

Serving Survivors in Confinement

A HANDBOOK FOR
MINNESOTA ADVOCATES

COMPILED BY THE MINNESOTA COALITION
AGAINST SEXUAL ASSAULT

About MNCASA

The Minnesota Coalition Against Sexual Assault (MNCASA) provides leadership and resources for sexual assault programs and allies to prevent sexual violence while promoting a comprehensive, socially just response for all victims/survivors. We support, convene, and collaborate with sexual assault programs, advocates, prosecutors, law enforcement officers to promote a more victim-centered response to sexual violence, and increase effective criminal justice. Our prevention programs take action before someone is harmed, and we work with policy makers and elected officials for laws and programs that fight sexual violence.

MNCASA provides (1) Victim and Survivor Support by helping partner programs and medical personnel, law enforcement, and legal and social service providers deliver state of the art victim advocacy and support; (2) Prevention Support by developing the capacity of partner programs and others to design and implement effective community-level primary prevention strategies; (3) Policy Reforms through public policy education and advocacy; and (4) Systems Change by developing capacity in medical, criminal justice, social service, and judicial systems to incorporate a coordinated and victim-centered approach into their responses.

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Advocate or Community-Based Advocate

An individual who is working for a community-based sexual violence advocacy center and who has undergone the 40-Hour Sexual Assault Advocacy Training.

Confinement

To hold or detain a person in facility, including, but not limited to prisons, jails, community confinement facilities, and juvenile detention centers. Correctional staff and other community partners often refer to people in confinement as “offenders” or “inmates.”

Person Who Harms

A person who has caused harm through acts of sexual violence. This term will be used synonymously with the term “abuser” in the Prison Rape Elimination Act standards.

Sexual Violence Advocacy Center

Programs, agencies, or centers that provide resources and support services to people who have been affected by sexual violence, and are based in the community they serve. This term will be used synonymously with the term “rape crisis center” as it is used in the Prison Rape Elimination Act standards.

Sexual Violence

Acts of sexual violence include, but are not limited to, unwanted touching, intimate partner sexual violence, stalking, sexual harassment, reproductive coercion, child sexual assault and manipulation, and trafficking. This term will be used synonymously with the terms “sexual abuse” and “sexual harassment” as they are used in the Prison Rape Elimination Act standards.

Victims/Survivors

A person who has experienced sexual violence, regardless of where or when the sexual violence occurred.

Introduction

Victims/survivors in confinement are both highly vulnerable and profoundly underserved. In addition to the large number of victims/survivors who experienced sexual violence prior to their confinement, it's estimated that more than [200,000 people in custody](#) experience sexual violence every year. Support and services are crucial for the well-being of all victims/survivors, regardless of where they go to bed at night.

Victims/survivors in confinement may have many of the same concerns as victims/survivors in the community, along with additional fears and challenges due to their environment. Victims/Survivors in confinement may face retaliation and further violence if they make a report or are “outed” as victims/survivors of sexual violence. Similar to in the community, people may be targeted for sexual violence on the basis of their identity (for example, people in the LGBTQ+ community) or because they are perceived as being vulnerable. In addition, people who have been confined face stigma and bias during their time in confinement and following their reentry into the community. As an advocate, it is important to recognize your privilege, and any implicit biases or stereotypes you may have.

The experience of confinement is traumatizing – people in confinement lose nearly all power and control over what they can do and where they can go. For victims/survivors, this loss of control severely limits the coping mechanisms available to them. When providing advocacy services, it is important to recognize the limitations people in confinement face, and to adapt the information and support you provide with those limitations in mind (for example, to talk about coping skills that are accessible, such as guided imagery and breathing techniques, and to avoid suggesting coping skills that may not be accessible—such as taking walks in nature or spending time with family). These limitations are important to be aware of when safety planning as well. However, just as with victims/survivors in the community, victims/survivors in confinement are the experts on their situation and know what they need to stay safe.

As a community-based advocate, you have the unique ability to provide victims/survivors in confinement with external support and confidentiality. All staff and volunteers inside the facility are mandated reporters of sexual violence under the Prison Rape Elimination Act (PREA), including medical and mental health staff. The skills, support, and understanding of sexual violence an advocate provides can be incredibly meaningful.

Purpose of Handbook

This handbook is meant to connect advocates with resources and Minnesota-specific information relevant to serving victims/survivors in confinement. The handbook itself includes an introduction to the Prison Rape Elimination Act standards and advocate confidentiality in Minnesota, and provides links to recommended webinars and resources on victim service provision for people in confinement.

Prison Rape Elimination Act

The Prison Rape Elimination Act (PREA) has served as a powerful tool for service providers trying to reach victims/survivors in confinement. PREA can be used by advocacy centers to begin conversations with correctional staff about victim services, to motivate correctional staff to develop written agreements or Memoranda of Understandings with advocacy centers, and to improve access to victim services for people in confinement.

History of PREA

Across the United States, advocates have been providing, or trying to provide, services to people in confinement for many decades. Similarly, individuals and groups have been advocating for recognizing and addressing sexual violence in settings of confinement for just as long. Their advocacy culminated in 2003 with the passage of the Prison Rape Elimination Act. PREA began the first-ever national research on sexual violence in correctional and law enforcement facilities across the United States. In addition, it began the drafting of the Prison Rape Elimination Act standards. The standards placed regulations on facilities to address the sexual violence that occurs within them.

