessments are completed upon receipt of additional information that relates to the inmates risk of victimization or predation or following an allegation of Inmate-on-Inmate sexual victimization.
- m. Designation(s) will not be used to restrict potential victims or perpetrators from services offered within the facility.
- n. Each facility will maintain confidentiality of the information learned through the sexual violence screening process. Sharing on a “need to know” basis only, to ensure that sensitive information is not exploited to the inmate’s detriment by staff or other inmates.

#### 4. Classification and Housing

In order to reduce the likelihood of sexual abuse while an inmate is in custody, the DOC will take the following into account when assigning housing for every inmate upon intake, or in any special circumstances (for example, a cell move for medical reasons.) To minimize the risk of inmate sexual abuse due to housing assignment, except in exigent circumstances, *designated predatory* inmates will not be placed in the same cell with *designated vulnerable* inmates.

- a. Intake
  - i. All inmates will be assessed at intake to determine whether they meet specific criteria indicating either likelihood of victimization or predation, both of which require a *SVS* designation.
  - ii. Except as noted below, all cell assignments for inmates in celled housing will be determined using:
    - A. The DOC Classification assessment
    - B. The *SVS* which recognizes key risk factors and identifiers used to track vulnerable and sexually predatory inmates.
- b. After receiving information regarding a PREA incident from a CFSS, the following will occur:
  - i. When necessary, the CWS/LUS, the Facility PREA Coordinator and the PREA Director will work together to determine PREA housing restrictions.
  - ii. In all cases of inmate-on-inmate sexual abuse, the PREA Director and the CWS/LUS for that site will determine jointly if a separation is necessary between the victim(s) and/or perpetrator(s).
  - iii. After a PREA designation is determined, the SOS is responsible for immediately notifying the Superintendent and the inmate's assigned CSS. The PREA Director is responsible for notifying the Offender Classification & Placement Administrator.
  - iv. A PREA designation will be applied in all cases of substantiated nonconsensual sexual acts.
    - A. Depending on the PREA designation, the perpetrator may still live in the same unit as the victim.
    - B. The CWS/LUS or designee may place inmates involved in PREA incidents together if familiar with all inmates who are in a cell or unit and confident that they do not pose a risk if housed together.
- c. Inmates that have been designated as vulnerable 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 a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than twenty-four hours while completing the assessment.<sup>28</sup>

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<sup>28</sup> 28 C.F.R. §115.43(a).

- d. Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document<sup>29</sup>:
  - i. The opportunities that have been limited;
  - ii. The duration of the limitation; and,
  - iii. The reasons for such limitations.
- a. The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of thirty days.<sup>30</sup>
- b. If an involuntary segregated housing assignment is made pursuant to paragraph (c) of this section, the facility shall clearly document<sup>31</sup>:
  - i. The basis for the facility's concern for the inmate's safety; and,
  - ii. The reason why no alternative means of separation can be arranged.
- c. Every thirty days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.<sup>32</sup>

#### **5. Reporting and Investigating Inmate-on-Inmate and Staff-on-Inmate Incidents<sup>33</sup>**

DOC has a clear protocol for responding to all incidents of sexual abuse and behavior. This ensures that no matter when or where the incident occurs, victims will get the same level of care, and perpetrators are held to the same level of accountability.

All incidents, regardless of time frames will be investigated. Individuals intentionally making false allegations will be held accountable through internal and external systems. Inmates are encouraged, and staff is required, to immediately report incidents.

When a PREA incident has occurred or is alleged to have occurred, DOC's priorities are safety and security for the victim, the general inmate population, the perpetrator, and the institution. DOC will separate and segregate the involved inmates as necessary to prevent further victimization or retaliation.

Upon notification by an inmate, staff, volunteer, contractor, witness, third party grievance, or anonymous report that an inmate has been victimized<sup>34</sup>, the staff member shall immediately follow the appropriate steps and/or protocols for each category of incident.

<sup>29</sup> 28 C.F.R. §115.43(b).

<sup>30</sup> 28 C.F.R. §115.43(c).

<sup>31</sup> 28 C.F.R. §115.43(d).

<sup>32</sup> 28 C.F.R. §115.43(e).

