

HOUSE BILL 292

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

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AN ACT

RELATING TO CORRECTIONAL INSTITUTIONS; ENACTING THE NEW MEXICO
PRISON RAPE ELIMINATION ACT; PROVIDING REQUIREMENTS; PROVIDING
EXCEPTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "New Mexico Prison Rape Elimination Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the New Mexico Prison Rape Elimination Act:

A. "agency" means the unit of a state, local, corporate or nonprofit authority with direct responsibility for the operation of a facility that confines inmates, detainees or residents, including the implementation of policy as set by the governing, corporate or nonprofit authority;

B. "agency head" means the principal official of an

1 agency;

2 C. "community confinement facility" means a
3 community treatment center, a halfway house, a restitution
4 center, a mental health facility, an alcohol or drug
5 rehabilitation center or other community correctional facility,
6 including residential reentry centers, other than a juvenile
7 facility, in which individuals reside as part of a term of
8 imprisonment or as a condition of pretrial release or
9 post-release supervision while participating in gainful
10 employment, employment search efforts, community service,
11 vocational training, treatment, educational programs or similar
12 facility-approved programs during nonresidential hours;

13 D. "contractor" means a person that provides
14 services on a recurring basis pursuant to a contractual
15 agreement with an agency;

16 E. "detainee" means a person detained in a lockup,
17 regardless of adjudication status;

18 F. "direct staff supervision" means that security
19 staff are in the same room with, and within reasonable hearing
20 distance of, a resident or an inmate;

21 G. "employee" means a person who works directly for
22 an agency or a facility;

23 H. "exigent circumstances" means any set of
24 temporary and unforeseen circumstances that requires immediate
25 action in order to combat a threat to the security or

1 institutional order of a facility;

2 I. "facility" means an individual prison, jail,
3 lockup, community confinement facility, detention facility,
4 juvenile facility, place, institution, building or part of a
5 building, set of buildings, structure or area, whether or not
6 enclosing a building or set of buildings, that is used by an
7 agency for the confinement of individuals;

8 J. "facility head" means the principal official of
9 a facility;

10 K. "gender nonconforming" means a person whose
11 appearance or manner does not conform to traditional societal
12 gender expectations;

13 L. "inmate" means a person incarcerated or detained
14 in a prison or jail;

15 M. "intersex" means a person whose sexual or
16 reproductive anatomy or chromosomal pattern does not fit
17 typical definitions of male or female;

18 N. "jail" means a confinement facility of a state
19 or local law enforcement agency whose primary use is to hold
20 persons pending adjudication of criminal charges, persons
21 committed to confinement after adjudication of criminal charges
22 for sentences of one year or less or persons adjudicated guilty
23 who are awaiting transfer to a correctional facility;

24 O. "juvenile" means a person under the age of
25 eighteen, unless under adult court supervision and confined or

detained in a prison or jail;

P. "juvenile facility" means a facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system;

Q. "law enforcement staff" means employees responsible for the supervision and control of detainees in lockups;

R. "lockup" means a facility that contains holding cells, cell blocks or other secure enclosures that are:

(1) under the control of a law enforcement, court or custodial officer; and

(2) primarily used for the temporary confinement of individuals who have recently been arrested or detained or are being transferred to or from a court, jail, prison or other agency;

S. "medical practitioner" means a health professional who, by virtue of education, credentials and experience, is permitted by law to evaluate and care for patients within the scope of the medical practitioner's professional practice;

T. "mental health practitioner" means a mental health professional who, by virtue of education, credentials and experience, is permitted by law to evaluate and care for patients within the scope of the mental health practitioner's professional practice;

1 U. "pat-down search" means a running of the hands
2 over the clothed body of an inmate, a detainee or a resident by
3 an employee to determine whether the individual possesses
4 contraband;

5 V. "prison" means an institution under federal or
6 state jurisdiction whose primary use is for the confinement of
7 individuals convicted of a serious crime, usually for a term in
8 excess of one year in length, or a felony;

9 W. "qualified medical practitioner" means a medical
10 practitioner who has successfully completed specialized
11 training for treating victims of sexual abuse;

12 X. "qualified mental health practitioner" means a
13 mental health practitioner who has successfully completed
14 specialized training for treating victims of sexual abuse;

15 Y. "resident" means a person confined or detained
16 in a juvenile facility or in a community confinement facility;

17 Z. "restricted housing", whether instituted
18 pursuant to disciplinary, administrative, inmate classification
19 or other action, means confinement of an inmate locked in a
20 cell or similar living quarters in a correctional facility for
21 twenty-two or more hours each day without daily, meaningful and
22 sustained human interaction;

23 AA. "security staff" means employees primarily
24 responsible for the supervision and control of inmates,
25 detainees or residents in housing units, recreational areas,

1 dining areas and other program areas of a facility;

2 BB. "strip search" means a search that requires a
3 person to remove or arrange some or all clothing so as to
4 permit a visual inspection of the person's breasts, buttocks or
5 genitalia;

6 CC. "substantiated" means that an allegation was
7 investigated and determined to have occurred;

8 DD. "transgender" means a person whose gender
9 identity is different from the person's assigned sex at birth;

10 EE. "unfounded" means that an allegation has been
11 investigated and determined by definitive evidence not to have
12 occurred. An allegation where the evidence is sufficient to
13 conclude that the conduct at issue occurred or may have
14 occurred but the conduct did not amount to a violation of the
15 New Mexico Prison Rape Elimination Act is excluded from the
16 definition of "unfounded";

17 FF. "unsubstantiated" means an allegation has been
18 investigated, and the investigation produced insufficient
19 evidence to make a final determination as to whether or not the
20 event occurred;

21 GG. "volunteer" means an individual who donates
22 time and effort on a recurring basis to enhance the activities
23 and programs of an agency;

24 HH. "youthful inmate" means a person under the age
25 of eighteen who is under adult court supervision and

incarcerated or detained in a prison or jail; and

II. "youthful detainee" means a person under the age of eighteen who is under adult court supervision and detained in a lockup.

SECTION 3. [NEW MATERIAL] SEXUAL ABUSE AND SEXUAL HARASSMENT--NEW MEXICO PRISON RAPE ELIMINATION ACT COORDINATOR.--

A. An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting and responding to sexual abuse and sexual harassment.

B. An agency shall employ or designate an upper-level, agency-wide New Mexico Prison Rape Elimination Act coordinator with sufficient time and authority to develop, implement and oversee the agency's efforts to comply with the provisions of the New Mexico Prison Rape Elimination Act in the agency's facilities.

C. If an agency operates more than one facility, each facility shall designate a New Mexico Prison Rape Elimination Act compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the provisions of the New Mexico Prison Rape Elimination Act.

D. "Sexual abuse" includes:

(1) sexual abuse of an inmate, a detainee or a resident by another inmate, detainee or resident; and

(2) sexual abuse of an inmate, a detainee or a resident by an employee, a contractor or a volunteer.

E. Sexual abuse of an inmate, a detainee or a resident by another inmate, detainee or resident includes the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence or is unable to consent or refuse:

(1) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(2) contact between the mouth and the penis,
vulva or anus;

(3) penetration of the anal or genital opening of another person, however slight, by a hand, a finger, an object or other instrument;

(4) any other intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh or buttocks of another person, excluding contact incidental to a physical altercation; and

(5) as otherwise provided in Sections 30-9-1 through 30-9-21 NMSA 1978.