A draft of the PREA standards was published in 2009. Three years later, in 2012, the finalized version was published by the Department of Justice. Four sets of standards came out, each for different facility types. The standard numbers cited throughout the handbook refer to the [Prisons and Jails](#) set of standards. However, very similar standards exist in both the [Community Confinement](#) and [Juvenile Facilities](#) sets of standards. Today, states that are not PREA-compliant risk a reduction in federal [S.T.O.P. funding](#).

Other federal agencies that hold people in confinement have their own regulations and standards. For example, the Department of Homeland Security, which houses Immigration and Customs Enforcement, [came out with its own PREA standards in 2014](#). There are a

number of components in their facilities that function differently, such as the investigation process, as a result. Those differences will not be covered in this handbook, but MNCASA is available as a resource for more information.

Purpose of PREA

PREA has three overarching goals:

- Eliminate sexual violence in correctional and law enforcement facilities.
- Increase the accountability of correctional and law enforcement facilities to the individuals they hold and to the public.
- Provide the same level of care to victims/survivors in confinement as victims/survivors in the community receive.

To achieve these goals, each set of the PREA standards includes a number of requirements focused on prevention and detection. These include, for example, the requirements to:

- Screen people held in facilities for risk of victimization and abusiveness upon their arrival, and then to use that information to inform housing decisions ([§115.41](#)).
- Consider how video monitoring systems, when updated or installed, can enhance the facility's ability to protect people in the facility ([§115.18](#)).

Additionally, a number of requirements focus on the facility response to sexual violence. These response-oriented requirements include facility investigation requirements ([§115.71-§115.73](#)), and trainings on sexual violence for medical and mental health care practitioners in the facility ([§115.35](#)).

Relevant PREA Standards for Community-Based Advocates

Victim/Survivor access to outside community-based sexual violence advocacy services was recognized as important for meeting PREA's goals. However, it is important to note that PREA standards place requirements on correction facilities, not on community-based advocacy centers. Two standards under PREA include provisions for victim/survivor access to advocacy:

- §115.53: Inmate access to outside confidential support services.
- §115.21: Evidence protocol and forensic medical examinations.

[Standard §115.53: Inmate access to outside confidential support services.](#)

Standard §115.21 requires facilities to provide people held in their custody with access to community-based advocates for emotional support services relating to sexual violence.

PREA requires that access to advocacy is provided by the facility “in as confidential a manner as possible.” However, this language does not remove the legal confidentiality obligations advocates are held to.

Access to emotional support services under Standard §115.53:

- Is not related to reporting, and should be provided regardless of whether victims/survivors have made a report or want to make a report.
- Should be available to victims/survivors who experienced sexual violence outside of the facility as well as those who experienced sexual violence inside the facility.¹

Under Standard §115.53, facilities must maintain written agreements, or attempt to enter into written agreements, with community-based sexual violence advocacy centers that are able to provide services to victims/survivors in their facility. Community-based sexual violence advocacy centers are encouraged to keep records of their agreements and relationships with correctional facilities. These records can be helpful for conversations with PREA auditors, as PREA requires facilities to undergo audits every 3 years. If an advocacy center is not contacted by a PREA auditor, or has concerns about a facility’s PREA-compliance, it may be helpful to contact them directly or to submit an Auditor Feedback Form on the National PREA Resource Center’s website. Auditors’ final reports, which include auditor contact information, should be publically accessible on correctional facilities’ websites. Information about certified auditors can also be found on the National PREA Resource Center website.²

§115.21: Evidence protocol and forensic medical examinations.

Standard §115.21 states after a report has been made, victims/survivors should have access to an advocate during the forensic medical examination; investigatory interviews; and for emotional support, information, crisis intervention, and referrals. Importantly, this standard also states that victims/survivors should be provided with access to a forensic medical examination, performed by a Sexual Assault Nurse Examiner or Sexual Assault Forensic Examiner when possible and appropriate. The examination should be provided without any financial cost placed on the victim/survivor.

Victim/Survivor Rights Under PREA

In addition to the two standards that include provisions for victim/survivor access to advocacy, PREA has a number of other standards that can be helpful for advocates to know about when providing services to people in confinement. PREA standards on reporting

1. See <https://www.prearesourcecenter.org/node/6157> for more information.

2. See Just Detention International’s Fact Sheet “The Role of Victim Advocates in the PREA Audit” for more information.

sexual violence in a facility, what happens after a report of sexual violence is made, and victim/survivor protections following a report of sexual violence, are summarized below.

Making a Report

People in correctional and law enforcement facilities should be provided with the following reporting options:

- Telling any facility staff member, contractor, or volunteer ([§115.61](#) and [§115.32](#)). Staff are required to report any “knowledge, suspicion, or information” about sexual abuse or harassment that occurred at a facility, regardless of the facility’s agency.
- Multiple internal reporting mechanisms within the agency ([§115.51](#)). What these reporting mechanisms are can vary by facility.
- A third party (for example, a family member or friend) report ([§115.54](#)). The third-party reporting option must be easy for members of the public to find and use, and third-party reports must be taken as seriously as any other report, regardless of whether a victim/survivor or person who harmed has been named.
- Contact information for reporting to an outside agency (for example, the phone number for child protective services in a juvenile facility) ([§115.51](#)). This is not to be conflated with a counseling or crisis hotline.³