<sup>33</sup> 28 C.F.R. §115.51(a-d); §115.52(a-g).

<sup>34</sup> 28 C.F.R. §115.51(a).

Victims of sexual abuse will be provided with timely unimpeded access to all services in which they would be entitled to if they were sexual abuse victims in the community. These services will be comparable to those provided in the community and at no cost to the victim. These services include but are not limited to victim advocate services, SANE/SAFE exams, Medical and mental health care, etc. If the SAFE's or SANE's are not available the exam can be performed by other qualified medical practitioners.<sup>35</sup> The facility will document its efforts to provide SANE/SAFE.<sup>36</sup> If it is determined that follow care is required (i.e. prenatal care, mental health care, etc.) These services will be offered in the facility or at an outside agency if the facility is unable to provide them internally.

If requested by the victim. The victim advocate, qualified DOC staff member, or qualified community based organization staff member shall accompany and support the victim through the forensics medical exam process and investigatory interviews and shall provide emotional support<sup>37</sup>, crisis intervention, information and referrals.<sup>38</sup>

Supervisors will ensure that someone that is trained in investigating sexual assault within a confinement setting is notified of the incident.

- a. Reporting and Investigating Inmate-on-Inmate Incidents
  - i. Sexualized Behavior
    - A. Staff will follow the DOC approved reporting protocol.
  - ii. Inmate-on-Inmate Sexual Abuse
    - A. Sexual Harassment
      - 1) Staff will follow the DOC approved reporting protocol.
    - B. Abusive Sexual Contact
      - 1) Staff will follow the DOC approved reporting protocol.
    - C. Nonconsensual Sexual Acts
      - 1) Staff will follow the DOC approved reporting protocol.
- b. Reporting and Investigating Staff-on-Inmate Incidents
  - i. Staff Sexual Misconduct
    - A. Sexual Harassment, Indecent Exposure, and/or Voyeurism
      - 1) Staff will follow the DOC approved reporting protocol.
    - B. Staff-on-inmate Abusive Sexual Contact/Nonconsensual sexual acts form and protocol.
      - 1) Staff will follow the DOC approved reporting protocol.
  - ii. Upon receipt of information that an inmate was sexually abused while confined at another facility, the superintendent of the facility that received the allegation

<sup>35</sup> 28 C.F.R. §115.21(h).

<sup>36</sup> 28 C.F.R. §115.21(c).

<sup>37</sup> 28 C.F.R. §115.53(a).

<sup>38</sup> 28 C.F.R. §115.21(e); 28 C.F.R. §115.21(h).

shall notify the superintendent or appropriate staff at the facility where the alleged abuse occurred.

- A. Notification will be provided as soon as possible but no later than seventy-two hours after receiving the allegation.
  - B. The facility will document that notification was made and to whom the allegation was reported to. This notification will then be sent to the PREA Office.
  - C. The facility superintendent receiving the notification will ensure that the allegation is investigated.
- iii. Following all investigations into an inmate's allegation that he/she suffered sexual abuse at a facility, the inmate shall be informed as to whether the allegation has been determined to be substantiated, unsubstantiated or unfounded. Following an inmate's allegation that staff has committed sexual abuse against the inmate, the facility shall subsequently inform the inmate (unless allegation is determined to be unfounded) whenever:
- A. The staff is no longer posted within the inmate's unit as a result of the findings of the investigation;
  - B. The staff is no longer employed at the facility as a result of the allegation;
  - C. The facility learns that the staff has been indicted on a charge related to sexual abuse within the facility; or
  - D. The facility learns that the staff has been convicted on a charge related to sexual abuse within the facility.
- iv. Following an inmate's allegation that he/she has been sexually abused by another inmate, the facility shall subsequently inform the alleged victim whenever:
- A. The facility learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
  - B. The facility learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
- iv. The facilities obligation to notify the inmate as outlined in this section shall terminate if the inmate is released from DOC custody. Inmates will be disciplined for sexual contact with staff only upon finding that the staff member did not consent to such contact.
- v. All such notifications will be documented.

