
MEMORANDUM OF UNDERSTANDING

Between
Montana Department of Corrections
And
YWCA Missoula

I. PURPOSE

This memorandum of understanding (MOU) between the MONTANA DEPARTMENT OF CORRECTIONS (MDOC) and YWCA MISSOULA (YWCA), is entered into in order to provide specified victim advocate services to victims of all ages of sexual abuse and sexual harassment in confinement, as required by the *Prison Rape Elimination Act* (PREA) (42 U.S.C. 15601ff, 2003) and the *Prison Rape Elimination Act* final rule (28 C.F.R. Part 115; 2012).

II. OBJECTIVE

The objective of this MOU is to provide an outline of the roles and responsibilities of MDOC and YWCA, to further their shared goals of providing victim advocate services to victims of sexual abuse and sexual harassment in confinement, and to outline their understandings and intentions with regard to these shared goals. The parties seek to combine their respective strengths, experiences, technologies, methodologies, and resources in order to achieve these goals.

PREA and the PREA final rule require MDOC and other agencies of the State's executive branch to attempt to make available victim advocate services to victims of sexual abuse or sexual harassment in confinement. The services required by PREA and the PREA final rule include: access to 24-hour hotline services; access to rape crisis center advocates; providing crisis intervention services and referrals; access to victim advocates; providing acute and long term medical and mental health care; and providing emotional support services throughout the process of forensic examination, investigation, and recovery from sexual abuse or sexual harassment.¹ To achieve these objectives, MDOC and YWCA enter into this MOU in order to assess the needs, feasibility, and logistics of providing required services to victims of sexual abuse and sexual harassment in confinement facilities within the designated service area. This MOU is a preliminary, pre-contractual agreement that provides the basis for a six month period of assessment and evaluation. If performance is satisfactory during the period of performance of the MOU, then MDOC and YWCA intend to enter into a longer term arrangement for the ongoing provision of victim advocate services.

The parties enter into this MOU while maintaining their own separate and unique missions, mandates, and accountabilities. Unless specifically provided otherwise, the cooperation among the parties as outlined in this MOU shall not be construed as a partnership or other

¹ The specific requirements imposed by the PREA final rule are cross-referenced from the *Violence Against Women Act*, codified at 42 U.S.C. 14043g(b)(2)(C).

type of legal entity or personality. Each party shall accept full and sole responsibility for any and all expenses it incurs relating to this MOU. Nothing in this MOU shall be construed as superseding or interfering in any way with any agreements or contracts entered into among the parties, either prior to or subsequent to the signing of this MOU. Nothing in this MOU shall be construed as an exclusive working relationship. The parties specifically acknowledge that this MOU is not an obligation of funds, nor does it constitute a legally binding commitment by any party or create any rights in any third party.

III. SCOPE OF AGREEMENT

The designated service area covered by this MOU includes all confinement facilities within Granite, Lake, Mineral, Missoula, Ravalli, and Sanders counties. It also includes the facilities of the Montana State Prison (MSP) located in Powell County, Montana and its remote housing unit located in the town of Lewistown (in Fergus County, Montana). Coverage extends to those facilities under the operational control of MDOC, and to the County and privately-run facilities with which MDOC contracts for the confinement of offenders.

For the purpose of providing victim advocate services as described above, each party agrees to perform the following duties:

MDOC will:

- Ensure that all inmates, detainees, and residents in confinement facilities within the designated service area receive current and complete PREA information including, but not limited to:
 - MDOC and facility-specific zero tolerance policies for sexual abuse and sexual harassment in confinement;
 - How to report incidents or suspicions of sexual abuse or sexual harassment;
 - Their right to access to confidential victim services; and
 - The telephone number of the hotline operated by YWCA.
- Provide YWCA with 24-hour and emergency contact information for personnel in MDOC's Investigations Bureau.
- Provide YWCA with the names of and contact information for appropriate personnel in all non-DOC agencies or confinement facilities within the designated service area, and update this information as necessary.
- Provide YWCA with a current and comprehensive list of confinement facilities within the designated service area, and update the list as necessary.
- Receive and document all reports from YWCA, and
 - Notify the proper DOC authorities;
 - Inform all non-DOC authorities as necessary; and
 - Handle all necessary law enforcement notifications and referrals.
- Collect, analyze, review, and report incident-based and aggregate data received from YWCA.
- Provide training on a regular basis to YWCA staff and volunteers.
- Provide technical assistance, guidance, and support to YWCA staff and volunteers on an ongoing basis.