F. Sexual abuse of an inmate, a detainee or a resident by an employee, a contractor or a volunteer includes the following acts, with or without consent of the inmate, detainee or resident:

(1) contact between the penis and the vulva or

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the penis and the anus, including penetration, however slight;

(2) contact between the mouth and the penis, vulva or anus;

(3) contact between the mouth and any body part where the employee, contractor or volunteer has the intent to abuse, arouse or gratify sexual desire;

(4) penetration of the anal or genital opening, however slight, by a hand, a finger, an object or other instrument, that is unrelated to official duties or where the employee, contractor or volunteer has the intent to abuse, arouse or gratify sexual desire;

(5) any other intentional contact, either directly or through clothing, of or with the genitalia, anus, groin, breast, inner thigh or buttocks that is unrelated to official duties or where the employee, contractor or volunteer has the intent to abuse, arouse or gratify sexual desire;

(6) an attempt, a threat or a request by an employee, a contractor or a volunteer to engage in the activities described in this subsection;

(7) a display by an employee, a contractor or a volunteer of the employee's, contractor's or volunteer's uncovered genitalia, buttocks or breast in the presence of an inmate, a detainee or a resident;

(8) voyeurism by an employee, a contractor or a volunteer. "Voyeurism by an employee, a contractor or a

"volunteer" means an invasion of privacy of an inmate, a detainee or a resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in the inmate's cell to perform bodily functions; requiring an inmate to expose the inmate's buttocks, genitals or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions; and

(9) as otherwise provided in Sections 30-9-1 through 30-9-21 NMSA 1978.

G. "Sexual harassment" includes:

(1) repeated and unwelcome sexual advances, requests for sexual favors or verbal comments, gestures or actions of a derogatory or an offensive sexual nature by one inmate, detainee or resident directed toward another; and

(2) repeated verbal comments or gestures of a sexual nature to an inmate, a detainee or a resident by an employee, a contractor or a volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing or obscene language or gestures.

SECTION 4. [NEW MATERIAL] CONTRACTS FOR CONFINEMENT OF
INMATES.--

A. An agency that contracts for the confinement of the agency's inmates with an agency or other entity shall include in a new contract or contract renewal the entity's

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1 obligation to comply with the provisions of the New Mexico
2 Prison Rape Elimination Act.

3 B. A new contract or contract renewal shall provide
4 for agency contract monitoring to ensure that the contractor is
5 complying with the provisions of the New Mexico Prison Rape
6 Elimination Act.

7 **SECTION 5. [NEW MATERIAL] SUPERVISION AND MONITORING OF**
8 **FACILITIES.--**

9 A. An agency shall ensure that each facility the
10 agency operates shall develop, document and make the facility's
11 best efforts to comply with a staffing plan that provides for
12 adequate levels of staffing and, where applicable, video
13 monitoring to protect inmates against sexual abuse. In
14 calculating adequate staffing levels and determining the need
15 for video monitoring, a facility shall take into consideration:

16 (1) generally accepted detention and
17 correctional practices;

18 (2) any judicial findings of inadequacy;
19 (3) any findings of inadequacy from
20 investigative agencies;

21 (4) any findings of inadequacy from internal
22 or external oversight bodies;

23 (5) all components of the facility's physical
24 plant, including blind spots or areas where staff or inmates
25 may be isolated;

- (6) the composition of the inmate population;
- (7) the number and placement of supervisory employees;
- (8) institution programs occurring on a particular shift;
- (9) applicable state or local laws, regulations or standards;
- (10) the prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
- (11) any other relevant factors.

B. In instances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan.

C. Whenever necessary, but at least once each year, for each facility that an agency operates, in consultation with the agency's New Mexico Prison Rape Elimination Act coordinator, the agency shall assess, determine and document whether adjustments are needed to:

- (1) the staffing plan established pursuant to Subsection A of this section;
- (2) the facility's deployment of video monitoring systems and other monitoring technologies; and
- (3) the resources that the facility has available to commit to ensure adherence to the staffing plan.

D. An agency operating a facility shall implement a

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1 policy and practice of having intermediate-level or higher-
2 level supervisors conduct and document unannounced rounds to
3 identify and deter staff sexual abuse and sexual harassment.
4 The policy and practice shall be implemented for night shifts
5 and day shifts. An agency shall have a policy to prohibit
6 staff from alerting other employees that the supervisory rounds
7 are occurring, unless the announcement is related to the
8 legitimate operational functions of the facility.

9 **SECTION 6. [NEW MATERIAL] YOUTHFUL INMATES.--**

10 A. A youthful inmate shall not be placed in a
11 housing unit in which the youthful inmate will have sight,
12 sound or physical contact with an adult inmate through use of a
13 shared dayroom or other common space, shower area or sleeping
14 quarters.

15 B. In areas outside of housing units, a facility
16 shall:

17 (1) maintain sight and sound separation
18 between youthful inmates and adult inmates; or

19 (2) provide direct staff supervision when
20 youthful inmates and adult inmates have sight, sound or
21 physical contact.

22 C. Pursuant to the Restricted Housing Act, a
23 youthful inmate shall not be placed in restricted housing for
24 any reason. A youthful inmate shall have access to programs
25 and work opportunities to the extent possible.

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1 **SECTION 7. [NEW MATERIAL] CROSS-GENDER VIEWING AND**
2 **SEARCHES.--**

3 A. A facility shall not conduct cross-gender strip
4 searches or cross-gender visual body cavity searches, including
5 a search of the anal or genital opening, except in exigent
6 circumstances or when performed by a medical practitioner.

7 B. For a facility whose rated capacity does not
8 exceed fifty inmates, the facility shall not permit cross-
9 gender pat-down searches of female inmates, absent exigent
10 circumstances. Facilities shall not restrict female inmates'
11 access to regularly available programming or other out-of-cell
12 opportunities in order to comply with this section.

13 C. A facility shall document all cross-gender strip
14 searches, cross-gender visual body cavity searches and cross-
15 gender pat-down searches of female inmates.

16 D. A facility shall implement policies and
17 procedures that enable inmates to shower, perform bodily
18 functions and change clothing without nonmedical staff of the
19 opposite gender viewing the inmates' breasts, buttocks or
20 genitalia, except in exigent circumstances or when such viewing
21 is incidental to routine cell checks. Policies and procedures
22 shall require an employee of the opposite gender to announce
23 the employee's presence when entering an inmate housing unit.

24 E. A facility shall not search or physically
25 examine a transgender or an intersex inmate for the sole

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1 purpose of determining the inmate's genital status. If the
2 inmate's genital status is unknown, it may be determined during
3 conversations with the inmate, by reviewing medical records or,
4 if necessary, by learning that information as part of a broader
5 medical examination conducted in private by a medical
6 practitioner.

7 F. An agency shall train security staff in how to
8 conduct cross-gender pat-down searches and searches of
9 transgender and intersex inmates in a professional and
10 respectful manner and in the least intrusive manner possible,
11 consistent with security needs.

12 **SECTION 8. [NEW MATERIAL] INMATES WITH DISABILITIES AND**
13 **INMATES WHO ARE LIMITED IN ENGLISH PROFICIENCY.--**

14 A. An agency shall take appropriate steps to ensure
15 that inmates with disabilities, including inmates who are deaf
16 or hard of hearing, who are blind or have low vision or who
17 have intellectual, psychiatric or speech disabilities, have an
18 equal opportunity to participate in or benefit from all aspects
19 of the agency's efforts to prevent, detect and respond to
20 sexual abuse and sexual harassment. Steps shall include, when
21 necessary to ensure effective communication with inmates who
22 are deaf or hard of hearing, providing access to interpreters
23 who can interpret effectively, accurately and impartially, both
24 receptively and expressively, using any necessary specialized
25 vocabulary. An agency shall ensure that written materials are

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1 provided in formats or through methods that ensure effective
2 communication with inmates with disabilities, including inmates
3 who have intellectual disabilities or limited reading skills or
4 who are blind or have low vision. An agency is not required to
5 take actions that the agency can demonstrate would result in a
6 fundamental alteration in the nature of a service, a program or
7 an activity or in undue financial and administrative burdens as
8 those terms are used in regulations promulgated under Title II
9 of the federal Americans with Disabilities Act of 1990.