## 5. Monitoring

- a. Facilities will begin monitoring for retaliation against alleged victims, reporters, and persons cooperating with the investigation at the receipt of all sexual harassment and sexual abuse allegations. Monitoring the behavior, treatment and conduct of inmates and staff will continue for a minimum of ninety days.<sup>39</sup>

<sup>39</sup> 28 C.F.R. §115.67(c).

- i. Retaliation against inmates will be monitored by the inmate's assigned caseworker, monitoring shall include periodic status checks.<sup>40</sup>
- ii. Retaliation against staff will be monitored by the facility Superintendent or their designee. DOC will take appropriate measures to protect a reporting individual from retaliation given its operational, security, safety and resource needs.<sup>41</sup>
- iii. In all instances of retaliation, the facility will employ multiple protection measures, such as 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.<sup>42</sup>
- iv. The facility shall extend such monitoring beyond ninety days if the initial monitoring indicates a continuing need.
- v. The obligation to monitor is terminated if the allegation is determined to be unfounded.<sup>43</sup>

## 6. Post Incident

- a. Within thirty days of the conclusion of a substantiated or unsubstantiated sexual abuse investigation the facility upper management, with input from supervisors, medical and/or mental health practitioner's will conduct a review) of the incident. At a minimum, this review will include an assessment of the area where the incident allegedly occurred to determine if physical barriers may enable abuse, the need to change policy/practice, a review of staffing levels, and electronic video monitoring. The review team will consider whether the incident or allegations was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, queer, questioning, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility.
- b. The committee will submit a written report of its findings to the facility superintendent and the PREA Office.
- c. The facility shall implement recommended improvements or shall document the reason(s) for not doing so.
- d. Ensure all incident based documents, including reports, investigation files and sexual abuse incident reviews are forwarded to the PREA Office.

## 7. Supplemental Housing (SHCF) – Out of State (OOS) Inmates

The DOC is responsible for the safety of inmates who are placed in supplemental housing correctional facilities. The DOC will have protocols in place with all contract institutions regarding orientation to PREA, inmate reporting mechanisms, victim safety and perpetrator accountability.

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<sup>40</sup> 28 C.F.R. §115.67(a); 28 C.F.R. §115.67(d).

<sup>41</sup> 28 C.F.R. §115.67(e).

<sup>42</sup> 28 C.F.R. §115.67(b).

<sup>43</sup> 28 C.F.R. §115.67(f).

- a. Inmate Orientation at the OOS Facility: As part of the orientation process, within fourteen business days of the inmate being assigned to a Vermont DOC OOS caseworker, the caseworker will send the inmate the following:
  - i. A copy of the PREA Office brochure, "You Have the Right to be Safe: A Guide about Sexual Abuse in Corrections for Inmates at Supplemental Housing Correctional Facilities – Know Your Rights and Responsibilities;"
  - ii. A letter informing them of the:
    - A. Assigned caseworker's contact information;
    - B. Zero-tolerance policy of sexual abuse;
    - C. Reporting protocol at their assigned facility;
    - D. Ability to report incidents of sexual abuse or behavior to any DOC or OOS contracted facility staff member (including contractors and volunteers).
  - iii. The Caseworker will put a copy of the letter in the inmate's file.
- b. Allegation Reporting
  - i. All OOS casework staff are responsible for:
    - A. Notifying the Classification Administrator & OOS Casework Supervisor immediately of any report of sexual abuse;
    - B. Entering appropriate electronic case notes as instructed by the PREA Director and Classification Administrator & OOS Casework Supervisor.
  - ii. The Classification Administrator & OOS Casework Supervisor is responsible for:
    - A. Reporting all allegations to the PREA Director and the Director of Facility Operations immediately.
    - B. Working with staff at the contracted institution and gathering all incident paperwork to be submitted to the PREA Office (E-mail: [AHS.DOCPREA@state.vt.us](mailto:AHS.DOCPREA@state.vt.us))

## TRAINING<sup>44</sup>

The PREA Director has the responsibility and authority to develop all PREA-related training and will work with the Director of Training and Professional Development to ensure that all appropriate personnel are trained in the provisions of this directive within one year of the effective date of the final PREA standards and receive refresher training every two years on the current sexual abuse sexual harassment policies and procedures. In the off years the employees will receive refresher information on these policies and procedures. The DOC will document, through employee signature or other verification that employees understand the training they have received.