Facility Response and Protective Measures Following a Report

After a report of sexual violence (that occurred within a facility) is made, facilities are required to take certain actions under PREA. This information can be helpful for a victim/survivor of sexual violence who is determining whether to make a report. The actions facility staff are required to take include:

- Separating the victim/survivor and person who harmed ([§115.64](#)).
- Requesting the victim/survivor to not take any actions that would damage physical evidence (this includes showering and going to the bathroom). The person who harmed is told not to take any actions that would damage physical evidence ([§115.64](#)).
- Activating the facility’s coordinated response. The coordinated response can vary by facility, so it may be beneficial to ask facility staff about their response procedures ([§115.65](#)).
- Interviewing the victim/survivor, the person who harmed, and witnesses ([§115.71](#)). Facilities are responsible for ensuring an advocate is available for victims/survivors during victim/survivor interviews.
- Employing protection measures for both the victim/survivor and for the person who made the report, if the report was made by someone in the facility who is not the

3. See the following link for more information: <https://www.prearesourcecenter.org/node/6160>

victim/survivor ([§115.67](#)). Protection measures vary by facility.

- Monitoring victims/survivors and reporters for 90 days following a report ([§115.67](#)). How the monitoring occurs may vary by facility, but it should be aimed at preventing and detecting retaliation for making a report.
- Telling victims/survivors the determination of the facility investigation, or why an investigation did not occur ([§115.73](#)). If the person who harmed was a staff member, the victim/survivor should be provided updates on the staff member. These updates include whether the staff member is no longer working in the victim's/survivor's unit, is no longer employed, or has been charged.

Victim/Survivor Protections after Sexual Violence in Confinement:

- The victim/survivor should not be placed in segregate housing, commonly known as solitary confinement, without an assessment showing there were no viable alternatives for the victim's/survivor's safety ([§115.43](#)).
- Victims/Survivors should be provided access to emergency medical treatment and crisis intervention services, information about and access to emergency contraception, and STI treatment ([§115.82](#)). This access should be provided without financial cost, regardless of the victim's/survivor's cooperation with the investigation or the naming of the person who harmed.

June, 2020

Confidentiality

Confidentiality Protections for Victims/Survivors in Custody

This fact sheet can serve as a tool for conversations with correctional staff about confidentiality. It is recommended to use this resource together with Just Detention International's fact sheet, "[Corrections Agencies and Rape Crisis Centers Working Together](#)," and the Victim Rights Law Center's Tip Sheet, "[Eliminating Bars as Barriers. Together](#)," these resources provide a brief overview of what confidentiality is, its role in the PREA Standards, the importance of confidential services, the legal obligations of advocates in Minnesota, and why conversations between corrections and advocacy on confidentiality can be challenging. Sharing this information with correctional staff can provide a helpful base for ongoing conversations about confidentiality.

Confidentiality for Victims/Survivors in Custody

The confidentiality requirements placed on sexual assault advocates by [Minnesota Statute](#) and the Violence Against Women Act (VAWA) apply when serving victims/survivors in detention and incarceration. Advocates must follow VAWA and Minnesota confidentiality requirements regardless of the location of the services they are providing. Further:

- Advocates' duty of confidentiality to victims/survivors cannot be over-ridden by signing a Memorandum of Understanding (MOU) or a contract, and;
- Confidentiality requirements cannot be over-ridden by signing a confidentiality agreement within a coordinating team.

Minnesota correctional facilities and advocacy programs should aim to provide a similar level of confidential communication between advocates and victims/survivors in custody as is provided for individuals in confinement and their attorneys. Below is further information on the legal obligations of sexual assault advocates. Advocacy programs and correctional facilities can use these requirements for guidance when determining how to provide access to advocacy services to victims/survivors in custody.

Violence Against Women Act (VAWA) and Victims of Crime Act (VOCA)

VAWA 34 U.S.C. § 12291(b)(2) and 29 CFR 90.4(b)
VOCA 28 CFR 22 and 28 CFR 94.115

Programs with VAWA and VOCA funding (grantees and sub-grantees under VAWA or VOCA) may not disclose, reveal or release personally identifying information or individual information collected in connection with the services requested, utilized, or denied through their programs. Personally identifying and individual information cannot be released regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected ([OVW, Oct. 2017](#)).

Under VAWA:

- Personally identifying information includes information about a person that may directly or indirectly identify them.
- For victims/survivors of domestic violence, dating violence, sexual violence, and stalking, personally identifying information also includes information that would disclose the location of the victim/survivor.
- By statute, programs with VAWA/VOCA funding may share personally identifying information in only three specific circumstances:

1. When the victim/survivor provides written, informed, and reasonably time-limited consent to the release of information (“a release”);
2. When a statute compels that information be released; or
3. When a court compels that information be released.⁴

Minnesota Statute

Minnesota Statute [595.02](#) Testimony of Witnesses

Sexual Assault counselors (advocates), as defined by Minnesota statute, must have undergone at least forty hours of crisis counseling training and work under the direction of a supervisor in a crisis center. The crisis center’s primary purpose must be to advise, counsel, or assist victims/survivors of sexual assault.

Minnesota Statute 595.02 protects the communications between advocates and victims/survivors. With the exception of very specific situations involving neglect or termination of parental rights proceedings, advocates cannot not be compelled to testify about any opinion or information received from or about the victims/survivors with whom they are working. Further, Minnesota Statute states that advocates cannot “disclose any opinion or information received from or about the victim without the consent of the victim.”