10 B. An agency shall take reasonable steps to ensure
11 meaningful access to all aspects of the agency's efforts to
12 prevent, detect and respond to sexual abuse and sexual
13 harassment to inmates who are limited in English proficiency,
14 including steps to provide interpreters who can interpret
15 effectively, accurately and impartially, both receptively and
16 expressively, using any necessary specialized vocabulary.

17 C. An agency shall not rely on inmate interpreters,
18 inmate readers or other types of inmate assistants except in
19 limited circumstances where an extended delay in obtaining an
20 effective interpreter could compromise an inmate's safety, the
21 performance of first-response duties or the investigation of an
22 inmate's allegations.

23 SECTION 9. [NEW MATERIAL] HIRING AND PROMOTION
24 DECISIONS---

25 A. An agency shall not hire or promote a person who
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1 may have contact with inmates, and shall not enlist the
2 services of a contractor who may have contact with inmates, who
3 has:

4 (1) engaged in sexual abuse in a prison, jail,
5 lockup, community confinement facility, juvenile facility or
6 other institution;

7 (2) been convicted of engaging or attempting
8 to engage in sexual activity in the community facilitated by
9 force, overt or implied threats of force or coercion or if the
10 victim did not consent or was unable to consent or refuse; or

11 (3) been civilly or administratively
12 adjudicated to have engaged in an activity described in
13 Paragraph (2) of this subsection.

14 B. An agency shall consider any incidents of sexual
15 harassment in determining whether to hire or promote a person
16 or to enlist the services of a contractor who may have contact
17 with inmates.

18 C. Before hiring a new employee who may have
19 contact with inmates, an agency shall:

20 (1) perform a criminal background records
21 check; and

22 (2) make the agency's best efforts to contact
23 all prior institutional employers for information on
24 substantiated allegations of sexual abuse or any resignation
25 during a pending investigation of an allegation of sexual

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1 abuse.

2 D. An agency shall perform a criminal background
3 records check before enlisting the services of a contractor who
4 may have contact with inmates.

5 E. An agency shall conduct criminal background
6 records checks at least every five years of current employees
7 and contractors who may have contact with inmates or have in
8 place a system for otherwise capturing such information for
9 current employees.

10 F. An agency shall ask all applicants and employees
11 who may have contact with inmates directly about previous
12 misconduct described in Subsection A of this section in written
13 applications or interviews for hiring or promotions and in
14 interviews or written self-evaluations conducted as part of
15 reviews of current employees. An agency shall impose upon
16 employees a continuing affirmative duty to disclose any such
17 misconduct.

18 G. Material omissions regarding sexual misconduct
19 or the provision of materially false information shall be
20 grounds for termination.

21 H. An agency shall provide information on
22 substantiated allegations of sexual abuse or sexual harassment
23 involving a former employee upon receiving a request from an
24 employer for whom the employee has applied to work.

25 **SECTION 10. [NEW MATERIAL] UPGRADES TO FACILITIES AND**

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1 TECHNOLOGY.--

2 A. When designing or acquiring a new facility, or
3 in planning a substantial expansion or modification of an
4 existing facility, an agency shall consider the effect of the
5 design, acquisition, expansion or modification upon the
6 agency's ability to protect inmates from sexual abuse.

7 B. When installing or updating a video monitoring
8 system, an electronic surveillance system or other monitoring
9 technology, an agency shall consider how the technology may
10 enhance the agency's ability to protect inmates from sexual
11 abuse.

12 SECTION 11. [NEW MATERIAL] EVIDENCE PROTOCOL--FORENSIC
13 MEDICAL EXAMINATIONS.--

14 A. An agency shall follow a uniform evidence
15 protocol that maximizes the potential for obtaining usable
16 physical evidence for administrative proceedings and criminal
17 prosecutions when investigating allegations of sexual abuse.

18 B. An evidence protocol pursuant to Subsection A of
19 this section shall be developmentally appropriate for youth
20 where applicable and shall be adapted from or otherwise based
21 on the most recent edition of the publication of the office on
22 violence against women of the United States department of
23 justice, "A National Protocol for Sexual Assault Medical
24 Forensic Examinations, Adults/Adolescents", or similarly
25 comprehensive and authoritative protocols developed after 2024.

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1 C. An agency shall offer a victim of sexual abuse
2 access to forensic medical examinations, whether on site or at
3 an outside facility, without financial cost, where
4 evidentiarily or medically appropriate. The examinations shall
5 be performed by a sexual assault forensic examiner or a sexual
6 assault nurse examiner where possible. If a sexual assault
7 forensic examiner or a sexual assault nurse examiner cannot be
8 made available, the examination may be performed by another
9 qualified medical practitioner. The agency shall document the
10 agency's efforts to provide a sexual assault forensic examiner
11 or a sexual assault nurse examiner.

12 D. An agency shall attempt to make available to a
13 victim of sexual abuse a victim advocate from a rape crisis
14 center. If a rape crisis center is not available to provide
15 victim advocate services, the agency shall make available to
16 provide the services a qualified community-based staff member
17 or a qualified agency staff member. An agency shall document
18 efforts to secure services from rape crisis centers. An agency
19 may use a rape crisis center that is part of a governmental
20 unit as long as the center is not part of the criminal justice
21 system, including a law enforcement agency, and offers a
22 comparable level of confidentiality to a nongovernmental entity
23 that provides similar victim services.

24 E. If requested by a victim of sexual abuse, the
25 victim's victim advocate or a qualified agency staff member or

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1 qualified community-based staff member shall accompany and
2 support the victim through the forensic medical examination
3 process and investigatory interviews and shall provide
4 emotional support, crisis intervention, information and
5 referrals.

6 F. To the extent an agency is not responsible for
7 investigating allegations of sexual abuse, the agency shall
8 request that an investigating agency follow the requirements of
9 Subsections A through E of this section.

10 G. The requirements of Subsections A through F of
11 this section shall apply to any state, county or local entity
12 outside of the agency that is responsible for investigating
13 allegations of sexual abuse in prisons or jails.

14 H. As used in this section:

15 (1) "rape crisis center" means an entity that
16 provides intervention and related assistance, such as the
17 services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of
18 sexual assault of all ages; and

19 (2) "qualified agency staff member" and
20 "qualified community-based staff member" means an individual
21 who has been screened for appropriateness to serve in that role
22 and has received education concerning sexual assault and
23 forensic examination issues in general.

24 SECTION 12. [NEW MATERIAL] REFERRALS OF ALLEGATIONS FOR
25 INVESTIGATION.--

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1 A. An agency shall ensure that an administrative or
2 a criminal investigation is completed for all allegations of
3 sexual abuse and sexual harassment.

4 B. The agency shall have in place a policy to
5 ensure that allegations of sexual abuse or sexual harassment
6 are referred for investigation to an agency with the legal
7 authority to conduct criminal investigations, unless the
8 allegation does not involve potentially criminal behavior. The
9 agency shall publish such policy on its website or, if the
10 agency does not have a website, make the policy available
11 through other means. The agency shall document all referrals.