1. Facility Superintendents, Facility Assistant Superintendents, Site PREA Coordinators, CLUS Staff, CSS Staff, SOS Staff, CFSS, CHSVT staff, PREA Office Staff and any additional staff as determined by their manager will complete the National Institute of Corrections online course, Your Role: Responding to Sexual Abuse. Upon the post assessment completion, staff will receive an email with their attached certificate. Staff will submit their certificate to the

<sup>44</sup> 28 C.F.R. §115.31(a-d); 28 C.F.R. §115.32(a-c);

local training coordinator to be entered into the Training Registration Management System (TRMS.)

2. Correctional Officers will successfully complete the PREA/Staff Sexual Misconduct course at the Vermont Correctional Academy. Gender specific training will be tailored to the gender of the inmate in the facility in which the staff member will be working.
3. Volunteers, medical providers, mental health providers, other contract staff and BGS staff will participate in and complete orientation provided at the security/orientation training. This training will include their responsibilities for prevention, detection and responding to the DOC's sexual abuse/harassment policies based upon the level of inmate contact. The DOC will document, through employee signature or other verification that employees understand the training they have received. The DOC Volunteer Coordinator will maintain training files for volunteers.
4. Facility PREA Coordinators will ensure that new staff receive the staff PREA brochure, review the DOC's Zero Tolerance Policy, 13 V.S.A. § 3257 (Staff Sexual Exploitation Statute), this directive, reporting protocol, signs of victimization, and how to maintain appropriate boundaries.

#### Specialized Training Investigations:<sup>45</sup>

Facility PREA coordinators, their alternate and anyone that investigates sexual abuse incidents are required to successfully complete specialized investigation training. This training can be accomplished by completing and passing a web interfaced course Prison Rape Elimination Act (PREA) Investigating Sexual Abuse in a Confinement Setting Course (at: <http://nicic.gov/Library/027695>) Staff successfully completing the Special Investigations Training will be documented by the Facility PREA Coordinator and submitted to the Local Training Coordinator to be entered into TRMS.

#### Specialized Training Medical and Mental Health Care:

Medical and Mental health care contractor will ensure that full and part-time medical and mental health care practitioners who work regularly in DOC facilities will be trained in:

1. How to detect and assess signs of sexual abuse and sexual harassment;
2. How to preserve physical evidence of sexual abuse;
3. How to respond effectively and professionally to victims of sexual abuse and sexual harassment;
4. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment

Documentation that medical and mental health care practitioners have received the specialized training will be maintained by the contractor and will be filed in each Facility Medical Unit.

#### 1. Training Topics

The topics listed below will be offered every two years to each category of identified staff.

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<sup>45</sup> 28 C.F.R. §115.34(a-d)

- a. Facility Staff (CO, CFSS, CWS/LUS, CSS, CSTL, etc.)
  - i. Sexual abuse reporting and investigative protocol;
    - A. Zero-tolerance for sexual abuse and harassment;
    - B. How to fulfill you responsibility of sexual abuse and harassment prevention, detection, reporting, and response;
    - C. Inmates' right to be free from sexual abuse and harassment;
    - D. Staff and inmates rights to be free from retaliation.
  - ii. Inmates as Victims & Perpetrators: Strategies for identifying potential perpetrators and protecting potential victims;
  - iii. Maintaining appropriate professional boundaries: Strategies for promoting effective prevention and intervention of staff-on-inmate sexual abuse and harassment.
- b. Medical/Mental Health Providers (QHCP, QMHP)<sup>46</sup>
  - i. PREA, Medical, & Mental Health: Professional Obligation, Institutional Obligation & Victim Care
  - ii. Victim care: The forensic exams process performed by SANEs or SAFEs;
  - iii. How to detect and assess sexual abuse and harassment;
  - iv. Reporting and investigative protocol to include crime scene preservation and evidence collection;
  - v. Mental Health care and referrals.
- c. Other Staff (CHSVT, contract staff)
  - i. Sexual abuse reporting and protocol;
  - ii. Maintaining appropriate professional boundaries: Strategies for promoting effective prevention and intervention of staff-on-inmate sexual abuse and harassment
- d. All Staff should receive training on the following topics
  - i. The dynamics of sexual abuse and harassment in confinement.
  - ii. The common reactions to of sexual abuse and sexual harassment victims.
  - iii. How to detect and respond to signs of threatened and actual sexual abuse.
  - iv. How to avoid inappropriate relationships with inmates.