Minnesota Statute [13.822](#) Sexual Assault Data and [611A.46](#) Classification of Data

Programs with funding from the Minnesota Office of Justice Programs sign contracts which include the agreement to fully comply with the provisions of the Minnesota Data Practices Act—Chapter 13 of the Minnesota Statutes. Under the Data Practices Act, all sexual assault communication data are classified [as private data on individuals](#).

Mandated Reporting

Under Minnesota statute, adults are not vulnerable adults simply due to their confinement. [The Minnesota Reporting of Maltreatment of Vulnerable Adults statute’s definition of vulnerable adults](#) includes adults in [facilities](#). However, the statute’s definition of facilities does not include [correctional facilities](#).

[Sexual Assault Counselors \(advocates\) are not considered mandated reporters of maltreatment of vulnerable adults](#). However, advocates may have professional licensures that add additional mandatory reporting requirements. Victims/survivors in custody must have access to confidential services from sexual assault counselors. This may require programs to make choices about which advocates provide services. Advocates should not disclose any information without their client’s informed consent.

4. Under 28 CFR 94.115, advocacy programs with VOCA funding must also notify the individual when they are releasing information.

Advocates do not have a duty to warn of the contents of confidential client interactions while in custody regardless of the context of those interactions. There is no statutory rule or case law that dictates that advocates have a duty to warn, and it would be contrary to the purposes of advocacy to require the disclosure of any confidential client communications to the correctional agency.

Resources on Service Provision

Recommended Resources on PREA and Serving Victims/Survivors in Custody

These resources come from the following organizations:

- [Just Detention International \(JDI\)](#)
- [National PREA Resource Center \(PRC\)](#)
- [California Coalition Against Sexual Assault \(CALCASA\)](#)
- [Texas Association Against Sexual Assault \(TAASA\)](#)
- [Colorado Coalition Against Sexual Assault \(CCASA\)](#)
- [Resource Sharing Project \(RSP\)](#)
- [Victim Rights Law Center \(VRLC\)](#)

PREA Introductory/Overview

Fact Sheets

- *JDI | The Prison Rape Elimination Act Standards: An Overview for Community Service Providers | June, 2013 | <https://justdetention.org/wp-content/uploads/2015/10/FS-The-Prison-Rape-Elimination-Act-Standards-An-Overview-For-Community-Service-Providers.pdf>*

Guides

- *JDI | Hope Behind Bars: An Advocate's Guide to Helping Survivors of Sexual Abuse in Detention | https://justdetention.org/wp-content/uploads/2015/10/Advocates_Manual_FINAL.pdf*

This resource includes sections on the following: an overview of sexual abuse behind bars; the importance of advocates; overcoming barriers to providing services behind bars; guiding principles to serving survivors in custody; hospital accompaniment for survivors; hotline services for inmates (p. 26); prisoner correspondence (p. 28); and in-person services in detention settings. A sample letter to a survivor in confinement can be found on page 30 of this resource.

- CCASA | PREA: Prison Rape Elimination Act | 2018 | <https://www.ccasa.org/resources/prea-toolkit/>

CCASA's PREA toolkit covers a number of topics, including: reporting dynamics; advocacy for people who are incarcerated; concern and bias; tips for advocate success; and tips for advocates at the hospital.

Webinars

- JDI | *Learn the Basics: The Prison Rape Elimination Act for Victim Service Providers* | March 16, 2016 | <https://justdetention.org/webinar/learn-the-basics-the-prison-rape-elimination-act-for-victim-service-providers/>
- RSP & JDI | *Mapping It Out: Providing Victim Services for Incarcerated Survivors* | November 16, 2017 | <https://www.youtube.com/watch?v=4GcwsLIVwmw&t=1s>

Confidentiality and Reporting

Fact Sheets

- JDI & PRC | *Untangling the PREA Standards: Outside Reporting, Confidential Support, and Third-Party Reporting Fact Sheet* | https://www.prearesourcecenter.org/sites/default/files/content/reporting_and_support_services_fact_sheet_-_final.pdf
- JDI | *Corrections Agencies and Rape Crisis Centers Working Together: Five Things to Know About Confidentiality* | October 2018 | <https://justdetention.org/wp-content/uploads/2015/10/Fact-sheet-Corrections-Agencies-and-Rape-Crisis-Centers-Working-Together-Five-Things-to-Know-About-Confidentiality-1.pdf>

Guides

- VRLC | *Eliminating Bars as Barriers: Tip Sheet for Delivering Confidential Victim Services to Confined Survivors of Sexual Assault, Domestic and Dating Violence, and Stalking* | 2018 | <https://www.victimrights.org/sites/default/files/Tips%20-%20Eliminating%20Bars%20as%20Barriers.pdf>

Webinars

- PRC & VRLC | *In as Confidential a Manner as Possible: Community-based Advocacy in Confinement* | June 24, 2019 | <https://vimeo.com/344334818>

Understanding Corrections & Confinement Environments

Fact Sheets

- JDI | *The Very Basics about Sexual Abuse in Detention* | October, 2018 | <https://justdetention.org/wp-content/uploads/2019/05/Fact-sheet-The-Very-Basics-about-Sexual-Abuse-in-Detention.pdf>

Guides

- JDI & RSP | *Shedding Light on the System: A Corrections Primer for Victim Advocates* | <https://justdetention.org/wp-content/uploads/2015/10/Shedding-Light-on-the-System.pdf>

