

<p><i>Effective Date:</i>11/30/2024, 1/11/2023, 1/27/2021</p> <p><i>Supersedes:</i> 02/17/2020, 5/23/2019, 10/03/2017</p>	<p><i>Approval by: Jail Administrator</i> <i>Christina Allard</i></p>	<p><i>Number:</i></p> <p style="text-align: center;"><b>8.08</b></p>
<p><i>Chapter:</i> PREA</p> <p><i>Subject:</i> Investigations: Criminal and Administrative, Referrals, Coordinated Response</p>		
<p><i>Reference:</i> ND Jail Standard 2</p>	<p><i>Reevaluation Date (Annual):</i> 11/30/2024 by Jail Administrator Christina Allard</p>	<p><i>No. Pages:</i> 2</p>

**POLICY:**

The Rolette Count Jail (RCJ) will have written policy and procedures mandating zero-tolerance towards all forms of sexual abuse and sexual harassment. RCJ will describe in detail approaches taken to prevent, detect, and respond to such conduct. Policy & Procedure will be in accordance with the DOJ Title 28 Code of Federal Regulations, Part 115, and National Standards, to prevent, detect, and respond to prison rape.

**ALLEGATIONS OF SEXUAL ABUSE OR SEXUAL HARASSMENT**

- ❖ RCJ will ensure an administrative or criminal investigation is completed for **ALL** allegations of sexual abuse and sexual harassment.
  - If the allegation is criminal in nature it will be referred to the BCI for investigation.
    - All referrals to BCI will be documented in an investigative report by the RCJ PREA coordinator.
- ❖ Allegations that do not involve potentially criminal behavior will be investigated internally (Administrative Investigation) by the RCJ PREA coordinator or designee.

**COORDINATED RESPONSE**

- ❖ Actions will be coordinated in response to an incident of sexual abuse, among staff first responders, shift supervisors, medical & behavioral health practitioners, investigators, and administration {See policy 8.09}.

**CRIMINAL AND ADMINISTRATIVE AGENCY INVESTIGATIONS**

- ❖ When RCJ conducts its own investigations into allegations of sexual abuse and sexual harassment, it will initiate a thorough and objective investigation for all allegations within 24 hours or as circumstances dictate, including third-party and anonymous reports.
- ❖ Where sexual abuse is alleged, RCJ shall utilize investigators who have received specialized training in sexual abuse investigations pursuant to §115.34.
- ❖ Investigators shall:
  - Gather and preserve direct and circumstantial evidence, including available physical and DNA evidence and available electronic monitoring data
  - Interview alleged victims
  - Interview suspected perpetrators
  - Interview witnesses
  - Review prior complaints and reports of sexual abuse involving the alleged perpetrator
- ❖ When the quality of evidence appears to support criminal prosecution, RCJ will cease any administrative investigation while the criminal investigation is being conducted.
- ❖ The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person’s status as an inmate or staff. RCJ will not require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
- ❖ Administrative Investigations:
  - Must include an effort to determine whether staff actions or failures to act contributed to the abuse; and

- Must be documented in written reports that include the description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
- ❖ Criminal investigations must be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.
- ❖ Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.
- ❖ RCJ shall retain all administrative and criminal written reports referenced for as long as the alleged abuser is incarcerated or employed by the agency, plus 5 years.
- ❖ Investigations are completed regardless of employee status or inmate custody status.
- ❖ When BCI investigates sexual abuse, RCJ staff shall cooperate with outside investigators and shall remain informed about the progress of the investigation.

## **EVIDENTIARY STANDARD FOR ADMINISTRATIVE INVESTIGATIONS**

- ❖ RCJ may not impose a standard higher than a preponderance (>50%) of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

## **EVIDENCE PROTOCOL**

- ❖ To the extent RCJ is responsible for investigating allegations of sexual abuse, RCJ will follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
- ❖ Protocol is based on North Dakota's Sexual Assault Evidence Collection Protocol 5<sup>th</sup> Ed.

## **REPORTING TO INMATES**

- ❖ Following an investigation, the PREA coordinator or designee will inform the inmate or inmates verbally whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. The PREA coordinator will deliver in person a statement of findings which will require the signature of the inmate(s). If the inmate(s) refuse to sign the findings form, the PREA coordinator will document the refusal and have a staff member witness and sign the refusal.
- ❖ If BCI conducts the investigation, RCJ shall request the relevant information in order to inform the inmate of the outcome of the investigation.
- ❖ If there has been a substantiated or unsubstantiated complaint of sexual abuse committed by a staff member against an inmate, the agency must subsequently inform the inmate whenever:
  - The staff member is no longer posted within the inmate's unit;
  - The staff member is no longer employed at the facility;
  - RCJ learns that the staff member has been charged or convicted on an offense related to sexual abuse within the facility
- ❖ Following an inmate's allegation that he or she has been sexually abuse by another inmate while at RCJ, RCJ subsequently informs the alleged victim whenever:
  - RCJ learns that the alleged abuse has been indicted or convicted on a charge related to sexual abuse within a facility.
- ❖ All notifications or attempted notifications of the final determination of an allegation is documented and stored by the PREA coordinator.
- ❖ RCJ's obligation to report under this standard terminates if the inmate is released from RCJ custody.

## **DISCIPLINARY SANCATIONS FOR INMATES**

- ❖ RCJ will impose sanctions pursuant to RCJ disciplinary processes to inmates found guilty of engaging in inmate-on-inmate sexual abuse.
- ❖ Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories.
- ❖ The disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.
- ❖ RCJ may discipline an inmate for sexual contact with a staff only upon finding the staff member did not consent to the contact.
- ❖ Reports made in good faith may not constitute falsely reporting an incident or lying, even if the investigation does not establish evidence sufficient to substantiate the allegation.