## QUALITY ASSURANCE

DOC will collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set definitions.

The DOC will aggregate the incident-based sexual abuse data at least annually.

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<sup>46</sup> 28 C.F.R. §115.35(a-d)

The incident-based data collected will 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 (DOJ).

The DOC will maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

The DOC will obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.

Upon request, the DOC will provide all such data from the previous calendar year to the Department of Justice.

### **BUSINESS OFFICE**

The Business Office is responsible for ensuring the appropriate contract wording (see below) is inserted to any contract with entity providing confinement services for inmates

“Contractor will comply with the Prison Rape Elimination Act of 2003 (28 C.F.R. Part 115, Docket No. OAG-131, RIN 1005-AB34-Date May 17, 2012), and with applicable PREA Standards, DOC Policies and Directives related to PREA for preventing, detecting, monitoring, investigating, and eradicating and form of sexual abuse within DOC. Contractor acknowledges that, in addition to “self-monitoring requirements” VT State staff will conduct announced or unannounced, compliance monitoring to include “on-site “monitoring. Failure to comply with PREA, including PREA Standards and DOC Directives and Policies may result in termination of the contract.”<sup>47</sup>

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<sup>47</sup> 28 C.F.R. §115.12(a); 28 C.F.R. §115.12(b).

# EXHIBIT 2

|   |  |   |
|---|--|---|
| <p style="text-align: center;"><b>STATE OF VERMONT</b><br/> <b>AGENCY OF HUMAN SERVICES</b><br/> <b>DEPARTMENT OF CORRECTIONS</b></p>   | <p><b>Title: Reporting and Investigating Unlawful Discrimination, Sexual Harassment, and Retaliation in the Workplace.</b></p> | <p style="text-align: right;">Page 1 of 4</p>           |
| <p><b>Chapter: Personnel</b></p>  | <p style="text-align: center;"><b># 118.02</b></p>   | <p><b>Supersedes #118.02</b><br/>(dated 08/21/1995)</p> |
| <p><b>Attachments, Forms &amp; Companion Documents:</b></p> <p>1.</p>   |  |   |
| <p><b>Local Procedure(s) Required:</b> No.<br/> <b>Applicability:</b> All staff (including contractors and volunteers)<br/> <b>Security Level:</b> "B" – Anyone may have access to this document.</p>   |  |   |
| <p><b>Approved:</b></p> <div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 20px;"> <div style="text-align: center;"> <br/> <hr style="width: 100%;"/> <p><b>Andrew A. Pallito, Commissioner</b></p> </div> <div style="text-align: center;"> <p><i>2/18/15</i></p> <hr style="width: 100%;"/> <p><b>Date Signed</b></p> </div> <div style="text-align: center;"> <p><i>2/22/15</i></p> <hr style="width: 100%;"/> <p><b>Date Effective</b></p> </div> </div> |  |   |

**PURPOSE**

To provide all State of Vermont Department of Corrections (DOC) employees and supervisors with procedures for reporting and investigating unlawful discrimination, sexual harassment and retaliation claims.

**POLICY**

The Vermont Department of Corrections is opposed to and prohibits without qualification the harassment of anyone on the basis of gender, unlawful discrimination, and any retaliation arising from such behavior.

**AUTHORITY**

42 U.S.C. §147; State of Vermont Personnel Policies and Procedures 3.1 – Sexual Harassment (effective March, 1, 1996); 28 V.S.A. §103.