Webinars

- JDI | *The World of Corrections (Part 1): Tips for the “First Termer” Advocate* | March 25, 2015 | <https://justdetention.org/webinar/the-world-of-corrections-part-1-tips-for-the-first-termer-advocate/>
- JDI | *The World of Corrections (Part 2): Perspectives on Prisoner Culture in Men’s Prisons* | September 30, 2015 | <https://justdetention.org/webinar/the-world-of-corrections-part-2-perspectives-on-prisoner-culture-in-mens-prisons/>

Understanding Confinement Environments: Facility-Type Specific

Fact Sheets

- JDI | *No Safe Place: Sexual Violence in the Juvenile Justice System* | September 2013 | <https://justdetention.org/wp-content/uploads/2015/10/FS-No-Safe-Place-Sexual-Violence-in-the-Juvenile-Justice-System.pdf>

Webinars

- CCASA | *PREA: Understanding the Juvenile Justice System* | February 27, 2019 | <https://www.youtube.com/watch?v=GglrlabF9cs&feature=youtu.be>

While this webinar includes content specific to the state of Colorado, the presenter also discusses differences and commonalities in juvenile justice systems nationwide.

- *CALCASA | PREA: Working with Survivors in Immigration Detention Centers | May 24, 2019* | <https://www.youtube.com/watch?v=J75HutErlU8>
- *JDI | In Your Reach: Providing Services to Survivors in Rural Detention Facilities | January 28, 2014* | <https://justdetention.org/webinar/in-your-reach-providing-services-to-survivors-in-rural-detention-facilities/>

Support Services by Mail

Fact Sheets

- *JDI | Tips for Responding to Calls, Letters, and Emails from Incarcerated Survivors | September 2018* | <https://justdetention.org/wp-content/uploads/2015/10/Fact-sheet-Tips-for-Responding-to-Calls-Letters-and-Emails-from-Incarcerated-Survivors.pdf>

Guides

- *TAASA Incarcerated Survivor Advocacy Program | Words of Hope: Starting a Correspondence Advocacy Program for Incarcerated Survivors | (2017 or later)* | http://taasa.org/wp-content/uploads/2018/08/ISAP_Correspondence-toolkit-8.18_web.pdf
- *JDI | Hope Behind Bars: An Advocate's Guide to Helping Survivors of Sexual Abuse in Detention* | https://justdetention.org/wp-content/uploads/2015/10/Advocates_Manual_FINAL.pdf

The section on victim/survivor mail correspondence within this resource begins on page 28. A sample letter to a victim/survivor in confinement can be found on page 30.

Webinars

- *CALCASA | I Carry Your Words With Me: Meaningful Written Correspondence for Incarcerated Survivors | March 5, 2019* | www.calcasa.org/2019/03/i-carry-your-words-with-me-meaningful-written-correspondence-for-incarcerated-survivors/
- *JDI | Dear Abby, inmate #3255101: Building a Correspondence Program | 2016* | <https://justdetention.org/webinar/dear-abby-inmate-no-3255101-building-a-correspondence-program-2/>

Support Services by Phone/Hotline

Fact Sheets

- *JDI | Tips for Responding to Calls, Letters, and Emails from Incarcerated Survivors | September 2018 | <https://justdetention.org/wp-content/uploads/2015/10/Fact-sheet-Tips-for-Responding-to-Calls-Letters-and-Emails-from-Incarcerated-Survivors.pdf>*

Webinars

- *JDI & RSP | Help is on the Line: Providing Hotline Services for Incarcerated Survivors | August 15, 2018 | <https://justdetention.org/webinar/help-is-on-the-line-providing-hotline-services-for-incarcerated-survivors/>*
- *CALCASA | Receiving Phone Calls from Incarcerated Survivors | March 26, 2019 | <http://www.calcasa.org/2019/03/receiving-phone-calls-from-incarcerated-survivors/>*

Please note this webinar was created for an audience of California-based advocates, and as such includes information and guidance specific to California facilities. However, it also provides information that is applicable generally, including best practices during calls, and recommendations to ensure the long-term success and sustainability of crisis line services.

Forensic Medical Examination Accompaniment

Webinars

- *CALCASA | Accompanying Incarcerated Survivors at Forensic Exams | July 9, 2019 | <http://www.calcasa.org/2019/07/forensicexams/>*

Victims/Survivors with Mental Health Concerns

Fact Sheets

- *JDI | Mental Illness and Sexual Abuse Behind Bars | September 2013 | <https://justdetention.org/wp-content/uploads/2015/10/FS-Mental-Illness-and-Sexual-Abuse-Behind-Bars.pdf>*

Webinars

- *CALCASA & JDI | Conversations from the Field: Incarcerated Survivors with Mental Illness | May 6, 2019 | <http://www.calcasa.org/2019/05/conversations-from-the-field-incarcerated-survivors-with-mental-illness/>*

Guide to Sample Memorandum of Understanding (MOU)

March, 2020

Quick Guide to the Sample Memorandum of Understanding (MOU)

The sample MOU was designed upon the following:

- Recommended practices from technical assistance providers and leading organizations
- Confidentiality requirements under federal law (specifically, VOCA and VAWA) and Minnesota statute (specifically, 595.02)
- Guiding advocacy principles
- The understanding that the Prison Rape Elimination Act (PREA) standards are a tool for achieving the purpose of improved access to healing, justice, and services for victims/survivors in confinement.

