
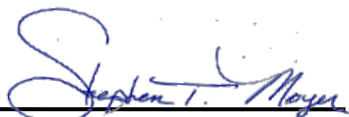


Executive Directive



Title: PREA Investigations — Tracking and Review	Executive Directive Number: OSPS.020.0027 REVISED
Related MD Statute/Regulations: Correctional Services Article, §§2-103 Annotated Code of Maryland; Prison Rape Elimination Act of 2003 (P.L. 108-79)	Supersedes: Executive Directive Number COS.020.0027 dated March 20, 2014
Related Standards: ACA 4-4281, 4-4281-3, 4-4281-7 and 4-4281-8. 4-ALDF-4D-22-2,-5,-6 and -7. PREA Standards 115.21, 115.22, 115.34, 115.64, 115.67, and 115.71 — 73	Responsible Authority:  PREA Coordinator
Related MCCS Standards: N/A	Effective Date: November 13, 2015 Number of Pages: 7



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Secretary



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.01 Purpose.

This directive continues policy and procedures for the Department of Public Safety and Correctional Services (Department) for data collection, tracking, and review of PREA related incidents and investigations.

.02 Scope.

This directive applies to Department personnel assigned to investigate an allegation of misconduct that involves a PREA related sex offense and Correctional Facility Managing Officials.

.03 Policy.

- A. The Department does not tolerate sexual abuse or sexual harassment of an inmate.
- B. The Department shall uniformly collect accurate data for every allegation of sexual abuse from each correctional facility under the authority of the Department to assess and improve effectiveness of sexual abuse prevention, detection and responsiveness.
- C. The Department shall ensure that existing efforts and new strategies to prevent, detect, and respond to acts of sexual abuse comply with applicable federal standards established under the authority of the Prison Rape Elimination Act (PREA) of 2003 (P.L. 108-79).

.04 Definitions.

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

Executive Directive Number: OSPS.020.0027

- (a) “Employee” means an individual assigned to or employed by the Department in a full-time, part-time, temporary, or contractual position.
- (b) “Employee” includes:
 - (i) A volunteer; and
 - (ii) An intern.
- (2) “Inmate” means an individual who is actively or constructively detained or confined in a Department correctional facility or otherwise under the care or supervision of the Department.
- (3) “Investigator” means a Department employee permanently assigned to, or assigned to assist, the Internal Investigative Division (IID) with the responsibilities specified under Correctional Services Article, §10-701(a)(3), Annotated Code of Maryland.
- (4) “PREA Committee” means the Department’s PREA Committee established by the Department’s PREA Coordinator required by Secretary’s Directive titled Prison Rape Elimination Act — Federal Standards Compliance.
- (5) 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;
 - (vi) Any attempt, threat, or request by an employee to engage in the activities described in §§.04B(5)(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.

Executive Directive Number: OSPS.020.0027

- (b) “Sexual abuse” of an inmate by an inmate includes the following acts if the victim inmate does not consent, is coerced into the act by overt or implied threats of violence, or is unable to consent or refuse:
 - (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) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
 - (iv) Any other intentional touching, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

- (6) “Sex related offense”:
 - (a) Means any behavior or act:
 - (i) Of a sexual nature by an employee directed toward an inmate;
 - (ii) Of a sexual nature by an employee directed toward an inmate’s personal contact or associate who believes the employee exercises influence or authority over the inmate; or
 - (iii) Of a derogatory or offensive sexual nature by an inmate directed toward another inmate.

 - (b) May include, but is not limited to:
 - (i) A sexual crime identified under Criminal Law Article, §§3-301 — 312, 3-314, and 3-324, Annotated Code of Maryland;
 - (ii) Kissing, hugging, and hand-holding for the sexual arousal or gratification of an individual, or for the abuse of either party;
 - (iii) Sexual abuse;
 - (iv) Indecent exposure;
 - (v) Voyeurism;
 - (vi) Sexual harassment;
 - (vii) Request for a sexual favors;
 - (viii) A solicitation or attempt to commit any of the acts listed under §§.04B(6)(b)(i) – (vii) of this directive;
 - (ix) Action or the lack of action on the part of an employee that contributed to an incident involving a sex related offense; and

Executive Directive Number: OSPS.020.0027

- (x) Retaliation related to a sex related offense, such as refusing to participate, reporting, or participating in the investigation of a sex related offense.
 - (c) Does not include contact with an inmate made by an employee in the course of the proper performance of an official duty such as a medical examination or an authorized and properly conducted security-related pat down or strip search.
- (7) Sexual Favor.
- (a) “Sexual favor” between an employee and an inmate means an agreement to participate in sexual misconduct that is obtained by threat or promise of what is believed to be special or different treatment affecting an inmate’s safety supervision status, work status, program involvement, or other privilege.
 - (b) “Sexual favor” between an inmate and another inmate means an agreement to participate in inmate on inmate sexual conduct that is obtained by threat or promise of what is believed to be special or different treatment.
- (8) “Sexual harassment” includes 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.
- (9) “Voyeurism”:
- (a) Means that an employee invades the privacy of an inmate for reasons unrelated to official duties.
 - (b) Includes, but is not limited to:
 - (i) Peering at an inmate who is using the toilet in the inmate’s cell to perform bodily functions;
 - (ii) Requiring an inmate to expose the inmate’s buttocks, genitals, or breasts; or
 - (iii) Recording images of an inmate’s naked body or of an inmate performing bodily functions.