12 C. A state, local or county entity responsible for
13 conducting administrative or criminal investigations of sexual
14 abuse or sexual harassment in prisons or jails shall have in
15 place a policy governing the conduct of those investigations.

16 SECTION 13. [NEW MATERIAL] EMPLOYEE TRAINING--VOLUNTEER
17 TRAINING.--

18 A. An agency shall train an employee who may have
19 contact with inmates on:

20 (1) the agency's zero-tolerance policy for
21 sexual abuse and sexual harassment;

22 (2) how to fulfill the employee's
23 responsibilities under the agency's sexual abuse and sexual
24 harassment prevention, detection, reporting and response
25 policies and procedures;

(3) the right of inmates to be free from sexual abuse and sexual harassment;

(4) the right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;

(5) the dynamics of sexual abuse and sexual harassment in confinement;

(6) the common reactions of victims of sexual abuse and sexual harassment;

(7) how to detect and respond to signs of threatened and actual sexual abuse;

(8) how to avoid inappropriate relationships with inmates;

(9) how to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex or gender nonconforming inmates; and

(10) how to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

B. Employee training pursuant to this section shall be tailored to the gender of the inmates at the employee's facility. An employee shall receive additional training if the employee is reassigned from a facility of one gender to a facility of the opposite gender.

C. An agency shall provide each employee with refresher training every two years to ensure that all employees

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1 know the agency's current sexual abuse and sexual harassment
2 policies and procedures. In years in which an employee does
3 not receive refresher training, the agency shall provide
4 refresher information on the agency's current sexual abuse and
5 sexual harassment policies.

6 D. An agency shall document, through employee
7 signature or electronic verification, that an employee
8 understands the training that the employee has received.

9 E. An agency shall ensure that all volunteers and
10 contractors who have contact with inmates have been trained on
11 the volunteers' and contractors' responsibilities under the
12 agency's sexual abuse and sexual harassment prevention,
13 detection and response policies and procedures.

14 F. The type of training provided to volunteers and
15 contractors shall correspond with the services the volunteers
16 and contractors provide and level of contact the volunteers and
17 contractors have with inmates. All volunteers and contractors
18 who have contact with inmates shall be notified of the agency's
19 zero-tolerance policy regarding sexual abuse and sexual
20 harassment and informed how to report such incidents.

21 G. An agency shall maintain documentation
22 confirming that volunteers and contractors understand the
23 training that the volunteers and contractors have received
24 pursuant to this section.

25 SECTION 14. [NEW MATERIAL] INMATE EDUCATION.--

1 A. During an agency's inmate intake process,
2 inmates shall receive information explaining the agency's
3 zero-tolerance policy regarding sexual abuse and sexual
4 harassment and how to report incidents or suspicions of sexual
5 abuse or sexual harassment.

6 B. Within thirty days of intake of an inmate, an
7 agency shall provide comprehensive education to the inmate
8 either in person or through video regarding the inmate's rights
9 to be free from sexual abuse and sexual harassment and to be
10 free from retaliation for reporting incidents of sexual abuse
11 and sexual harassment and regarding the agency's policies and
12 procedures for responding to incidents of sexual abuse and
13 sexual harassment.

14 C. Current inmates who have not received education
15 pursuant to this section shall be educated within one year of
16 the effective date of the New Mexico Prison Rape Elimination
17 Act, and an inmate shall receive education upon transfer to a
18 different facility to the extent that the policies and
19 procedures of the inmate's new facility differ from those of
20 the previous facility.

21 D. An agency shall provide inmate education in
22 formats accessible to all inmates, including those who are
23 limited in English proficiency, deaf or hard of hearing, blind
24 or have low vision or otherwise disabled, as well as to inmates
25 who have limited reading skills.

E. An agency shall maintain documentation of inmate participation in education sessions pursuant to this section.

F. In addition to providing education pursuant to this section, an agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks or other written formats.

SECTION 15. [NEW MATERIAL] SPECIALIZED TRAINING FOR INVESTIGATIONS.--

A. In addition to the general training provided to all employees pursuant to Section 13 of the New Mexico Prison Rape Elimination Act, an agency shall ensure that, to the extent the agency conducts sexual abuse investigations, the agency's investigators receive training in conducting the investigations in confinement settings.

B. Specialized training pursuant to Subsection A of this section shall include techniques for interviewing victims of sexual abuse, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

C. An agency shall maintain documentation that the agency's investigators have completed the specialized training in conducting sexual abuse investigations required pursuant to this section.

D. A state, local or county entity that

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1 investigates sexual abuse in confinement settings shall provide
2 specialized training as provided in Subsection B of this
3 section to the agency's agents and investigators who conduct
4 sexual abuse investigations.

5 **SECTION 16. [NEW MATERIAL] MEDICAL AND MENTAL HEALTH**
6 **SPECIALIZED TRAINING.--**

7 A. An agency shall ensure that all full- and part-
8 time medical practitioners and mental health practitioners who
9 work regularly in the agency's facilities have been trained in:

10 (1) how to detect and assess signs of sexual
11 abuse and sexual harassment;

12 (2) how to preserve physical evidence of
13 sexual abuse;

14 (3) how to respond effectively and
15 professionally to victims of sexual abuse and sexual
16 harassment; and

17 (4) how and to whom to report allegations or
18 suspicions of sexual abuse and sexual harassment.

19 B. If a medical practitioner employed by an agency
20 conducts forensic examinations, the medical practitioner shall
21 receive the appropriate training to conduct the examinations.

22 C. An agency shall maintain documentation that
23 medical practitioners and mental health practitioners employed
24 by the agency have received the training described in
25 Subsection A of this section either from the agency or

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1 elsewhere.

2 D. Medical practitioners and mental health care
3 practitioners shall receive the training mandated for employees
4 and volunteers under Section 13 of the New Mexico Prison Rape
5 Elimination Act, depending upon the practitioner's status at
6 the agency.

7 **SECTION 17. [NEW MATERIAL] INMATE SCREENING FOR RISK OF**
8 **VICTIMIZATION AND ABUSIVENESS.--**

9 A. Inmates shall be assessed during an intake
10 screening and upon transfer to another facility for the
11 inmates' risk of being sexually abused by other inmates or
12 sexually abusive toward other inmates. The screening shall
13 take place within seventy-two hours of arrival at the facility
14 and shall be conducted using an objective screening instrument.

15 B. An intake screening shall consider the following
16 criteria to assess an inmate for risk of sexual victimization:

17 (1) whether the inmate has a mental, physical
18 or developmental disability;

19 (2) the age of the inmate;

20 (3) the physical build of the inmate;

21 (4) whether the inmate has previously been
22 incarcerated;

23 (5) whether the inmate's criminal history is
24 exclusively nonviolent;

25 (6) whether the inmate has prior convictions

1 for sex offenses against an adult or a child;

2 (7) whether the inmate is or is perceived to
3 be gay, lesbian, bisexual, transgender, intersex or gender
4 nonconforming;

5 (8) whether the inmate has previously
6 experienced sexual victimization;

7 (9) the inmate's own perception of
8 vulnerability; and

9 (10) whether the inmate is detained solely for
10 civil immigration purposes.

11 C. An initial screening shall consider prior acts
12 of sexual abuse, prior convictions for violent offenses and
13 history of prior institutional violence or sexual abuse, as
14 known to the agency conducting the screening, in assessing
15 inmates for risk of being sexually abusive.