**REFERENCE**

28 C.F.R. §115; 21 V.S.A., Chapter 5 (Employment Practices), State of Vermont Personnel Policies and Procedures.

## DEFINITIONS

Sexual Harassment<sup>1</sup>: Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by a person directed towards another. It also includes, repeated verbal comments or gestures of a sexual nature to a person by another, including demeaning reference to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.<sup>2</sup>

Unlawful Discrimination: Unfair or unequal treatment of an individual (or group) based on age, disability, ethnicity, gender, marital status, national origin, race, religion, and sexual orientation.<sup>3</sup>

Retaliation: When an employer or individual fires, demotes, harasses, or otherwise retaliates against an individual for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.<sup>4</sup>

## PROCEDURAL GUIDELINES

1. **Any employee who believes (s)he has been the subject of unlawful discrimination, sexual harassment or retaliation shall report the alleged act(s) as soon as possible to anyone of the following:**
  - a. The immediate supervisor;
  - b. Any Department management staff;
  - c. Any support coordinator;
  - d. The Department of Human Resources (DHR) administrator assigned to the Department of Corrections (DOC);
  - e. Any member of the Department of Personnel Labor Relations staff, 10 State Street, Montpelier, Vermont.
2. **For any complaint based upon an actual or perceived disability, the employee may first contact the DHR Administrator assigned to the DOC.**
3. **To process a complaint, the following applies:**
  - a. All complaints received by supervisors, managers or DHR staff pertaining to unlawful discrimination, sexual harassment, or retaliation will be referred

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<sup>1</sup> The Vermont Department of Corrections incorporates by reference the State of Vermont's definition of sexual harassment found in the Vermont Personnel Policies 3.1.

<sup>2</sup> 28 C.F.R. §115.5 (2012).

<sup>3</sup> 42 U.S.C. §2000 (2012); 29 U.S.C. §209 (2012); 29 U.S.C. §623 (2012); 42 U.S.C. §12112 (2012); 29 U.S.C. §791 (2012); 29 U.S.C. §202 (2012); 42 U.S.C. §19812 (2012).

<sup>4</sup> U.S. Equal Opportunity Commission. (n.d.). *Facts about Retaliation*. Retrieved November 24, 2014, from <http://www1.eeoc.gov/laws/types/facts-retal.cfm?renderforprint=1>

immediately to the DHR administrator assigned to the DOC who will coordinate with the appointing authority to ensure that a timely and complete review of the complaint is made. A report of any investigation will be provided to the appointing authority and the Commissioner of the Vermont Department of Corrections or designee. The appointing authority, after consultation with the DHR administrator assigned to the DOC, will identify and take steps to promptly remedy the unlawful discrimination, sexual harassment or retaliation and prevent its recurrence.

- b. The appointing authority or designee shall issue a written response to the complainant acknowledging the complaint and providing notice if applicable, that any prohibited activity is expected to cease (a copy of the response shall be provided to the Personnel Administrator). An investigation will be done promptly and a written response will normally take place within thirty (30) days.
- c. Complainants should be notified that confidentiality cannot be guaranteed if a complaint results in a grievance, discipline, or other litigation of the complainant.
- d. The DHR and appointing authorities shall ensure that an investigation is conducted when any instance of sexual harassment comes to their attention, even in the absence of a complaint.
- e. If the appointing authority or any member of the agency/department personnel unit is named in the complaint, the complainant or his or her representative shall bring the complaint to the attention of the DHR administrator assigned to DOC who shall notify the Secretary of Administration or Commissioner of DHR to determine the appropriate personnel to be responsible for investigating the charge.
- f. Any intimidation, harassment or interference for filing a complaint or assisting in an investigation and/or intentionally filing a false complaint of sexual harassment will be subject to appropriate discipline, up to and including dismissal.

**4. The use of this procedure does not preclude any victim of unlawful discrimination, sexual harassment or retaliation from pursuing any other legal remedy. To explore other remedies, employees may also contact the following:**

- a. Equal Employment Opportunity Commission  
1 Congress Street  
Boston, MA 02114
- b. Vermont Human Rights Commission  
14-16 Baldwin Street  
Montpelier, VT 05633-6301
- c. Vermont Attorney General's Office  
109 State Street  
Montpelier, VT 05609-1001

d. Vermont State Employees Assn., Inc.  
155 State Street  
Montpelier, VT 05601

5. This directive also incorporates by reference the policies outlined in Directive #122.01.