When utilizing the following document, please keep in mind:

- Agency partnerships can be challenging. The agreements and arrangements you make with correctional agencies may represent starting points, which can improve as your organizational relationship develops.
- Confidentiality requirements cannot be signed away in an MOU, organizational policy, or other written agreements. This also includes informed consent forms, which must be informed, time-limited, and specific.
- Your advocacy agency is an equal partner in your agreements with correctional facilities.
- The Prison Rape Elimination Act (PREA) places requirements on correctional facilities. It does not place any requirements on advocacy agencies or other community-based service providers.
- Be prepared to explain to correctional staff why certain provisions in the proposed MOU matter.

When reading the sample MOU:

- Words, phrases, and sentences written in *italics* and brackets [*example*] serve as guidance on how to adapt the document to your situation.

We recommend adapting this sample MOU in its entirety as much as possible. There are aspects of the MOU that are flexible. At the same time, some components of the MOU are

required under PREA, or are necessary in order to maintain the nature of victim/survivor-advocate relationships. Below are charts that share which components within MOUs are flexible and which components are necessary.

Necessary

Required of correctional facilities by PREA, or a core principle of advocacy.

*If necessary due to a core principle of advocacy, the component will be marked with an asterisk.

Flexible

Not required by PREA, and does not violate a core principle of advocacy. Remain as victim/survivor-centered as possible when considering different arrangements for flexible components.

Telephone

Necessary	Flexible
Telephone access to advocacy	Location of phone(s) in the facility
Anonymous access, available without having to ask a staff member, and without being monitored*	Whether the phone(s) serve(s) multiple purposes, or is solely for advocacy communications. If possible: <ol style="list-style-type: none"> 1. Have phones with access to advocacy separate from the phones available for reporting to the facility 2. Consider how having phones designated solely for advocacy communications may “out” victims/survivors using them.
Access without cost or fee*	Hours of the day when access is available
Access to advocacy regardless of when the abuse/violence/harassment occurred, and whether or not an allegation or report has been made	Mechanism for advocacy access. Examples: <ol style="list-style-type: none"> 1. A code is dialed for access to advocacy 2. Separate phone(s) connect only to advocacy (and/or other organizations/agencies if phones have multiple purposes)

Mail

Necessary	Flexible
Access to advocacy via mail	<p>Whether mail communication with advocacy is treated as legal/special/official mail. Even legal/special/official status mail may not meet advocacy confidentiality requirements. If so, limits to confidentiality and privilege will need to be clearly and consistently communicated to people in the facility.</p> <p>How programs are identified in mail correspondence—for example, considering what organizational name is on the front of the envelope, and alternatives that can be used so the nature of the correspondence is not obvious.</p>
Release of information forms are available to people in the facility (ideally in common areas) without needing to request them from a staff member*	
Access without cost or fee*	
Access to advocacy regardless of when the abuse/violence/harassment occurred, and whether or not an allegation or report has been made	

In-Person Meetings with Facilitator

Necessary	Flexible
In-person meetings themselves are inherently negotiable (not required under PREA). Additionally, advocacy may not have the capacity to provide in-person services in facilities.	
Facility staff will not discuss the meeting attendees in front of other corrections staff or people in the facility unless necessary*	<p>Whether meetings designated as with chaplain/attorney/case worker/etc. instead of with an advocate, in order to maintain privacy and confidentiality.</p> <p>Be prepared to clarify why this matters.</p>

In-Person Meetings with Facilitator, Continued.

Necessary	Flexible
<p>Facility staff will not discuss the meeting attendees in front of other corrections staff or people in the facility unless necessary*</p>	<p>Whether in-person meetings are available for victims/survivors: of in-facility sexual violence & harassment; of sexual violence & harassment prior to incarceration; who have made a report to the facility; who have not reported to the facility. Note:</p> <ol style="list-style-type: none"> 1. For victims/survivors who have not disclosed to the facility, coordinating confidential in-person advocacy may be much harder. 2. Be prepared to explain the value of in-person advocacy and confidential advocacy. 3. Consider: How do security/name tags identify advocates in the facility? How can you maintain confidentiality when everyone in the facility knows who the advocates are?

Forensic Medical Examination Accompaniment

Necessary	Flexible
<p>Victims/survivors have access to advocacy accompaniment throughout forensic medical examinations.</p>	<p>Prior to and following forensic medical examinations, victims/survivors will be able to speak to the accompanying advocate without audio monitoring (e.g., correctional staff listening to the conversation).</p>
	<p>Whether, when, and how correctional officers will alternate their monitoring between visually observing and listening as appropriate to provide privacy for the victim/survivor during examinations</p>

Investigatory Interview Accompaniment

Necessary	Flexible
<p>Victims/Survivors have access to advocacy accompaniment throughout investigatory interviews.</p> <p>Note: Corrections may counter that it is not often possible to contact advocacy before the investigatory interview because of the “way these things happen.” It can be helpful to use the language of the standards and frame the conversation about how to make it work as much of the time as possible.</p>	<p>Prior to and following investigatory interviews, victims/survivors will be able to speak with the accompanying advocate without audio monitoring.</p>

Sample Memorandum of Understanding (MOU)

Memorandum of Understanding Between [Correctional Agency] and [Community Based Advocacy Agency]

This Memorandum of Understanding (MOU) is entered into between [Correctional Agency] (“CA”) and [Community Based Advocacy Agency] (“CBAA”). The purpose of this MOU is to assure a unified effort between the parties involved to provide victims/survivors in confinement with better services; access to healing, justice, and trauma-informed care; a victim/survivor-centered response; and an environment in which sexual assault, abuse, and harassment is taken seriously and prevention efforts are ongoing. This will include providing victims/survivors in confinement with confidential emotional support services, crisis intervention, safety planning, information, and referrals related to sexual violence, as required by the federal Prison Rape Elimination Act (PREA) regulations, Title 28 Code of Federal Regulations, § 115.21 and §115.53.