.05 Responsibility.

- A. The Department’s Internal Investigative Division (IID) is the primary investigative body for all PREA related allegations and shall collect and maintain data regarding PREA related criminal and administrative investigations, which are required to be reported to IID.
- B. The IID shall:
 - (1) Uniformly collect and maintain data for each reported allegation of sexual abuse at correctional facility under the authority of the Department that, at a minimum, is necessary to respond to data reporting required by the Survey of Sexual Violence conducted by the Department of Justice.
 - (2) Be responsible for developing forms necessary to collect data required under this directive.

Executive Directive Number: OSPS.020.0027

- (3) Annually report PREA related data to the PREA Coordinator, or a designee.
- (4) By June 30 of each calendar year, report sexual violence data from the previous calendar year to the Department of Justice.

C. The PREA Coordinator, or a designee shall:

- (1) Aggregate the incident-based sexual abuse data annually.
- (2) Maintain review and collect data as needed from all available incident-based documents, including reports, investigative files, and sexual abuse incident reviews.
- (3) Ensure that all aggregated sexual abuse data is included in an annual report that:
 - (a) Includes an assessment of the Department's sexual abuse prevention, detection, and response policies, practices, and training;
 - (b) If applicable, identifies Department-wide problem areas or problems within specific correctional facilities;
 - (c) Is used to facilitate corrective action at the Department and correctional facility levels;
 - (d) Compares the current calendar year's data and activities with that available from previous years;
 - (e) Assesses the Department's progress in addressing sexual abuse; and
 - (f) Is approved by the Secretary and made available to the public through the Department's public website that redacts information:
 - (i) That would present a clear and specific threat to the safety and security of a correctional facility before publication indicating the nature of the redacted information; and
 - (ii) Related to personal identifiers.
- (4) Securely maintain incident-based and aggregate data ensuring only authorized personnel have access to the information.
- (5) Maintain sexual abuse data for at least 10 years from the date received.

D. Except for sex related offenses that are investigated and determined to be unfounded, a facility incident review team shall, within 30 days after an investigation of a sex related offense is concluded shall review the incident.

E. The facility incident review team shall:

- (1) Consist of upper-level facility management officials designated by the facility managing official after consultation with the facility PREA Compliance Manager.

Executive Directive Number: OSPS.020.0027

- (2) Have input from or access to line supervisors, investigators, and medical or mental health practitioners concerning the incident being reviewed.
- (3) Consider if the incident or allegation indicates a need to change policy or procedure to better prevent, detect or respond to sexual abuse.
- (4) Consider if the incident or allegation was motivated by:
 - (a) Race;
 - (b) Ethnicity;
 - (c) Gender identity;
 - (d) Lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status;
 - (e) Gang affiliation; or
 - (f) Other group dynamics at the correctional facility.
- (5) Examine the location where the incident allegedly occurred to:
 - (a) Determine if there are physical plant issues that may have contributed to the incident; and
 - (b) Assess staffing levels in the area and the need for monitoring technology to augment or supplement staffing these areas.
- (6) Prepare a report of findings for the managing official and PREA compliance manager, which includes, but is not limited to:
 - (a) Identifying problem areas;
 - (b) Necessary corrective action; and
 - (c) Recommendations for improvement.

F. The managing official shall:

- (1) Work with the facility's PREA Compliance Manager to:
 - (a) Implement the facility incident review team's recommendations for improvement from the review team; or
 - (b) If a recommendation is not implemented, document the reason for not adopting the recommendation.
- (2) Ensure that reporting requirements under this directive are performed.

Executive Directive Number: OSPS.020.0027

- (3) Communicate, through the facility's PREA Compliance Manager, with the PREA Coordinator, or a designee, concerning PREA compliance and related issues necessary for Department PREA reporting requirements.

.06 Attachment(s).

There are no attachments to this directive.

.07 History.

This directive replaces Executive Directive Number COS.020.0027 dated March 20, 2014 and supersedes provisions of any other prior existing Department communication with which it may be in conflict.

.08 Operations Distribution.

A

S — Staff Assigned to Conduct an Investigation of a Sex Related Offense