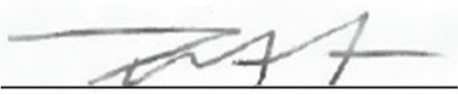


POLICY TITLE: CONTACT WITH VICTIMS POLICY NUMBER: 6.3 CHAPTER 6: VICTIM SERVICES		PAGE 1 OF 11
 STATE of MAINE DEPARTMENT of CORRECTIONS Approved by Commissioner: 		PROFESSIONAL STANDARDS: See Section VIII
EFFECTIVE DATE: May 16, 2016	LATEST REVISION: February 1, 2023	CHECK ONLY IF APA []

I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to the authority contained in Title 34-A M.R.S.A. Section 1403.

II. APPLICABILITY

Adult and Juvenile Facilities

III. POLICY

In order to aid in the protection of victims, promote rehabilitation of residents, and minimize risks to safety, security, and orderly management of its facilities, the Department prohibits contact between a resident currently in custody for domestic violence, a sex offense, child abuse, or child neglect and the victim, unless the prohibition is waived through the process established by this policy.

IV. DEFINITIONS

1. Child abuse - includes, but is not limited to, sexual abuse, an act of violence against a child, a threat of violence against a child, or endangering the welfare of a child by an act that the person knows or should know exposes a child to serious physical harm, such as by reckless driving with a child in the car, creating a police standoff with a child present, operating a meth lab in the child's home, having unsecured firearms in the child's home, intentionally starving a child, or purposely leaving a child in a hot car, etc.
2. Child neglect - includes, but is not limited to, omissions that endanger the welfare of a child, such as by failing to provide the child with adequate food, water, shelter, health care, or supervision, etc., on a reoccurring or enduring basis. Child neglect also includes substance use that causes an infant to be born addicted.
3. Domestic violence – any conduct committed against a family or household member that constitutes a crime under Title 17-A M.R.S.A. chapter 9 (offenses against the person), chapter 13 (kidnapping and criminal restraint), section 454 (tampering with a victim), section 458 (retaliation against a victim), section 506-B (violation of a protective order),

or section 758 (obstructing report of crime or injury); a crime under Title 15, section 1092 (violation of condition of release); or any other crime that by its nature involves domestic violence.

4. Domestic violence against a child - includes, but is not limited to, domestic violence directed at the child, domestic violence directed at another person in such a way that it also endangers the child (e.g., the resident assaulted another person who was holding the child), or the child being a witness to aggravated domestic violence, up to and including murder, etc.
5. Sex offense - any conduct that constitutes a crime under Title 17-A M.R.S.A. chapter 11 (sexual assaults) or chapter 12 (sexual exploitation of a minor).
6. Victim – for purposes of this policy,
 - a. a person against whom any of the above conduct has been committed;
 - b. a child in a child protection case as described below;
 - c. a child for whom parental rights have been terminated as described below;
 - d. a person with respect to whom there is a current protective order (including a consent decree); or
 - e. a person with respect to whom there is a current harassment notice.

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VI. ATTACHMENTS

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Attachment B:	Resident Request for Waiver for Contact with Victim

VII. PROCEDURES

Procedure A: Contact with Victims, General

1. A resident who is currently in the Department's legal custody for domestic violence, a sex offense, child abuse, or child neglect (i.e., the resident was, is, or will be serving a sentence or disposition during the current time in custody for the domestic violence, sex offense, child abuse, or child neglect) is prohibited from having contact with the victim unless granted a waiver by the Commissioner, or designee.
2. This includes a resident who is currently in custody on a conviction or adjudication for domestic violence, a sex offense, child abuse, or child neglect; on a conviction or adjudication for another offense if a formal charge of domestic violence, a sex offense, child abuse, or child neglect was pled down to the other offense or dismissed in exchange for a plea to the other offense; on a detention order for a charge of one these offenses; or on a revocation of administrative release, deferred disposition, probation, supervised release for sex offenders, or parole due to a violation based on conduct

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consisting of one of these offenses. It also includes a resident who is currently in custody due to an incident involving conduct consisting of one of these offenses.