16 D. Within thirty days from an inmate's arrival at a
17 facility, the facility shall reassess the inmate's risk of
18 victimization or abusiveness based upon any additional relevant
19 information received by the facility since the inmate's intake
20 screening.

21 E. An inmate's risk level shall be reassessed when
22 warranted due to a referral, a request, an incident of sexual
23 abuse or receipt of additional information that bears on the
24 inmate's risk of sexual victimization or abusiveness.

25 F. An inmate shall not be disciplined for refusing

1 to answer, or for not disclosing complete information in
2 response to, questions asked pursuant to Subsection B of this
3 section.

4 G. An agency shall implement appropriate controls
5 on the dissemination within a facility operated by the agency
6 of responses to questions asked pursuant to Subsection B of
7 this section in order to ensure that sensitive information is
8 not exploited to the inmate's detriment by employees or other
9 inmates.

10 H. If a screening pursuant to this section
11 indicates that a:

12 (1) prison inmate has experienced prior sexual
13 victimization, whether it occurred in an institutional setting
14 or in the community, staff shall ensure that the inmate is
15 offered a follow-up meeting with a medical practitioner or
16 mental health practitioner within fourteen days of the intake
17 screening;

18 (2) prison inmate has previously perpetrated
19 sexual abuse, whether it occurred in an institutional setting
20 or in the community, staff shall ensure that the inmate is
21 offered a follow-up meeting with a mental health practitioner
22 within fourteen days of the intake screening; or

23 (3) jail inmate has experienced prior
24 sexual victimization, whether it occurred in an institutional
25 setting or in the community, staff shall ensure that the inmate

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1 is offered a follow-up meeting with a medical practitioner or
2 mental health practitioner within fourteen days of the intake
3 screening.

4 I. Information related to sexual victimization or
5 abusiveness that occurred in an institutional setting shall be
6 strictly limited to medical practitioners, mental health
7 practitioners and other staff, as necessary, to inform
8 treatment plans and security and management decisions,
9 including housing, bed, work, education and program
10 assignments, or as otherwise required by federal, state or
11 local law.

12 J. Medical practitioners and mental health
13 practitioners shall obtain informed consent from inmates before
14 reporting information about prior sexual victimization that did
15 not occur in an institutional setting, unless the inmate is
16 under the age of eighteen.

17 **SECTION 18. [NEW MATERIAL] USE OF SCREENING**
18 INFORMATION.--

19 A. An agency shall use information from the risk
20 screening required by Section 17 of the New Mexico Prison Rape
21 Elimination Act to inform housing, bed, work, education and
22 program assignments with the goal of keeping separate those
23 inmates at high risk of being sexually victimized from those at
24 high risk of being sexually abusive. The agency shall make
25 individualized determinations about how to ensure the safety of

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1 each inmate.

2 B. In deciding whether to assign a transgender or
3 an intersex inmate to a facility for male or female inmates,
4 and in making other housing and programming assignments, an
5 agency shall consider on a case-by-case basis whether a
6 placement would ensure the inmate's health and safety and
7 whether the placement would present management or security
8 problems. A transgender or an intersex inmate's own views with
9 respect to the inmate's own safety shall be given serious
10 consideration.

11 C. Placement and programming assignments for each
12 transgender or intersex inmate shall be reassessed at least
13 twice each year to review any threats to safety experienced by
14 the inmate.

15 D. Transgender and intersex inmates shall be given
16 the opportunity to shower separately from other inmates.

17 E. An agency shall not place lesbian, gay,
18 bisexual, transgender or intersex inmates in dedicated
19 facilities, units or wings solely on the basis of lesbian, gay,
20 bisexual, transgender or intersex identification or status,
21 unless the placement is in a dedicated facility, unit or wing
22 established in connection with a consent decree, legal
23 settlement or legal judgment for the purpose of protecting the
24 inmates.

25 F. Nothing in the New Mexico Prison Rape

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1 Elimination Act shall be construed to limit, narrow or modify
2 the Restricted Housing Act.

3 **SECTION 19. [NEW MATERIAL] PROTECTIVE CUSTODY.--**

4 A. An inmate who is at high risk for sexual
5 victimization shall not be placed in restricted housing unless
6 an assessment of all available alternatives has been made and a
7 determination has been made that there is no available
8 alternative means of separation from likely abusers. If a
9 facility cannot conduct such an assessment immediately, the
10 facility may hold the inmate in involuntary segregated housing
11 for up to twenty-four hours while completing the assessment.

12 B. An inmate placed in restricted housing pursuant
13 to this section shall have access to programs, privileges,
14 education and work opportunities to the extent possible. If a
15 facility restricts access to programs, privileges, education or
16 work opportunities pursuant to this section, the facility shall
17 document:

- 18 (1) the opportunities that have been limited;
- 19 (2) the duration of the limitation; and
- 20 (3) the reasons for the limitation.

21 C. A facility shall assign inmates to restricted
22 housing pursuant to this section only until an alternative
23 means of separation from likely abusers can be arranged, and
24 the assignment shall not ordinarily exceed a period of thirty
25 days.

1 D. If a restricted housing assignment is made
2 pursuant to Subsection A of this section, the facility making
3 the assignment shall clearly document:

4 (1) the basis for the facility's concern for
5 the inmate's safety; and
6 (2) the reason why no alternative means of
7 separation can be arranged.

8 E. Every thirty days, a facility shall afford each
9 inmate housed pursuant to this section a review to determine
10 whether there is a continuing need for separation from the
11 general population.

12 F. Nothing in the New Mexico Prison Rape
13 Elimination Act shall be construed to limit, narrow or modify
14 the Restricted Housing Act.

15 **SECTION 20. [NEW MATERIAL] INMATE REPORTING.--**

16 A. An agency shall provide multiple internal ways
17 for inmates to privately report sexual abuse and sexual
18 harassment, retaliation by other inmates or staff for reporting
19 sexual abuse and sexual harassment and staff neglect or
20 violation of responsibilities that may have contributed to such
21 incidents.

22 B. An agency shall provide at least one way for
23 inmates to report abuse or harassment to a public or private
24 entity or office that is not part of the agency and that is
25 able to receive and immediately forward inmate reports of

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1 sexual abuse and sexual harassment to agency officials,
2 allowing the inmate to remain anonymous upon request. Inmates
3 detained solely for civil immigration purposes shall be
4 provided information on how to contact relevant consular
5 officials and relevant officials at the United States
6 department of homeland security.

7 C. Employees shall accept reports made verbally, in
8 writing, anonymously and from third parties and shall promptly
9 document any verbal reports.

10 D. An agency shall provide a method for staff to
11 privately report sexual abuse and sexual harassment of inmates.

12 **SECTION 21. [NEW MATERIAL] EXHAUSTION OF ADMINISTRATIVE
13 REMEDIES.--**

14 A. An agency shall not impose a time limit on when
15 an inmate may submit a grievance regarding an allegation of
16 sexual abuse. An agency may apply otherwise-applicable time
17 limits to any portion of a grievance that does not allege an
18 incident of sexual abuse.

19 B. An agency shall not require an inmate to use an
20 informal grievance process, or to otherwise attempt to resolve
21 with staff, an alleged incident of sexual abuse.

22 C. An agency shall ensure that:

23 (1) an inmate who alleges sexual abuse may
24 submit a complaint without submitting it to an employee who is
25 the subject of the complaint; and

(2) the complaint is not referred to an employee who is the subject of the complaint.