Definitions

Victims/survivors in confinement, also referred to as *victims/survivors* in this agreement, means a person held in detention/custody who has experienced sexual violence, abuse, or harassment at any time in their life regardless of whether it has been reported or an allegation has been made.

Some Relevant Law

Sexual assault counselor, also referred to as *advocate* in this agreement, is defined by Minnesota state statute 595.02 (k).

Privilege and confidentiality under Minnesota state statute 595.02 (k), VOCA 28 CFR 22 and 28 CFR 94.115, and VAWA 34 USC § 12291(b)(2) and 29 CFR 90.4 (b), requires information shared between an advocate and victim/survivor to remain private. This confidential information cannot be shared without: the written, time-limited, and informed consent of the victim/survivor; a court order; or requirement under state statute. This includes profession-specific mandatory reporting requirements under Minnesota state statutes 626.556 and 626.557. If information must be disclosed, an advocate will not share information beyond what is allowed under law.

Purpose and Scope

The parties agree through this MOU to achieve the following:

- Provide victims/survivors in confinement with confidential support services;
- Offer victims/survivors in confinement access to confidential advocacy in a manner that respects the security and confidentiality requirements of the respective parties;
- Determine the best structure for coordinating advocacy service provision by [CBAA] for victims/survivors in confinement, taking into account the logistical concerns and capacity of [CBAA] and [CA].
- Ensure co-training is prioritized. [CBAA] is properly trained and educated about the corrections environment, and [CA] staff and inmates are properly educated and trained about the services [CBAA] renders and confidentiality of services.

[Address Legality & Limits of Document here]

Whereas the parties share a common goal of encouraging zero tolerance toward all forms of sexual abuse and sexual harassment, as well as preventing, detecting and responding to such conduct; and

Whereas the parties desire to establish accessible methods of providing confidential emotional support services to victims/survivors in the [CA] facility and ensure the availability of confidential advocates through the crisis line, mail, forensic examination process, and during subsequent investigatory interviews if requested by the victim/survivor; and

Whereas the parties wish to establish a framework for cooperation and collaboration in the interest of addressing the needs of victims/survivors who are incarcerated who seek healing from sexual harassment, abuse and violence;

Now, therefore, the parties agree as follows:

In-Person Support Services and Investigatory Interview Accompaniment

The [CA] agrees to:

Promptly upon learning that an investigatory interview will be conducted, contact the [CBAA] to request that an advocate will be available, with the victim/survivor's permission, through any investigatory interview. Prior to and following the investigatory interview, the victim/survivor will be able to speak with the accompanying advocate without audio monitoring.

Facilitate follow-up and on-going contact between the advocate and victim/survivor in confinement without regard to the presence or status of an investigation.

Provide advocates private rooms for confidential sessions with victims/survivors in confinement. [CA] will not audio monitor or record meetings, nor will [CA] staff discuss the meeting attendees in front of other corrections staff or people in the facility.

Designate in-person meetings between an advocate and victim/survivor in confinement at the facility as [*Choose as appropriate for facility*]: attorney/legal visits, medical visits, case management, professional visits, or follow-up from an investigation.

In order to maintain privacy and confidentiality, [Add any other facility-specific logistical issues such as "*Corrections staff will transfer victim/survivor to meeting space via the hallway and not by walking the victim/survivor through the cafeteria where others will observe them.*" or "*Meetings will be held in a community services office room where little foot traffic goes by.*"]

The [CBAA] agrees to:

Provide an advocate to accompany and support victims/survivors through the investigatory interview process.

Provide follow-up services to victims/survivors in confinement, as resources allow, including in-person visits.

Provide victims/survivors with referrals for services after release or upon transfer to another facility, with the consent of the victim/survivor.

Forensic Medical Examinations

The [CA] agrees to:

In cases where the sexual abuse occurred within the previous [*time period used by responding hospital*], transport the victim/survivor to the [*designated medical facility*]. Prior to transport, [CA] staff will contact the [*designated medical facility*] [*and (CBAA), in cases where the hospital does not notify the CBAA*] to notify them of the pending arrival.

Ensure that when a victim/survivor is escorted for a forensic medical exam, the correctional staff involved are not the identified perpetrator or a person significantly connected to the identified perpetrator.

Ensure [CA] staff present at the medical facility will allow the [CBAA] advocate to provide support services to the victim/survivor in confinement, with the victim/survivor's permission, in as safe yet confidential a manner as possible.

Ensure [CA] staff present at the medical facility will alternate visual (observing the victim/survivor's interactions with medical staff and/or the advocate) and audio (listening to the victim/survivor's interactions with medical staff and/or the advocate) monitoring during the exam, as appropriate, for victim/survivor privacy.

Provide extra clothing for the victim/survivor in the case that any clothing is retained by the forensic examiner as evidence.