3. Also, a resident who has an open child protection case with the Department of Health and Human Services (DHHS) is prohibited from having contact with the child unless granted a waiver by the Commissioner, or designee.
4. As well, a resident is prohibited from having contact with the child unless granted a waiver by the Commissioner, or designee, if during their current time in custody the resident had an open child protection case with DHHS which was later closed primarily because DHHS determined that the child is safe from abuse or neglect due to the resident's being in custody and there being a DHHS safety plan in place that prohibits some or all contact.
5. A resident is prohibited from having contact with the victim and may not request a waiver of a prohibition on contact with the victim if any of the following circumstances exist:
 - a. there is a written request from the victim, whether the victim is an adult or a minor, the legal guardian of an adult victim, or the parent or other legal guardian of a minor victim requesting all contact between the resident and the victim be prohibited;
 - b. all contact between the resident and the victim is prohibited by a current court order, e.g., a custody order or protection from abuse or other protective order, etc.;
 - c. all contact between the resident and the victim is prohibited by a condition of bail or conditional release, administrative release, deferred disposition, probation, supervised release for sex offenders, supervised community confinement, parole, or community reintegration status of either person, including any condition that is currently in effect, is to become effective at a later date, or is no longer in effect as the result of a current revocation, current detention order for violation of conditional release, or current return from community reintegration status or from supervised community confinement;
 - d. there is a current notice issued pursuant to Title 17-A, section 506-A for the resident not to engage in harassing conduct against the victim;
 - e. the victim is still a minor and the resident's parental rights have been terminated, unless the termination was voluntary and was not the result, direct or indirect, of either a child protection investigation by DHHS or a termination of parental rights case brought by any party;
 - f. the facility Chief Administrative Officer, or designee, is currently prohibiting all contact between the resident and the victim for any reason set out in other Department policies.

Note: If a written request, court order, condition, or prohibition by the Chief Administrative Officer, or designee, does not prohibit all contact with the victim, the granting of a partial waiver may be considered, provided any partial waiver shall only be for contact that is not prohibited.

6. When one or more of the above circumstances exists, a request for a waiver is not applicable and shall not be considered, and the Department's Director of Victim Services, or designee (or in a child neglect case, the Chief Administrative Officer, or designee) shall so inform the resident's case manager or resident's social worker and

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document it in CORIS. The case manager or social worker, as applicable, shall inform the resident that the waiver request is not being considered and why and document it in CORIS.

7. Unless an exception is made by the Director of Victim Services, or designee (or, in the case of child neglect, by the Chief Administrative Officer, or designee), a resident shall be required to successfully complete a Department domestic violence education, problematic sexual behavior treatment, or parenting program, or another relevant Department program, prior to being considered for a waiver. An exception may be made based on completion of a relevant community program. If the resident committed domestic violence, a sex offense, child abuse, or child neglect after they completed a relevant program, the program is not considered to have been successfully completed.
8. Unless it is a situation described in Procedure B.15 or 16 below, or an exception is made by the Director of Victim Services, or designee (or, in the case of child neglect, by the Chief Administrative Officer, or designee), a resident requesting a waiver for contact with a victim shall not be considered for a waiver if the resident has contacted or attempted to contact the victim with whom they are requesting to be allowed contact prior to the decision on the requested waiver. A resident who is not considered for a waiver due to contact or attempted contact may apply again for a waiver after at least three (3) months have passed without the resident having contacted or attempted to contact the victim.
9. The Department's Director of Victim Services, or designee (or, in the case of child neglect, by the Chief Administrative Officer, or designee), may make an exception to either or both of the above if there is an emergency, such as the impending death or serious medical condition of the resident or the victim due to illness or accident; contact is needed for reentry planning; contact is needed for an impending court proceeding; contact is necessary to avoid serious emotional harm to a child victim; a relevant program is not available; the resident has not been able to complete the required program due to circumstances beyond the person's control; the situation is one of an isolated instance of relatively less serious conduct; or there are other extenuating circumstances as determined by the Director of Victim Services, or designee (or, in the case of child neglect, by the Chief Administrative Officer, or designee). The facility Chief Administrative Officer, or designee, may ask the Director of Victim Services, or designee, to consider other extenuating circumstances.
10. In order to determine whether a resident has contacted or attempted to contact a victim with whom they are prohibited from having contact, a facility law enforcement officers may, if authorized in writing by the Chief Administrative Officer, or designee, monitor all or some of the resident's communications (i.e., mail, phone calls, visits, video visits, texts, emails), except for privileged communications, in accordance with the applicable Department policies. The law enforcement officer may seek this authorization at the request of the Department's Director of Victim Services, or designee, but such a request is not necessary.
11. The Department Director of Victim Services, or designee, may, without requesting monitoring, request a facility law enforcement officer to provide them information as to whether, when, and how a resident has contacted or attempted to contact a victim with whom the resident is prohibited from having contact (e.g., by providing them a log showing a resident's phone call history.)

