
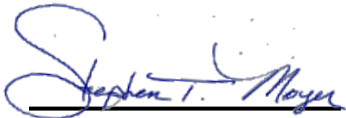


# Secretary's Directive



<b>Title:</b> <b>Prison Rape Elimination Act — Federal Standards Compliance</b>	<b>Executive Directive Number:</b> <b>DPSCS.020.0026</b> <b>Revised</b>
<b>Related MD Statute/Regulations:</b> Correctional Services Article, §2-103, Annotated Code of Maryland: Prison Rape Elimination Act of 2003 (P.L. 108-79)	<b>Supersedes:</b> DPSCS.020.0026, Prison Rape Elimination Act — Federal Standards Compliance dated April 15, 2016
<b>Related ACA Standards:</b> 4-4281; 4-4281-1 thru 8; 4-ALDF-2A-29 4-ALDF-4D-22-1 through 4-ALDF-4D-22-8	<b>Responsible Authority:</b>  <b>Deputy Secretary for Operations</b>
<b>Related MCCS Standards:</b> .05B	<b>Effective Date:</b> <b>August 19, 2016</b> <b>Number of Pages: 8</b>



**Stephen T. Moyer**  
**Secretary**

## **.01 Purpose.**

- A. This directive continues policy for the Department of Public Safety and Correctional Services (Department) concerning sexual abuse and sexual harassment of an inmate.
- B. This directive continues provisions for a Prison Rape Elimination Act (PREA) PREA Coordinator and a PREA Committee for the Department and assigns responsibilities to the PREA Coordinator and PREA Committee related to Department compliance with federal PREA standards established to prevent, detect, and respond to acts of sexual abuse and sexual harassment of an inmate.

## **.02 Scope.**

This directive applies to all units of the Department.

## **.03 Policy.**

- A. The Department does not tolerate sexual abuse or sexual harassment of an inmate.
- B. The Department requires that an employee with knowledge of an incident of inmate sexual abuse or sexual harassment shall report that knowledge according to Department procedures for reporting employee misconduct or inmate rule violations.
- C. The Department shall investigate the background of all prospective employees, promotees and contractual service providers who have direct contact with inmates to determine suitability for hire or promotion under the standards established by the Prison Rape Elimination Act.

## **.04 Definitions.**

- A. In this directive, the following terms have the meanings indicated.
- B. Terms Defined.

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- (1) "Community confinement facility":
  - (a) Means a facility housing individuals under the authority of the Department as part of a term of confinement or a condition of pre-trial release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during non-residential hours.
  - (b) May include, but is not limited to, a:
    - (i) Community treatment center;
    - (ii) Halfway house;
    - (iii) Restitution center;
    - (iv) Mental health facility;
    - (v) Alcohol or drug abuse rehabilitation center;
    - (vi) Residential re-entry center; or
    - (vii) Other facility, except for a juvenile facility, used for similar purposes.
- (2) "Inmate" means an individual who is actively or constructively detained or confined in a Department detention, correctional or community confinement facility or otherwise under the care or supervision of the Department.
- (3) Sexual Abuse.
  - (a) "Sexual abuse" of an inmate by an employee includes the following acts performed with or without consent by the inmate:
    - (i) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
    - (ii) Contact between the mouth and the penis, vulva, or anus;
    - (iii) Contact between the mouth and any body part where the employee has the intent to abuse, arouse, or gratify sexual desire;
    - (iv) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the employee has the intent to abuse, arouse, or gratify sexual desire;
    - (v) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the employee has the intent to abuse, arouse, or gratify sexual desire;

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- (vi) Any attempt, threat, or request by an employee to engage in the activities described in §§.04B(3)(a)(i)-(v) of this directive;
  - (vii) Any display by an employee of the employee's uncovered genitalia, buttocks, or breast in the presence of an inmate; and
  - (viii) Voyeurism by an employee.
- (b) "Sexual abuse" of an inmate by another inmate includes the following acts, if the victim inmate does or does not consent, is coerced into the act by overt or implied threats of violence, or is unable to consent or refuse:
- (i) Acts listed under §§.04B(3)(a)(i) and (ii) of this directive;
  - (ii) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
  - (iii) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another inmate, excluding contact incidental to a physical altercation.
- (4) "Sexual harassment" includes:
- (a) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed toward another inmate; and
  - (b) Repeated verbal comments or gestures of a sexual nature to an inmate by an employee, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.
- (5) "Voyeurism" means that an employee invades the privacy of an inmate for reasons unrelated to official duties, such as peering at an inmate who is using the toilet in the inmate's cell to perform bodily functions; requiring an inmate to expose the inmate's buttocks, genitals, or breasts; or recording images of an inmate's naked body or of an inmate performing bodily functions.