- Provide YWCA with reporting procedures, report templates and forms, and appropriate contact information to ensure proper and timely notification of all PREA calls received on the YWCA hotline. This will include contact information for:
 - MDOC operational and contract facilities;
 - County facilities; and
 - Juvenile facilities.
- Provide YWCA with a list of resources for community-based referrals used by DOC and non-DOC agencies.
- Provide YWCA with referral information outside of the designated service area, in the event that offenders call the hotline following a transfer to a facility that is outside of the designated service area.
- Protect to the greatest extent possible the confidentiality of victims of sexual abuse and sexual harassment in confinement.

YWCA will:

- Provide 24-hour hotline, crisis intervention, and referral and support services to adult and juvenile victims of sexual abuse or sexual harassment in confinement facilities within the designated service area.
- Notify MDOC's on-call investigator immediately of any emergent case reported on the hotline, and provide MDOC with written notification of any emergent case reported on the hotline.
- Provide aggregate reports to MDOC every Monday and Thursday morning. If a reporting day falls on a holiday, the report will be due the following business day. In the event that YWCA receives no calls on the hotline during a given reporting period, then no report is necessary for that reporting period.
- Use the information provided by MDOC to refer offenders who call the hotline from out of the designated service area to appropriate and local victim advocate service providers.

For the purposes of legal compliance, both parties understand and agree to the following:

- Confidentiality.** As a victim advocate service provider, and under the *Violence Against Women Act* and the *Family Violence Prevention and Services Act*, YWCA has specific legal obligations regarding confidentiality that apply to its domestic and sexual violence programs, including the victim advocate services provided under this MOU.

Generally, YWCA:

- Has a legal obligation to protect any personally identifiable information about a victim or client;
 - Will not release any information about the victim or client without clearly informed, written and signed, reasonably time-limited consent of the client; and
 - Will only share the specific information the client allows in a release;
- except where:
- There is a risk of harm to self and/or others;

- YWCA advocates are required by law to report suspected child abuse or neglect;
- YWCA advocates are required by law to report allegations or incidents of sexual abuse or sexual harassment in confinement facilities; or
- Necessary to seeking help in medical emergencies.

For the purposes of this MOU, therefore, YWCA's confidentiality requirements stipulate that:

- A survivor of sexual abuse or sexual harassment retains the right to choose when, how, and what personal information will be shared, or not shared, and with whom; and
- YWCA and its advocates are responsible for respecting and honoring the victim's wishes and safeguarding any of the victim's or client's information that they collect or hold.

Accordingly, MDOC and YWCA understand that conflicts between reporting and confidentiality may arise during the period of performance of this MOU, and both parties agree that conflicts will be resolved in favor of maintaining the confidentiality of victims of sexual abuse and sexual harassment in confinement.

- ii. **Reporting.** PREA and the PREA final rule impose obligations to collect, analyze, review, and report incident-based and aggregate data regarding allegations and incidents of sexual abuse and sexual harassment in confinement. Information received by YWCA regarding allegations or incidents of sexual abuse and sexual harassment in confinement will be documented in call sheets or incident report forms, and reported to MDOC in either:
 - Emergent case/incident reports; or
 - Aggregate reports of call activity.
- iii. **Evaluation.** On or before November 30, 2013, both parties will produce and exchange final reports that:
 - Describe and analyze performance under this MOU;
 - Provide information on the achievement of objectives;
 - Identify challenges encountered, and new or continuing needs; and
 - Provide recommendations for continuation of the relationship and providing services.

These reports will be submitted to the authorized representatives of MDOC and YWCA (whose names appear below), or their designees.

Following the submission of the final reports, the authorized representatives of MDOC and YWCA, or their designees, will meet to evaluate the success of the MOU, their interest in continuing the relationship and providing services, and, as necessary, the form the relationship should take (i.e. an extension of the current MOU, a new MOU, or a formal contract).

