



North Carolina Department of Public Safety

Prevent. Protect. Prepare.

Pat McCrory, Governor

Frank L. Perry, Secretary

August 30, 2013

ADMINISTRATIVE MEMORANDUM: 10-2013

TO: Department of Public Safety Managers and Supervisors
OAS

FROM: David Shehdan, DPS HR Director
Charlotte Jordan Williams, DPS PREA Director *Chjw*

RE: **PREA Hiring and Promotion Prohibitions**

The Department of Public Safety must adhere to the United States Department of Justice Final Rule on the “National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act (PREA) Standards”. The hiring and promotion prohibition applies to those who come into contact with persons in confinement (inmates and juveniles) and under supervision (offenders and juveniles). The PREA standards are as follows:

28 C.F.R. Part 115 Docket No. OAG-131 RIN 1105-AB34

§ 115.17 Hiring and promotion decisions.

(a) The agency shall not hire or promote anyone who may have contact with inmates, offenders, and residents, and shall not enlist the services of any contractor who may have contact with inmates, offenders, and residents, who—

- (1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);
- (2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
- (3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.

(b) The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates, offenders, and residents.

(c) Before hiring new employees who may have contact with persons in confinement or under supervision, the agency shall:

MAILING ADDRESS:
4201 Mail Service Center
Raleigh, NC 27699-4201
Telephone: (919) 733-2126



OFFICE LOCATION:
512 N. Salisbury Street
Raleigh, NC 27604-1159
Fax: (919) 715-8477

www.ncdps.gov
An Equal Opportunity employer

- (1) Perform a criminal background records check; and (2) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.
- (d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact inmates, offenders, and residents.
- (e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates, offenders, and residents or have in place a system for otherwise capturing such information for current employees.
- (f) The agency shall ask all applicants and employees who may have contact with inmates, offenders, and residents directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotion and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.
- (g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.
- (h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

Therefore, the NCDPS has established a requirement to comply with the PREA standard for every employee and applicant. NCDPS may not hire or promote an individual who is subject to these prohibitions.

To ensure compliance, current employees must be made aware of these hiring and promotion prohibitions and acknowledge and provide information as required on the Employee Statement form "PREA Notice and Information Collection for Current Employees" (attached). Every employee must acknowledge and provide the required response to this form through the state's new Learning Management System (LMS). Instructions on use of the LMS are attached to assist employees.

If an employee answers "Yes" to any question on the attached Employee Statement while completing the online responses in LMS, a report will be generated from our internal LMS Administrator to the PREA office for further review.

The employee should also notify his or her supervisor immediately. Employees answering "Yes" to any of these questions should be temporarily reassigned to duties which do not require or provide direct contact with persons in confinement or under supervision. Further, NCDPS may conduct criminal background checks to ensure the Department's compliance with this standard. Senior Management will then make a determination of what further action is required in each situation.

All employees must complete the online LMS PREA notice and assessment on or before **October 31, 2013**. Additionally, the notice and assessment will be required on an annual basis.

The agency must make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse. The reference check form HR008 has been updated to provide instructions on what authorized questions to ask prior institutional employers. An institutional employer is defined as a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997).

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Implementation changes for new hires and reference checks requirements will require that the following steps are taken:

1. All postings will be required to reference PREA prohibitions;
2. Applicant Verification form (HR 005), formerly named Essential Job Functions Verification form, has been updated with additional language to include the PREA prohibitions;
3. The Professional Reference Check (HR 008) has been updated with the required questions;
4. The Employment Statements (HR 013) has been updated with additional language to include the PREA prohibitions.

If you have any questions regarding these procedures, please contact Charlotte Jordan Williams, DPS PREA Manager in the General Counsel's Office. Thank you for your attention to this matter.

Attachments:

1. N.C. Department of Public Safety Employee Statement form – "PREA Notice and Information Collection for Current Employees"
2. Applicant Verification form (HR 005)
3. Professional Reference Check (HR 008)
4. DPS Employment Statements (HR 013)

Cc: Secretary Frank Perry
Commissioner Dollar
Commissioner Gorham
Commissioner Guice
GC Ellis Boyle
Deputy Chief GC Deborah McSwain