**.05 Responsibility.**

- A. The Secretary shall designate a Department PREA Coordinator (Coordinator).
- B. The Coordinator shall have sufficient time and appropriate authority to develop, implement, and oversee Department activities taken to comply with PREA standards in Department correctional and detention facilities and at a minimum, is responsible for:
  - (1) Oversight of Department prevention, detection, and response activities designed to support the Department's zero tolerance policy for sexual abuse and sexual harassment of an inmate;
  - (2) Ensuring that Department PREA-related activities comply with federal PREA standards in the following areas:

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- (a) Prevention planning;
  - (b) Planning for responding to incidents or complaints;
  - (c) Training and education;
  - (d) Screening for risk of sexual victimization and abusiveness;
  - (e) Reporting;
  - (f) Investigation;
  - (g) Discipline;
  - (h) Medical and mental health care;
  - (i) Data collection and review;
  - (j) Audits; and
  - (k) Auditing and corrective action;
- (3) Approving a recommendation from:
- (a) A managing official designating a facility employee as the facility's PREA Compliance Manager; and
  - (b) The Commissioner of Correction, Commissioner of Pretrial Detention and Services and Director of the Patuxent Institution for a unit PREA Compliance Manager;
- (4) Maintaining a current list of detention, correctional, and community confinement facility PREA compliance managers and unit PREA compliance managers and related contact information;
- (5) As the Chair of the PREA Committee, designating members to perform PREA related assignments and activities;
- (6) Authorizing procedures for the Department related to prevention, detection, and response to acts of sexual abuse and sexual harassment involving an inmate; and
- (7) Ensuring preparation and submission of PREA-related reports including, but not limited to:
- (a) An annual report to the Secretary, or a designee, on the status of Department PREA-related activities;
  - (b) Responses to PREA audit findings; and
  - (c) Other reports required under PREA.

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C. PREA Compliance Manager (PCM).

- (1) The managing official for each Department detention, correctional and community confinement facility, shall identify a PREA compliance manager (PCM) for that facility.
  - (a) The managing official may be the PCM or recommend to the Coordinator, for approval, a designee to be the facility PCM.
  - (b) The managing official shall ensure that an employee recommended to the Coordinator as the facility PCM has the authority to independently act on behalf of the managing official on facility PREA compliance activities.
  - (c) If the managing official is the PCM or recommends and has an employee approved by the Coordinator as the facility PCM, the managing official shall notify the Coordinator of the contact information for the facility PCM and subsequent changes to that information.
  - (d) Should events require a new designee for the facility PCM, the managing official shall serve as facility PCM until such time as the Coordinator approves a recommended designee.
- (2) The Commissioner of Correction, Commissioner of Pretrial Detention and Services and Director of the Patuxent Institution shall, from the approved subordinate facility PCMs, identify a unit PCM to represent the units facility PCMs as a PREA Committee member.
  - (a) The Commissioner of Correction, Commissioner of Pretrial Detention and Services and Director of the Patuxent Institution may be the unit PCM or recommend to the Coordinator, for approval, a designee to be the unit PCM.
  - (b) The Commissioner of Correction, Commissioner of Pretrial Detention and Services and Director of the Patuxent Institution shall ensure that an employee recommended to the Coordinator as the unit PCM has the authority to independently act on behalf of the Commissioner of Correction, Commissioner of Pretrial Detention and Services or Director of the Patuxent Institution on unit PREA compliance activities and PREA Committee responsibilities and assignments.
  - (c) If the Commissioner of Correction, Commissioner of Pretrial Detention and Services and Director of the Patuxent Institution is the unit PCM or recommends and has an employee approved as the unit PCM, the region director shall notify the Coordinator of the contact information for the unit PCM and subsequent changes to the contact information.
  - (d) An individual designated and approved as a unit PCM shall have the authority of the Commissioner of Correction, Commissioner of Pretrial Detention and Services or Director of the Patuxent Institution to independently act and direct activities of the unit's facility PCMs on PREA-related activities.
  - (e) Should events require a new unit designee, the Commissioner of Correction, Commissioner of Pretrial Detention and Services or Director of the Patuxent Institution shall serve as unit PCM until such time as the Coordinator approves a recommended unit designee.