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12. A copy of this policy shall be maintained in the library of each facility for review by residents.
13. It is the responsibility of each resident to address any questions about this policy or about the persons with whom they are allowed to have contact to their case manager (in the case of an adult resident), social worker (in the case of a juvenile resident), or other appropriate staff.
14. The Chief Administrative Officer, or designee, of each reception facility shall ensure that every resident is informed in writing at intake about the prohibitions on victim contact set out in this policy by providing the resident the Notification of Policy 6.3 (Attachment A) to be signed by the resident; the availability of a copy of this policy for review; and the staff to whom questions about the policy may be addressed. The notification shall also be posted in every housing unit in each of the Department's facilities.
15. A resident who has contacted or attempted to contact any victim with whom they are prohibited to have contact by this policy may be subject to criminal or juvenile criminal charges, revocation of probation (if an adult resident), facility discipline, or other appropriate legal or administrative action.

Procedure B: Waiver Requests and Decisions on Waiver Requests

1. If a resident wishes to have contact with their victim and is permitted to request a waiver, the resident shall submit a written request for a waiver of the prohibition using the Resident Request for Waiver for Contact with Victim form (Attachment B) to:
 - a. the Department's Director of Victim Services if it is a request for contact with a victim of domestic violence, a sex offense, or child abuse (even if the victim is also a victim of child neglect); or
 - b. the resident's Unit Manager or the resident's Juvenile Program Manager, as applicable, if it is a request for contact with a victim of child neglect only.
2. The form shall be fully completed. An incomplete form or a false statement on a form may result in a waiver request not being considered.
3. Upon receipt of a completed form, the Department's Director of Victim Services, or designee, the resident's Unit Manager, or designee, or the resident's Juvenile Program Manager, or designee, as applicable, shall review the resident's or resident's record in CORIS and other relevant information to determine whether the resident is permitted to request a waiver. If the resident is not permitted to request a waiver due to one of the circumstances in Procedure A above, the resident shall be notified as set out in that procedure.
4. If the resident is not permitted to request a waiver because the resident has not successfully completed a required Department program or the resident has contacted or attempted to contact the victim within the prior three (3) months, and there is no exception made, the Director of Victim Services, or designee (or, in the case of child neglect, the Chief Administrative Officer, or designee) shall inform the resident that the waiver request is not being considered and why and document it in CORIS.

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5. If the resident is permitted to request a waiver, the Director of Victim Services, or designee (or, in the case of child neglect, the Chief Administrative Officer, or designee) shall first determine whether the person with whom contact is being requested is a victim as defined in this policy.
6. If it is determined that the person is not such a victim, the Director of Victim Services, or designee, (or, in the case of child neglect, the Chief Administrative Officer, or designee) shall so inform the resident's case manager or resident's social worker and document it in CORIS. The case manager or social worker, as applicable, shall inform the resident that the waiver request is not necessary and why and document it in CORIS.
7. If it is determined that the person is such a victim, the Director of Victim Services, or designee (or, in the case of child neglect, the Chief Administrative Officer, or designee) shall determine whether or not to grant a waiver. If it is determined that the person is a victim of child neglect only, an adult resident's Unit Management Team or a juvenile resident's Unit Treatment Team, as applicable, shall make a recommendation to the Chief Administrative Officer, or designee, whether or not to grant a waiver.
8. In determining whether a person with whom a resident is seeking contact is such a victim, and in determining whether to grant a waiver, information from the following sources shall be considered, as relevant and necessary:
 - a. the resident;
 - b. the victim, if available;
 - c. in the case of a minor victim, the minor's parent or other legal guardian or another relevant person in the community;
 - d. in the case of adult victim with a legal guardian, the legal guardian or another relevant person in the community;
 - e. relevant court documents, including, but not limited to, affidavits, charging instruments and judgments and commitments, protection from abuse complaints and orders, bail and probation violation motions and orders, child custody orders, and preliminary protection orders, jeopardy orders, reunification and cease reunification orders, and orders for termination of parental rights;
 - f. police reports;
 - g. the prosecutor;
 - h. adult probation or juvenile community corrections officers;
 - i. the Department of Health and Human Services (DHHS);
 - j. facility staff, including the resident's Unit Team; and
 - k. any other relevant source.
9. If needed to obtain any relevant and necessary information, the resident shall be required to sign an authorization to disclose the information. Failure to sign a required authorization may result in a waiver request not being considered.