IV. PERIOD OF PERFORMANCE

This MOU shall remain in effect from the date of the final signature until December 31, 2013, the end of the evaluation period, unless terminated sooner as provided.

Either party may terminate this MOU without cause by giving written notice of termination to the other party at least 30 days prior to the date fixed in such notice.

V. AMENDMENT

This MOU may be amended by mutual agreement of the parties in writing at any time during the term of the agreement. The party which desires an amendment will propose the amendment in writing to the authorized representative, or designee, for the other party.

VI. LIMITATIONS OF LIABILITY

Both parties agree that neither party shall be liable for any property damage, personal injury, or death due to any act of negligence or willful misconduct on the part of the other party. Each party shall be responsible only for its own acts and the results of these acts to the extent authorized by law.

VII. ENTIRE AGREEMENT

This MOU constitutes the entire agreement between the parties.

VIII. PARAGRAPH HEADINGS

The paragraph headings in this MOU are for the reader's convenience only, and do not limit or construe the contents of any paragraph.

IX. DEFINITIONS

For the purposes and objectives of this MOU, the definitions of relevant terms are found in the *Prison Rape Elimination Act* final rule, 28 C.F.R. §§ 115.5 – 115.6.

In addition, for the purposes and objectives of this MOU, the term –

Aggregate report means a report of all incident-based and aggregate data received on the hotline, compiled by YWCA staff, and sent to the MDOC PREA Coordinator every Monday and Thursday morning, except where a reporting day falls on a holiday, in which case the report will be due on the following business day.

Confinement means the application of legal restraint pursuant to the state of being held in the custody of the Montana Department of Corrections or of any county or private facility with which MDOC contracts for confinement, and subject to the control, care, and supervision necessary to effect that custody. Confinement should not be construed to mean detention in a secure facility only; confinement for the purposes of PREA and this MOU includes placement in non-secure facilities, such as community confinement

facilities, youth community confinement facilities, and other facilities in which a person is legally required to reside as a part of a sentence, pending trial, or as part of a court sanction.

Confinement facility means any of the four facility types identified in the *Prison Rape Elimination Act* final rule, including: adult prisons and jails; lockups; community confinement facilities; and juvenile facilities.

Emergent means an urgent, unexpected act, occurrence, or event which demands prompt action. Under PREA, all allegations and incidences of sexual abuse (or prison rape) are necessarily considered emergent and trigger a coordinated institutional response.

Incident means an action, occurrence, or event that interrupts normal procedure, precipitates a crisis, or has other significant consequences.

Non-secure facility means a facility that allows a resident access to the community to achieve treatment or correctional objectives, such as educational or employment programs.

Secure facility means a facility in which the movements and activities of individual inmates, detainees, or residents are restricted or subject to control through the use of physical barriers or intensive staff supervision.

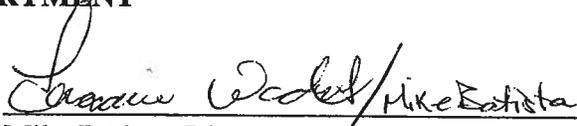
X. NOTICE

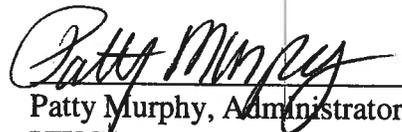
Any notices, demands, or communications required or permitted under this MOU must be made in writing to the authorized representatives, or their designees, of MDOC and YWCA. The names and signatures of these representatives appear below.

XI. APPROVAL AND SIGNATURES

DEPARTMENT

YWCA

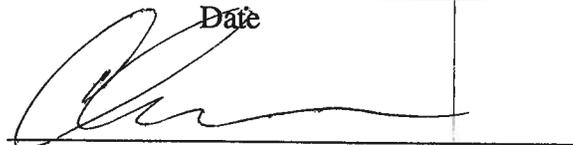

Mike Batista, Director
Montana Department of Corrections


Patty Murphy, Administrator
YWCA

8-1-13
Date

8.5.12
Date

Approved for Legal Content by:


Legal Counsel
Department of Corrections

7/26/13
Date