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D. PREA Committee (Committee).

- (1) Because PREA requirements impact more than just Department Operations activities, the Committee, at a minimum, shall consist of the:
  - (a) PREA Coordinator (Chair);
  - (b) Unit PREA compliance managers; and
  - (c) The following individuals or approved designees who have the authority to independently act on PREA matters on behalf of the individual specifically identified:
    - (i) Inspector General;
    - (ii) Director — Internal Investigative Division;
    - (iii) Executive Director — Field Support Services;
    - (iv) Chief Medical Officer;
    - (v) Executive Director — Police and Correctional Training Commissions;
    - (vi) Director — Security Operations;
    - (vii) Director — Capital Construction and Facilities Maintenance;
    - (viii) Executive Director — Human Resources Services Division;
    - (ix) Chief Hearing Officer;
    - (x) Coordinator – Inmate Affairs;
    - (xi) Executive Director — Grants, Policy, and Statistics; and
    - (xii) Secretary's Director — Investigation, Intelligence and Fugitive Apprehension.
- (2) The Chair may request additional Department employees to attend meetings and perform PREA-related assignments.
- (3) The chair shall schedule Committee meetings to take place at least annually, but may schedule meetings as necessary to ensure prompt attention to PREA-related issues affecting the Department.

E. The Committee is responsible for:

- (1) Coordinating Department and facility compliance with applicable federal PREA standards by:
  - (a) Monitoring Department sexual abuse and sexual harassment data and activities related to compliance with applicable federal PREA standards;

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(b) Facilitating development of policy and procedures and operational and administrative actions to specifically address compliance with applicable federal PREA standards; and

(c) Facilitating PREA audit and post audit activities; and

(2) Facilitating preparation of and reviewing reports required by PREA.

**F. Human Resources Services Division (HRSD).**

(1) The HRSD shall adopt hiring policy consistent with federal PREA standards prohibiting the hiring or promotion of anyone who may have contact with inmates, and prohibiting the enlisting of the services of any contractor, who may have contact with inmates, who:

(a) 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);

(b) Was 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

(c) Was civilly or administratively adjudicated to have engaged in the activity described in §.04B(3) of this directive.

(2) The HRSD shall consider incidents of sexual harassment when determining to hire or promote an employee or contract with a service provider if the individual may have contact with an inmate.

(3) Before hiring a new employee to perform duties involving contact with an inmate, the Human Resources Services Division shall:

(a) Conduct a criminal background records check; and

(b) Consistent with federal, state, and local law, make a best effort to contact all prior institutional employers for information on substantiated allegations of sexual abuse or a resignation during a pending investigation of an allegation of sexual abuse.

(c) Before enlisting a contractor to perform services that involve contact with an inmate, the HRSD shall conduct a criminal background records check of the contractor's employees who may have contact with an inmate.

(4) The HRSD shall inquire of each applicant and current employees who may have contact with an inmate directly about previous misconduct described in §.04B(3) of this directive in:

(a) A written application or interview for employment or promotions; and

(b) An interview or written self-evaluation conducted as a part of a review of a current employee.

(5) A material omission regarding conduct described in this directive or providing materially false information shall be grounds for termination of employment.

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- G. The Department shall continue an aggressive approach to preventing, detecting, and responding to acts of sexual abuse and sexual harassment involving an inmate.
- H. The Department shall ensure that existing efforts and new strategies to prevent, detect, and respond to acts of sexual abuse and sexual harassment involving an inmate comply with applicable national standards established under the authority of PREA.
- I. For each subordinate employee and contractor service provider who may have contact with an inmate, an appointing authority, or a designee, shall conduct a criminal records background check, at minimum, every five years, or have in place a system for otherwise capturing such information for current employees and contractors.

**.06 Attachment(s)/Links.**

There are no attachments or links to this directive.

**.07 History.**

- A. This Secretary's Directive supersedes DPSCS.020.0026 dated April 15, 2016 making adjustments based on changes to Department organization. Changes from the previous directive are underlined.
- B. This directive supersedes provisions of any other prior existing Department or unit communication with which it may be in conflict.

**.08 Correctional Facility Distribution Codes.**

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- B
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