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10. In determining whether to grant a waiver, the following factors shall be considered, as applicable:
- input from the victim (in writing), if available;
 - in the case of a minor victim, input from the minor's parent or other legal guardian or another relevant person in the community (in writing);
 - in the case of adult victim with a legal guardian, input from the legal guardian or another relevant person in the community (in writing);
 - the relationship between the resident and the victim;
 - relevant risk assessment information (e.g., ODARA, Static 99, LSI-R, etc.)
 - participation in a relevant Department program or program in the community;
 - whether the resident has a history of domestic violence, problematic sexual behavior, child abuse, or child neglect;
 - aggravating circumstances and/or higher risk issues present in relevant conduct, whether leading to the current time in custody or in the resident's history;
 - risk of future domestic violence, problematic sexual behavior, or child abuse being increased if contact is allowed;
 - any known violation of a Department policy prohibiting contact with a victim;
 - whether there is documentation from a relevant professional of an emergency circumstance, e.g., victim's, or resident's impending death or serious medical condition due to illness or accident; impending court proceeding requiring contact; or serious emotional harm to a child of the resident if contact is not allowed with the child, etc.; and
 - any other relevant factors (e.g., content of form, institutional behavior, other program participation, or need for reentry planning, etc.).
11. Whether or not there has been input from the victim, and, in the case of a minor victim, input from the minor's parent or other legal guardian or another relevant person in the community, and the contents of any input shall be kept confidential and shall not be disclosed to the resident or to any other person who is not making the determination whether to grant a waiver or who is not assisting the person making the determination.
12. Under no circumstances shall a waiver be granted for contact with a victim if the contact is opposed by the victim, whether the victim is an adult or a minor. A request for contact made by the victim shall be considered as a factor but is not determinative of the decision.
13. A waiver shall not be granted for contact with a minor if the contact is opposed by a parent or other legal guardian of the minor, unless a court in a protection from abuse case or child custody case orders that contact be arranged between the resident and the minor victim. (Note: such a court order shall be considered as a factor but is not determinative of the decision.) A request for contact made by a parent or other legal guardian of a minor victim shall be considered as a factor but is not determinative of the decision.

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14. Under no circumstances shall a full or partial waiver, with or without conditions, be granted for contact with a child if the contact is opposed by DHHS and is made known by DHHS in writing.
15. If a court in a child protection case orders DHHS to arrange contact between the resident and the child for reunification or for any other purpose, a waiver shall be granted for that purpose, unless the Director of Victim Services, or designee (or, in the case of child neglect, the Chief Administrative Officer, or designee) determines that there is reasonable suspicion that allowing contact between them would facilitate criminal activity, juvenile criminal activity, or violation of facility rules or would create a risk to safety, security, or orderly management of the facility. This waiver may be conditioned on the resident's participation in a relevant program.
16. If DHHS in a child protection case has been allowing contact between the resident and the child prior to the resident's current time in the Department's custody and there is still in place a DHHS plan for contact, a waiver shall be granted for that contact, unless the Director of Victim Services, or designee (or, in the case of child neglect, the Chief Administrative Officer, or designee) determines that there is reasonable suspicion that allowing contact between them would facilitate criminal activity, juvenile criminal activity, or violation of facility rules or would create a risk to safety, security, or orderly management of the facility. This waiver may be conditioned on the resident's participation in a relevant program.
17. If DHHS in any other child protection case determines that contact between the resident and the child would be beneficial to the child and makes that known in writing, a waiver shall be granted for that purpose, unless the Director of Victim Services, or designee (or, in the case of child neglect, the Chief Administrative Officer, or designee) determines that there is reasonable suspicion that allowing contact between them would facilitate criminal activity, juvenile criminal activity, or violation of facility rules or would create a risk to safety, security, or orderly management of the facility or determines, based on information unavailable to DHHS, that the contact would be harmful to the child. This waiver may be conditioned on the resident's participation in a relevant program.

Notwithstanding the above, if the resident contacted or attempted to contact the victim prior to the decision on the requested waiver, unless an exception is made, the resident shall not be considered for a waiver and the resident may be required to apply again for the waiver after at least three (3) months have passed without the resident having contacted or attempted to contact the victim.

18. The existence of a plea deal or condition of bail, conditional release, administrative release, deferred disposition, probation, supervised release for sex offenders, or parole that does not prohibit contact or that permits contact shall not be considered as a factor in making a waiver decision.
19. Upon review, the Director of Victim Services, or designee (or, in the case of child neglect, the Chief Administrative Officer, or designee) may:
 - a. grant a full waiver for all contact (i.e., visit, phone, mail, and, if applicable, text message);
 - b. grant a partial waiver for limited contact (e.g., contact by mail only, contact by phone

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only, contact by video visit only, one in-person visit only, monitored contact only, etc.);

