

Walsh County Sheriff's Office
Custody Manual
Prison Rape Elimination Act

The following excerpts from the Policy C-270 are applicable to investigations within the Walsh County Jail

3. § 115.65 Coordinated Response - Investigations of sexual abuse or sexual harassment

- a. Walsh County Jail shall use this procedure as a plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, investigators, and facility leadership.[115 .65 (a)-1]
- b. When a shift staff receives a report of possible sexual abuse or sexual harassment, the Sheriff shall ensure an investigation is conducted. (4-4281-3M)
- c. All allegations of non-criminal staff sexual abuse will be handled internally
- d. Sexual Abuse by an inmate, staff member, contractor or volunteer:
 1. First responder:
 - a. The first staff member responding to an allegation of sexual abuse must immediately separate the alleged victim from the alleged abuser.
 - b. Immediately notify the Sheriff or Chief Correctional Officer of the alleged incident.
 - c. Preserve and protect any crime scene until appropriate steps can be taken to collect evidence.
 - d. If the alleged abuse occurred within the past 120 hours, request that the alleged victim not take any action that could destroy physical evidence including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, eating or drinking.
 - e. Any employee who receives information about staff sexual abuse on inmate will immediately inform the Sheriff or Chief Correctional Officer. The Sheriff shall notify the PREA compliance manager. Information may include rumors from staff or inmates. Failure to report information about staff sexual abuse may result in disciplinary action, up to and including termination.
 - f. Ensure the alleged abuser does not destroy evidence.
 - g. Immediately notify the North Dakota State Jail Investigator of the incident.
 2. Supervising staff:
 - a. Immediately notify the Sheriff of the incident (In cases of staff, contractor, or volunteer)
 - b. The Sheriff will consult with human resources, the PREA Coordinator to select an investigator.
 - c. Ensure duties of first responder are completed. Ensure alleged abuser does not destroy evidence.
 - d. Contact Domestic Violence Shelter for external victim advocate services.
 - e. Immediately notify medical staff and have alleged victim escorted to Altru Healthcare Center. Notify medical staff an investigator will be assigned.
 - f. Preserve and protect any crime scene until appropriate steps can be taken to collect evidence. The area will remain secured as a crime scene until released by the Lead Investigator.
 - g. The Sheriff shall assign an investigator to investigate the incident. If it is determined a crime has been committed the Lead Investigator shall request assistance from the Bureau of Criminal Investigations and work as a liaison with the investigative agency in the investigation.
 - h. The shift staff shall complete the Incident Reporting form within 24 hours of notification.

- i. The Sheriff, Chief Correctional Officer or Lead Investigator shall separate to the extent possible the inmate and the affected staff during the investigation. This separation does not represent a form of punishment for the inmate or affected staff.
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5. PREA Investigator:

- a. At the completion of the investigation, the Lead Investigator will compile all documentation, including the investigative report, incident reports with disposition, medical and counseling findings, recommendations for post-release treatment, and send this information to the PREA Coordinator.

6. Bureau of Criminal Investigation:

- a. Walsh County investigator will meet with the inmate and review the inmate's statement
 - b. If it is determined a crime may have been committed, the Lead Investigator shall request assistance from the Bureau of Criminal Investigations and work as a liaison with the investigative agency in the investigation.
 - c. If it is determined a crime has not been committed, the Lead Investigator shall interview the staff member.
 - d. During the investigation employees shall cooperate fully by providing all pertinent information. Failure of an employee to answer any inquiry will be grounds for disciplinary action.
 - e. Employees interviewed or implicated may not make any attempt to contact the inmate victim from the time the allegation is first made until the completion of the investigation.
 - f. Employees are prohibited from any form of retaliation against an inmate who makes an allegation of staff sexual misconduct or staff sexual abuse.
 - g. False accusations:
 1. If the investigation reveals an inmate made a false allegation, disciplinary action may be imposed.
 - h. Employees, contractors, volunteers, official visitors or agency representatives who are found to have committed staff sexual abuse as defined in these procedures will be subject to internal discipline in accordance with Walsh County personnel policies
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606.10 SEXUAL ABUSE AND SEXUAL HARASSMENT INVESTIGATIONS

An administrative investigation, criminal investigation or both shall be completed for all allegations of sexual abuse and sexual harassment (28 CFR 115.22). Administrative investigations shall include an effort to determine whether the staff's actions or inaction contributed to the abuse. All administrative and/or criminal investigations shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings. Only investigators who have completed office-approved training on sexual abuse and sexual harassment investigation shall be assigned to investigate these cases (28 CFR 115.71).

When practicable, an investigator of the same sex as the victim should be assigned to the case. Sexual abuse and sexual harassment investigations should be conducted promptly and continuously until completed. Investigators should evaluate reports or threats of sexual abuse and sexual harassment without regard to an inmate's sexual orientation, sex or gender identity.

Investigators should not assume that any sexual activity among inmates is consensual.

The departure of the alleged abuser or victim from the employment or control of the jail or office shall not provide a basis for terminating an investigation (28 CFR 115.71).

If the investigation is referred to another agency for investigation, the Office shall request that the investigating agency follow the requirements as provided in 28 CFR 115.21 (a) through (e). The referral shall be documented. The Office shall cooperate with the outside agency investigation and shall request to be informed about the progress of the investigation (28 CFR 115.71). If criminal acts are identified as a result of the investigation, the case shall be presented to the appropriate prosecutor's office for filing of new charges (28 CFR 115.71).

Evidence collection shall be based on a uniform evidence protocol that is developmentally appropriate for youth, if applicable, and adapted from or otherwise based on the most recent edition of the DOJ's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011 (28 CFR 115.21).

Inmates alleging sexual abuse shall not be required to submit to a polygraph examination or other truth-telling device as a condition for proceeding with an investigation (28 CFR 115.71).

If a victim is under 18 or considered a vulnerable adult under state law, the assigned investigator shall report the allegation to the designated social services agency as required (28 CFR 115.61).

606.10.1 INVESTIGATIVE FINDINGS

All completed written investigations shall be forwarded to the Chief Correctional Officer or if the allegations may reasonably involve the Chief Correctional Officer, to the Sheriff. The Chief Correctional Officer or Sheriff shall review the investigation and determine whether any allegations of sexual abuse or sexual harassment have been substantiated by a preponderance of the evidence (28 CFR 115.71; 28 CFR 115.72).

The staff shall be subject to disciplinary sanctions, up to and including termination, for violating this policy. Termination shall be the presumptive disciplinary sanction for staff members who have engaged in sexual abuse. All discipline shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

All terminations for violations of sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to the law enforcement agency that would handle any related investigation and to any relevant licensing bodies (28 CFR 115.76).