D. An agency shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within ninety days of the initial filing of the grievance. Computation of the ninety-day time period shall not include time consumed by inmates in preparing any administrative appeal. The agency may claim an extension of time to respond, of up to seventy days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.

E. At all levels of the administrative process, if an inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.

F. Third parties, including fellow inmates, staff members, family members, attorneys and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse and shall also be permitted to file such requests on behalf of inmates. If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request

1 filed on the alleged victim's behalf and may also require the
2 alleged victim to personally pursue any subsequent steps in the
3 administrative remedy process. If the inmate declines to have
4 the request processed on the inmate's behalf, the agency shall
5 document the inmate's decision.

6 G. An agency shall establish procedures for the
7 filing of an emergency grievance alleging that an inmate is
8 subject to a substantial risk of imminent sexual abuse. After
9 receiving an emergency grievance alleging that an inmate is
10 subject to a substantial risk of imminent sexual abuse, the
11 agency shall immediately forward the grievance, or any portion
12 thereof that alleges the substantial risk of imminent sexual
13 abuse, to a level of review at which immediate corrective
14 action may be taken, shall provide an initial response within
15 forty-eight hours and shall issue a final agency decision
16 within five calendar days. The initial response and final
17 agency decision shall document the agency's determination
18 whether the inmate is in substantial risk of imminent sexual
19 abuse and the action taken in response to the emergency
20 grievance.

21 H. An agency may discipline an inmate for filing a
22 grievance related to alleged sexual abuse only where the
23 investigation finds that the allegation is unfounded and the
24 agency demonstrates, by evidence other than an anonymous
25 source, that the inmate purposefully lied about facts

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1 underlying the grievance and filed the grievance in bad faith.
2 The agency shall not discipline an inmate for filing a
3 grievance under the New Mexico Prison Rape Elimination Act
4 about conduct that the inmate reasonably believed to be a
5 violation of the New Mexico Prison Rape Elimination Act but
6 that was determined not to violate the New Mexico Prison Rape
7 Elimination Act.

8 I. Nothing in this section shall restrict an
9 agency's ability to defend against an inmate lawsuit on the
10 ground that the applicable statute of limitations has expired.

11 **SECTION 22. [NEW MATERIAL] INMATE ACCESS TO OUTSIDE
12 SUPPORT SERVICES.--**

13 A. A facility shall provide inmates with access to
14 outside victim advocates for emotional support services related
15 to sexual abuse by giving inmates mailing addresses and
16 telephone numbers, including toll-free hotline numbers where
17 available, of local, state or national victim advocacy or rape
18 crisis organizations and, for persons detained solely for civil
19 immigration purposes, immigrant services agencies. The
20 facility shall enable reasonable communication between inmates
21 and these organizations and agencies in as confidential of a
22 manner as possible.

23 B. A facility shall inform inmates, prior to giving
24 the inmates access, of the extent to which communications
25 pursuant to Subsection A of this section will be monitored and

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1 the extent to which reports of abuse will be forwarded to
2 authorities in accordance with mandatory reporting laws.

3 C. An agency shall maintain or attempt to enter
4 into memoranda of understanding or other agreements with
5 community service providers that are able to provide inmates
6 with confidential emotional support services related to sexual
7 abuse. The agency shall maintain copies of the agreements or
8 documentation showing attempts to enter into the agreements.

9 D. An agency shall establish a method to receive
10 third-party reports of sexual abuse and sexual harassment and
11 shall distribute publicly information on how to report sexual
12 abuse and sexual harassment on behalf of an inmate.

13 **SECTION 23. [NEW MATERIAL] EMPLOYEE AND AGENCY REPORTING**
14 DUTIES.--

15 A. An agency shall require the agency's employees
16 to report immediately and according to agency policy any
17 knowledge, suspicion or information regarding an incident of
18 sexual abuse or sexual harassment that occurred in a facility,
19 whether or not it is part of the agency, retaliation against
20 inmates or staff who reported such an incident and any staff
21 neglect or violation of responsibilities that may have
22 contributed to an incident or retaliation.

23 B. Employees shall not reveal information related
24 to a sexual abuse report to anyone other than to the extent
25 necessary, as specified in agency policy, to make treatment,

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1 investigation and other security and management decisions.

2 C. Unless otherwise precluded by law, a medical
3 practitioner and a mental health practitioner shall be required
4 to report sexual abuse pursuant to Subsection A of this section
5 and to inform inmates of the practitioner's duty to report, and
6 the limitations of confidentiality, at the initiation of
7 services.

8 D. If an alleged victim of sexual abuse or sexual
9 harassment is under the age of eighteen or considered a
10 vulnerable adult, the agency shall report the allegation to the
11 designated agency under applicable mandatory reporting laws.

12 E. A facility shall report all allegations of
13 sexual abuse and sexual harassment, including third-party and
14 anonymous reports, to the facility's designated investigators.

15 F. When an agency learns that an inmate is subject
16 to a substantial risk of imminent sexual abuse, the agency
17 shall take immediate action to protect the inmate.

18 SECTION 24. [NEW MATERIAL] REPORTING TO OTHER CONFINEMENT
19 FACILITIES.--

20 A. Upon receiving an allegation that an inmate was
21 sexually abused while confined at another facility, the head of
22 the facility that received the allegation shall notify the head
23 of the facility or appropriate office of the agency where the
24 alleged abuse occurred. The notification shall be provided as
25 soon as possible, but no later than seventy-two hours after

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1 receiving the allegation.

2 B. An agency or facility shall document that the
3 agency or facility has provided a notification pursuant to
4 Subsection A of this section.

5 C. A facility head or an agency office that
6 receives a notification pursuant to Subsection A of this
7 section shall ensure that the allegation is investigated in
8 accordance with the provisions of the New Mexico Prison Rape
9 Elimination Act.

10 **SECTION 25. [NEW MATERIAL] EMPLOYEE FIRST RESPONDER**
11 DUTIES.--

12 A. Upon learning of an allegation that an inmate
13 was sexually abused, the first security employee to respond to
14 the report shall:

15 (1) separate the alleged victim and abuser;
16 (2) preserve and protect any crime scene until
17 appropriate steps can be taken to collect evidence;

18 (3) if the abuse occurred within a time period
19 that still allows for the collection of physical evidence,
20 request that the alleged victim not take any actions that could
21 destroy physical evidence, including, as appropriate, washing,
22 brushing teeth, changing clothes, urinating, defecating,
23 smoking, drinking or eating; and

24 (4) if the abuse occurred within a time period
25 that still allows for the collection of physical evidence,

1 ensure that the alleged abuser does not take any actions that
2 could destroy physical evidence, including, as appropriate,
3 washing, brushing teeth, changing clothes, urinating,
4 defecating, smoking, drinking or eating.

5 B. If the first staff responder to an allegation
6 that an inmate has been sexually abused is not a security
7 employee, the responder shall be required to request that the
8 alleged victim not take any actions that could destroy physical
9 evidence and then notify security staff.

10 C. A facility shall develop a written institutional
11 plan to coordinate actions taken in response to an alleged
12 incident of sexual abuse among staff first responders, medical
13 practitioners, mental health practitioners, investigators and
14 facility leadership.

15 SECTION 26. [NEW MATERIAL] COLLECTIVE BARGAINING
16 AGREEMENTS--PRESERVATION OF ABILITY TO PROTECT INMATES FROM
17 CONTACT WITH ABUSERS AND RETALIATION.--

18 A. An agency or a governmental entity responsible
19 for collective bargaining on the agency's or governmental
20 entity's behalf shall not enter into or renew any collective
21 bargaining agreement or other agreement that limits the
22 agency's or governmental entity's ability to remove alleged
23 staff sexual abusers from contact with inmates pending the
24 outcome of an investigation or of a determination of whether
25 and to what extent discipline is warranted.