The [CBAA] agrees to:

With the consent of the victim/survivor in confinement, provide an advocate to accompany and support the victim/survivor through the forensic medical examination process, and to provide emotional support, crisis intervention, information, and referrals.

[CBAA] Hotline for Crisis Intervention and Emotional Support Service

The [CA] agrees to:

Provide people in the facility with confidential, [*# of hours/day available*] access to [CBAA]’s crisis hotline, at no cost, through the inmate phone system. This access will be provided regardless of when and where the abuse occurred, or whether or not it was reported to law enforcement. Phone calls to the crisis line will not be recorded, listened to, or monitored by [CA]. People in the facility will be able to access it anonymously, without revealing their identity. [*Describe the mechanism through which phone access will be provided, for example “People in the facility will be able to anonymously call the crisis line by inputting the code ###.”*]

Include the following topics related to the crisis hotline in inmate education programs and materials placed in areas visible to people throughout the facility:

- The difference between a confidential hotline and a reporting line, particularly the availability of emergency care, anonymity, and confidentiality; and
- That the hotline is available regardless of when and where the abuse occurred and whether or not it was reported.

The [CBAA] agrees to:

Staff a hotline [*# of hours and days agreed upon*] to provide crisis intervention, information, referrals and emotional support services to victims/survivors in [CA] confinement.

Advocacy Services by Mail

The [CA] agrees to:

Provide people in the facility with confidential access to [CBAA] by mail for the purpose of obtaining, signing, and delivering release forms and receiving emotional support. All mail between [CBAA] and people in the facility will be treated as [*legal/official/special mail*]. [*Legal/official/special*] mail in [CA] facility is [*insert how mail of this type is monitored by the facility, and limits to confidentiality*]. [CA] will consistently inform people in the facility of the level of confidentiality through this mail service process.

The [CBAA] agrees to:

Offer support services to people in the facility through confidential mail communications, including the provision of referrals, safety planning, and suggestions for coping mechanisms.

Understand the limits of confidentiality in their communication with incarcerated survivors through mail, and communicate those limitations to victims/survivors. *[Include only if applicable. Legal/official/special mail status may not ensure confidentiality. Many facilities have policies that allow correctional staff to open this mail in the presence of the person held in the facility.]*

Confidentiality of Communications Between Victims/Survivors and Advocates

The [CBAA] and [CA] agree:

To ensure that communication between victims/survivors and [CBAA] is done in as confidential a manner as possible, including, but not limited to, confidential legal mail, confidential legal phone calls, and/or confidential in-person services as applicable per standard 115.51(b), VAWA 34 USC § 12291(b)(2) and 29 CFR 90.4 (b), VOCA 28 CFR 22 and 28 CFR 94.115, and Minnesota Statute 595.02 *[And FVSPA if applicable]*.

[CBAA] advocates will obtain written, time-limited and informed consent from victims/survivors before disclosing confidential information to the [CA].

[CA] agrees to:

Enable privileged and confidential communication between [CBAA] and victims/survivors. Ensure release of information forms are available in constant supply to people in the facility in *[include specifics of where, such as the chapel or library]*.

[CBAA] agrees to:

Maintain confidentiality of communications with victims/survivors as required by VAWA 34 USC § 12291(b)(2) and 29 CFR 90.4 (b), VOCA 28 CFR 22 and 28 CFR 94.115, and Minnesota Statute 595.02 (k).

Logistics

The [CBAA] and [CA] agree to:

Participate in quarterly check-ins to review support and services for victims/survivors, the prevention of and the response to sexual abuse, assault, and harassment in the facility.

The [CA] agrees to:

Conduct and cover the costs for all security clearances and background checks needed for [CBAA] staff to provide the necessary coverage of advocacy services.

Provide appropriate security measures and [CA] staff to ensure advocates' safety and security, including upon request of an advocate.

Communicate any questions or concerns to the [CBAA] advocate [*or other designated CBAA staff position*].

The [CBAA] agrees to:

Work with [CA] staff to obtain security clearance and follow institutional procedures for safety and security when entering a correctional institution;

Communicate any logistical questions or concerns to [CA] PREA Coordinator [*or other designated staff position*].

Policy, Procedures, Training and Orientation for Advocates and Correctional Staff

The [CA] agrees to:

Include contacting [CBAA] in the protocol and procedures for responding to a report of sexual harassment, abuse, or assault, and/or a request for help from a victim/survivor in [CA] confinement.

Provide [CBAA] with information on [CA]'s response policies and procedures to sexual assault allegations.

Provide [CBAA] advocates with training.

The [CBAA] agrees to:

Provide [CA] staff with trainings.

Funding

The [CA] agrees to:

The [CBAA] agrees to:

Terms of Agreement

This MOU will begin on [date] and expire on [date].

No later than 60 days prior to the MOU expiration, both parties will meet to review services and support for victims/survivors in [CA] confinement, and the response to sexual abuse, assault, and harassment in the facility.

This MOU may be renewed. If each of the parties desires to renew this MOU, they will make every effort to exercise this option no later than 60 days prior to the MOU expiration.

This MOU may be terminated by either party for any reason upon 30 calendar days written notice, without cause, unless a lesser time is mutually agreed upon by both parties.

The individuals executing this agreement on behalf of each party warrant that they are authorized to execute the agreement on behalf of their respective agencies and that the agency will be bound by the terms and conditions herein.

Correctional Agency, Warden

Date

Community-Based Advocacy Agency,
Executive Director

Date