- c. grant a full or partial waiver with condition(s) (e.g., waiver is contingent on enrollment in and/or continued successful participation in a Department program; phone contact must be arranged through the resident's case manager; etc.); or
 - d. deny the waiver completely.
20. The Director of Victim Services, or designee, or the facility Chief Administrative Officer, or designee, as applicable, shall document the decision in CORIS.
21. The Director of Victim Services, or designee, or the facility Chief Administrative Officer, or designee, as applicable, shall provide a written response to the resident within forty-five (45) days of receipt of the request, unless documents needed to make the decision are still being gathered. A response from the Director of Victim Services, or designee, shall be marked as "legal mail" and processed as such at the facility where the resident is housed.
22. All decisions to prohibit, limit, or place condition(s) on contact are enforced at all times while the resident is in the Department's legal custody, including but not limited to, when the resident is:
- a. on a furlough pass or furlough leave, in a community transition program (work release, education release, or public service release), or on community reintegration status (if a juvenile resident) or supervised community confinement (if an adult resident);
 - b. boarded in a jail;
 - c. on transfer to an out of state facility; and
 - d. at a funeral or deathbed visit (unless a waiver has been granted for that specific purpose).
23. If a waiver is granted to a resident, it is effective only during the then current time in custody, and the waiver does not carry over to any subsequent time in custody. A resident requiring a waiver during a subsequent time in custody must make a request for a new waiver.
24. If, after a waiver has been granted in a child neglect case, it is discovered that the resident has also committed domestic violence, a sex offense, or child abuse against that victim, the waiver is no longer in effect unless and until the resident has requested and been granted a new waiver.
25. A waiver for contact with a victim of domestic violence, a sex offense, or child abuse may be revoked by the Department's Director of Victim Services, or designee, and a waiver for contact with a victim of child neglect may be revoked by the facility Chief Administrative Officer, or designee, if there are new circumstances or newly discovered circumstances that would have resulted in the request not being considered or in the request being denied if the circumstances had been in existence or had been known at the time of the waiver decision. A decision by the Director of Victim Services, or designee, to revoke a waiver shall be provided to the resident in writing and shall be marked as "legal mail" and processed as such at the facility where the resident is housed.

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26. Even if a waiver is granted, the facility Chief Administrative Officer, or designee, may deny, suspend, or restrict contact for any reason set out in other applicable Department policies.
27. A resident who has not been granted a waiver is not allowed to make another request for a waiver unless there has been a substantial change in circumstances, and any such request does not require a response.

Procedure C: Appeals

1. Except for a decision to not consider a waiver request because of one of the circumstances set out in Procedure A above, a resident may appeal a decision on a waiver request or a revocation of a waiver by sending a letter to the Deputy Commissioner, or designee, via the U.S. Postal Service.
2. In order to be reviewed, the appeal letter must be postmarked within fifteen (15) days of when the decision was received by the resident.
3. If an appeal is timely, after reviewing the case with the Director of Victim Services, or designee, or the facility Chief Administrative Officer, or designee, as applicable, the Deputy Commissioner, or designee, shall decide the appeal within fifteen (15) days after receiving the appeal. When it is sent to the resident, the decision on the appeal (or notation that the appeal was not timely) shall be marked as "legal mail" and processed as such at the facility where the resident is housed.
4. Upon review of the appeal, the Deputy Commissioner, or designee, may:
 - a. approve the decision;
 - b. reverse the decision;
 - c. modify the decision; or
 - d. request a new review be completed by the Director of Victim Services, or designee (or in the case of child neglect, the facility Chief Administrative Officer, or designee).
5. The Deputy Commissioner, or designee, shall provide a copy of the appeal and the response to the appeal to the Director of Victim Services, or designee, or the facility Chief Administrative Officer, or designee, as applicable, who shall then document the response in CORIS.
6. The Deputy Commissioner, or designee, is the final authority on an appeal (i.e., there is no further administrative level of appeal).

Procedure D: Documentation

1. In addition to documenting the responses to waiver requests and decisions on appeals in CORIS, all requests for waiver, documents reviewed, responses to waiver requests, appeals, and decisions on appeals in domestic violence, sex offense, and child abuse cases shall be maintained in the Office of Victim Services per the Department's record retention schedule.

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2. In addition to documenting the responses to waiver requests and decisions on appeals in CORIS, all requests for waiver, documents reviewed, responses to waiver requests, appeals, and decisions on appeals in child neglect cases shall be maintained at the facility separate from the resident's other records per the Department's record retention schedule.
3. A facility Chief Administrative Officer, or designee, shall forward to the Director of Victim Services, or designee, upon their request, a copy of these records.
4. Any documents received from the Department of Health and Human Services (DHHS) shall be destroyed once the resident has been released from custody.

VIII. PROFESSIONAL STANDARDS

None

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