B. Nothing in this section shall restrict the
entering into or renewal of an agreement that governs:

(1) the conduct of the disciplinary process, as long as the agreement is not inconsistent with the provisions of the New Mexico Prison Rape Elimination Act; or

(2) whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in an employee's personnel file following a determination that the allegation of sexual abuse is not substantiated.

C. An agency shall establish a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff and shall designate which employees or departments are charged with monitoring retaliation.

D. An agency shall 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 who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with sexual abuse or sexual harassment investigations.

E. For at least ninety days following a report of sexual abuse, an agency shall monitor the conduct and treatment

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1 of inmates or staff who reported the sexual abuse and of
2 inmates who were reported to have suffered sexual abuse to see
3 if there are changes that may suggest possible retaliation by
4 inmates or staff and shall act promptly to remedy any such
5 retaliation. Items the agency should monitor include inmate
6 disciplinary reports, housing or program changes or negative
7 performance reviews or reassessments of staff. The agency
8 shall continue such monitoring beyond ninety days if the
9 initial monitoring indicates a continuing need. In the case of
10 inmates, the monitoring shall also include periodic status
11 checks.

12 F. If any other individual who cooperates with a
13 sexual abuse or sexual harassment investigation expresses fear
14 of retaliation, an agency shall take appropriate measures to
15 protect that individual against retaliation.

16 G. An agency's obligation to monitor shall
17 terminate if the agency determines that the allegation is
18 unfounded.

19 **SECTION 27. [NEW MATERIAL] CRIMINAL AND ADMINISTRATIVE**
20 **AGENCY INVESTIGATIONS.--**

21 A. If an agency conducts its own investigations
22 into allegations of sexual abuse and sexual harassment, the
23 agency shall do so promptly, thoroughly and objectively for all
24 allegations, including third-party and anonymous reports.

25 B. If sexual abuse is alleged, an agency shall use

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1 investigators who have received special training in sexual
2 abuse investigations.

3 C. Investigators shall gather and preserve direct
4 and circumstantial evidence, including any available physical
5 and deoxyribonucleic acid evidence and any available electronic
6 monitoring data; interview alleged victims, suspected
7 perpetrators and witnesses; and review prior complaints and
8 reports of sexual abuse involving the suspected perpetrator.

9 D. If the quality of evidence appears to support
10 criminal prosecution, an agency shall conduct compelled
11 interviews only after consulting with prosecutors as to whether
12 compelled interviews may be an obstacle for subsequent criminal
13 prosecution.

14 E. The credibility of an alleged victim, a suspect
15 or a witness shall be assessed on an individual basis and shall
16 not be determined by the person's status as inmate or staff.
17 An agency shall not require an inmate who alleges sexual abuse
18 to submit to a polygraph examination or other truth-telling
19 device as a condition for proceeding with the investigation of
20 the allegation.

21 F. An administrative investigation shall include an
22 effort to determine whether staff actions or failures to act
23 contributed to the abuse and shall be documented in written
24 reports that include a description of the physical and
25 testimonial evidence, the reasoning behind credibility

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1 assessments and investigative facts and findings.

2 G. A criminal investigation shall be documented in
3 a written report that contains a thorough description of
4 physical, testimonial and documentary evidence and attaches
5 copies of all documentary evidence where feasible.

6 H. Substantiated allegations of conduct by staff or
7 contractors that appears to be criminal shall be referred for
8 prosecution. Substantiated allegations of conduct by or
9 exclusively between inmates that appears to be criminal shall
10 be referred for prosecution, except that a victim of the
11 criminal conduct shall be allowed to request that the matter
12 not be referred for prosecution. This section shall not be
13 construed to limit an agency's own investigation requirements
14 as to an allegation.

15 I. An agency shall retain all written reports
16 pursuant to this section for as long as the alleged abuser is
17 incarcerated or employed by the agency, plus five years.

18 J. The departure of an alleged abuser or victim
19 from the employment or control of a facility or an agency shall
20 not provide a basis for terminating an investigation.

21 K. A state, local or county entity that conducts
22 such investigations shall do so pursuant to the requirements of
23 this section.

24 L. A facility shall cooperate with outside
25 investigators.

1 M. An agency shall impose no standard higher than a
2 preponderance of the evidence in determining whether
3 allegations of sexual abuse or sexual harassment are
4 substantiated.

5 **SECTION 28. [NEW MATERIAL] REPORTING TO INMATES.--**

6 A. Following an investigation into an inmate's
7 allegation that the inmate suffered sexual abuse in an agency's
8 facility, the agency shall inform the inmate as to whether the
9 allegation has been determined to be substantiated,
10 unsubstantiated or unfounded.

11 B. If an agency did not conduct an investigation,
12 the agency shall request the relevant information from the
13 investigative authority responsible for conducting the
14 investigation in order to inform the inmate.

15 C. Following an inmate's allegation that an
16 employee has committed sexual abuse against the inmate, an
17 agency shall subsequently inform the inmate, unless the agency
18 has determined that the allegation is unfounded, whenever:

19 (1) the employee is no longer posted within
20 the inmate's unit;

21 (2) the employee is no longer employed at the
22 inmate's facility;

23 (3) the agency learns that the employee has
24 been indicted on a charge related to sexual abuse within the
25 facility; or

(4) the agency learns that the employee has been convicted on a charge related to sexual abuse within the facility.

D. Following an inmate's allegation that the inmate has been sexually abused by another inmate, an agency shall subsequently inform the alleged victim whenever:

(1) the agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or

(2) the agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

E. All notifications or attempted notifications pursuant to this section shall be documented.

F. An agency's obligation to report pursuant to this section shall terminate if the inmate is released from the agency's custody.

**SECTION 29. [NEW MATERIAL] EMPLOYEE DISCIPLINE AND
CORRECTIVE ACTIONS FOR CONTRACTORS AND VOLUNTEERS.--**

A. An employee of an agency shall be subject to disciplinary sanctions up to and including termination for violating the agency's sexual abuse or sexual harassment policies.

B. Termination shall be the presumptive disciplinary sanction for an employee who has engaged in sexual

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1 abuse.

2 C. Disciplinary sanctions for violations of agency
3 policies relating to sexual abuse or sexual harassment, other
4 than actually engaging in sexual abuse, shall be commensurate
5 with the nature and circumstances of the acts committed, the
6 employee's disciplinary history and the sanctions imposed for
7 comparable offenses by other employees with similar histories.

8 D. Terminations for violations of an agency's
9 sexual abuse or sexual harassment policies, or resignations by
10 employees who would have been terminated if not for their
11 resignation, shall be reported to law enforcement agencies,
12 unless the activity was clearly not criminal, and to any
13 relevant licensing bodies.

14 E. A contractor or volunteer who engages in sexual
15 abuse shall be prohibited from contact with inmates and shall
16 be reported to law enforcement agencies, unless the activity
17 was clearly not criminal, and to relevant licensing bodies.

18 F. A facility shall take appropriate remedial
19 measures, and shall consider whether to prohibit further
20 contact with inmates, in the case of any other violation of an
21 agency's sexual abuse or sexual harassment policies by a
22 contractor or volunteer.

23 SECTION 30. [NEW MATERIAL] DISCIPLINARY SANCTIONS FOR
24 INMATES.--

25 A. An inmate shall be subject to disciplinary

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1 sanctions pursuant to a formal disciplinary process following
2 an administrative finding that the inmate engaged in inmate-on-
3 inmate sexual abuse or following a criminal finding of guilt
4 for inmate-on-inmate sexual abuse.

5 B. Sanctions pursuant to Subsection A of this
6 section shall be commensurate with the nature and circumstances
7 of the abuse committed, the inmate's disciplinary history and
8 the sanctions imposed for comparable offenses by other inmates
9 with similar histories.

10 C. The disciplinary process shall consider whether
11 an inmate's mental disabilities or mental illness contributed
12 to the inmate's behavior when determining what type of
13 sanction, if any, should be imposed.

14 D. If a facility offers therapy, counseling or
15 other interventions designed to address and correct underlying
16 reasons or motivations for sexual abuse, the facility shall
17 consider whether to require an offending inmate to participate
18 in the interventions as a condition of access to programming or
19 other benefits.

20 E. An agency may discipline an inmate for sexual
21 contact with an employee only upon a finding that the employee
22 did not consent to such contact.

23 F. For the purpose of disciplinary action, a report
24 of sexual abuse made in good faith based upon a reasonable
25 belief that the alleged conduct:

(1) occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation; or

(2) violated the New Mexico Prison Rape Elimination Act shall not constitute falsely reporting an incident or lying, even if an investigation determines that the conduct did not constitute a violation.

G. An agency may, in the agency's discretion, prohibit all sexual activity between inmates and may discipline inmates for such activity. An agency shall not deem such activity to constitute sexual abuse if the agency determines that the activity is not coerced.

SECTION 31. [NEW MATERIAL] ACCESS TO EMERGENCY MEDICAL
AND MENTAL HEALTH SERVICES--ONGOING SERVICES.--

A. An inmate victim of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical practitioners and mental health practitioners according to the practitioners' professional judgment.

B. If no qualified medical practitioners or qualified mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim and shall

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1 immediately notify the appropriate medical practitioners and
2 mental health practitioners.

3 C. An inmate victim of sexual abuse while
4 incarcerated shall be offered timely information about and
5 timely access to emergency contraception and sexually
6 transmitted infection prophylaxis in accordance with
7 professionally accepted standards of care, where medically
8 appropriate.

9 D. Treatment services pursuant to this section
10 shall be provided to a victim of sexual abuse without financial
11 cost and regardless of whether the victim names the victim's
12 abuser or cooperates with any investigation arising out of the
13 incident.

14 E. A facility shall offer medical and mental health
15 evaluation and, as appropriate, treatment to all inmates who
16 have been victimized by sexual abuse in a prison, jail, lockup
17 or juvenile facility.

18 F. The evaluation and treatment of a victim of
19 sexual abuse pursuant to this section shall include, as
20 appropriate, follow-up services, treatment plans and, when
21 necessary, referrals for continued care following the victim's
22 transfer to, or placement in, release from custody.

23 G. A facility shall provide a victim of sexual
24 abuse pursuant to this section with medical and mental health
25 services consistent with the community level of care.

H. Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

I. If pregnancy results from the conduct described in Subsection H of this section, the victim of the conduct shall receive timely and comprehensive information about and timely access to all pregnancy-related medical services that are lawful in the state, including the option to terminate the pregnancy.

J. Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.

K. Treatment services pursuant to this section shall be provided to a victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

L. A prison shall attempt to conduct a mental health evaluation of a known inmate-on-inmate abuser within sixty days of learning of the abuser's abuse history and offer treatment when deemed appropriate by mental health practitioners.

SECTION 32. [NEW MATERIAL] SEXUAL ABUSE INCIDENT

REVIEWS . --

A. A facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation,

underscored material = new
[bracketed material] = delete

1 including where the allegation has not been substantiated,
2 unless the allegation has been determined to be unfounded. The
3 review shall occur within thirty days of the conclusion of the
4 investigation.

5 B. A review team shall include upper-level
6 management officials, with input from line supervisors,
7 investigators and medical practitioners or mental health
8 practitioners.

9 C. A review team shall:

10 (1) consider whether the allegation or
11 investigation under review indicates a need to change policy or
12 practice to better prevent, detect or respond to sexual abuse;

13 (2) consider whether the incident or
14 allegation was motivated by race, ethnicity, gender identity,
15 lesbian, gay, bisexual, transgender or intersex identification,
16 status or perceived status or gang affiliation or was motivated
17 or otherwise caused by other group dynamics at the facility;

18 (3) examine the area in the facility where the
19 incident allegedly occurred to assess whether physical barriers
20 in the area may enable abuse;

21 (4) assess the adequacy of staffing levels in
22 the area during different shifts;

23 (5) assess whether monitoring technology
24 should be deployed or augmented to supplement supervision by
25 employees; and

(6) prepare a report of the review team's findings and any recommendations for improvement and submit the report to the facility head and the facility's New Mexico Prison Rape Elimination Act compliance manager.

D. A facility shall implement the review team's recommendations for improvement or shall document the facility's reasons for not doing so.

SECTION 33. [NEW MATERIAL] DATA COLLECTION.--

A. An agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under the agency's direct control using a standardized instrument and set of definitions.

B. An agency shall aggregate the incident-based sexual abuse data collected pursuant to this section at least annually.

C. The incident-based data collected pursuant to this section shall include the data necessary to answer all questions from the most recent version of the survey of sexual violence conducted by the United States department of justice or a similarly comprehensive and authoritative survey.

D. An agency shall maintain, review and collect data pursuant to this section as needed from all available incident-based documents, including reports, investigation files and sexual abuse incident reviews.

E. An agency shall obtain incident-based and

1 aggregated data pursuant to this section from every private
2 facility with which it contracts for the confinement of its
3 inmates.

4 **SECTION 34. [NEW MATERIAL] DATA REVIEW FOR CORRECTIVE**
5 **ACTION.--**

6 A. An agency shall review data collected and
7 aggregated pursuant to Section 33 of the New Mexico Prison Rape
8 Elimination Act in order to assess and improve the
9 effectiveness of the agency's sexual abuse prevention,
10 detection and response policies, practices and training,
11 including by:

12 (1) identifying problem areas;
13 (2) taking corrective action on an ongoing
14 basis; and

15 (3) preparing an annual report of the agency's
16 findings and corrective actions for each facility as well as
17 the agency as a whole.

18 B. Reports pursuant to this section shall include a
19 comparison of the current year's data and corrective actions
20 with data and corrective actions from prior years and shall
21 provide an assessment of the agency's progress in addressing
22 sexual abuse.

23 C. An agency's report shall be approved by the
24 agency head and made readily available to the public on the
25 agency's website, or if the agency does not have a website, by

1 other means.

2 D. An agency may redact specific material from the
3 agency's reports when publication would present a clear and
4 specific threat to the safety and security of a facility but
5 shall indicate the nature of the material redacted.

6 E. An agency shall ensure that data collected
7 pursuant to this section are securely retained.

8 F. An agency shall make all aggregated sexual abuse
9 data, from facilities under the agency's direct control and
10 private facilities with which the agency contracts, readily
11 available to the public at least annually through the agency's
12 website or, if the agency does not have a website, through
13 other means.

14 G. Prior to making aggregated sexual abuse data
15 publicly available, an agency shall remove all personal
16 identifiers.

17 H. An agency shall maintain sexual abuse data
18 collected pursuant to Section 33 of the New Mexico Prison Rape
19 Elimination Act for at least ten years after the date of the
20 initial collection unless federal, state or local law requires
21 otherwise.