

# Prison Rape Elimination Act Audit Manual

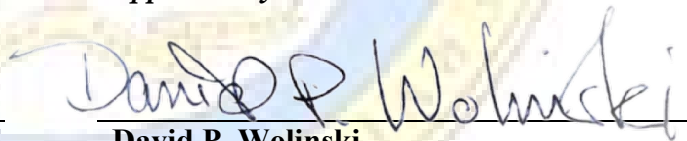
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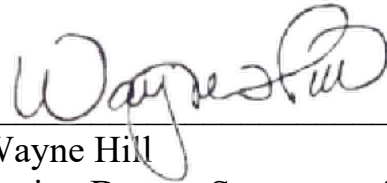


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## PREFACE

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This manual has been developed in accord with the National Standards to Prevent, Detect, and Respond to Prison Rape under the Prison Rape Elimination Act (PREA), 28 C.F.R. Part 115. Contextual changes have been made to indicate that the standards apply to the Department of Public Safety and Correctional Services (Department). References that do not apply to the Department have been removed.



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Wayne Hill  
Acting Deputy Secretary of Operations

# Prison Rape Elimination Act (PREA) Manual

## Revision Dates

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## REFERENCES

<b>Departmental Directives and Manuals</b>		
Administration	ADM.050.0041	Criminal History Records Check — Non-Mandated Employees
Department	DPSCS.020.0026	Prison Rape Elimination Act - Federal Standards Compliance
Internal Investigation Unit	IIU.110.0011	Investigating Sex Related Offenses
Internal Investigation Unit	IIU.220.0002	Evidence and Personal Property Collection, Storage, and Disposition
Office of Equal Opportunity	OEO.020.0032	Limited English Proficiency (LEP) Policy
Operations	OPS.001.0008	Inmate Handbooks
Operations	OPS.020.0003	Reporting Serious Incidents
Operations	OPS.050.0001	Sexual Misconduct – Prohibited
Operations	OPS.110.0047	Search Protocol - Inmates
Operations	OPS.115.0001	Staffing Analysis and Overtime Management
Operations	OPS.200.0005	Inmate on Inmate Sexual Conduct - Prohibited
Operations	OPS.200.0006	Assessment for Risk of Sexual Victimization and Abusiveness
Programs and Services	OSPS.020.0027	PREA Investigations - Tracking and Review
Programs and Services	OSPS.050.0011	Americans With Disabilities Act of 1990, Titles I & II
Division of Correction	DOC.100.0002	Case Management Manual, Section 17
Clinical Services		Mental Health Services Manual, Appendices G & H
Clinical Services		Medical Evaluation Manual, Chapter 13
Clinical Services		Medical Administration Manual Chapter 9
Volunteer Services		Volunteer Orientation Manual

<b>Code of Maryland Regulations (COMAR) and Annotated Code of Maryland</b>	
COMAR 10.12.02	Rape and Sexual Offense—Physician and Hospital Charges
COMAR 12.02.28	Administrative Remedy Procedure (ARP)
COMAR 12.03.01—.34	Inmate Discipline
COMAR 12.10.01	Correctional Training Commission – General Regulations
COMAR 12.11.01	Internal Investigative Division
COMAR 21.06.05.01	Right to Inspect
COMAR 21.07.01.02 and .22	Scope of Contract and Compliance with Laws
Correctional Services Article, § 10-701	Internal Investigative Division
General Provisions Article, § §4-311	Personnel Records
State Personnel and Pensions Article, §3-302	Rights of the State

<b>Worksheets &amp; Forms</b>	
Incident Review	Screening Instrument Instructions
Notice of Incident (to another facility)	Screening Instrument – Spanish
Retaliation Monitoring	Staffing Plan Development Checklist
Screening Instrument	Staffing Plan Annual Review

## DEFINITIONS AND COMPARABLE TERMS

28 C.F.R. § 115.5 General Definitions.	Comparable Maryland Definitions.
<p>(1) <b>Agency</b> means the unit of a State, local, corporate, or nonprofit authority, or of the Department of Justice, with direct responsibility for the operation of any facility that confines inmates, detainees, or residents, including the implementation of policy as set by the governing, corporate, or nonprofit authority.</p>	<p>“<b>Unit</b>” means an organization, institution, agency, or division established by statute or created by the Secretary of Public Safety and Correctional Services (Secretary) within the Department.</p>
<p>(2) <b>Agency head</b> means the principal official of an agency. Community confinement facility means a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours.</p>	<p>“<b>Managing official</b>” has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland. (“Managing official” means the administrator, director, warden, superintendent, sheriff, or other individual responsible for the management of a correctional facility.)</p> <p>“Unit head” means the highest authority of a unit.</p>
<p>(3) <b>Contractor</b> means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency.</p>	<p>“<b>Contractual employee</b>” means an individual who has a temporary employee-employer relationship with the Department under the terms of an employment contract.</p>
<p>(4) <b>Detainee</b> means any person detained in a lockup, regardless of adjudication status.</p>	<p><b>Inmate.</b></p> <p>(a) “Inmate” means an individual in actual or constructive custody of the Department.</p> <p>(b) “Inmate” includes an individual in pre-trial, sentenced, or pre-sentenced (post guilty finding but before sentencing) status.</p>

**28 C.F.R. § 115.5 General Definitions.**

(5) **Direct staff supervision** means that security staff are in the same room with, and within reasonable hearing distance of, the resident or inmate.

(6) **Employee** means a person who works directly for the agency or facility.

(7) **Exigent circumstance** means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility. Facility means a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals.

(8) **Facility head** means the principal official of a facility.

**Comparable Maryland Definitions.**

**Direct Observation.**

- (a) “Direct observation” means full, attentive, unobstructed surveillance of an inmate by staff.
- (b) “Direct observation” may include:
  - (i) One-on-one observation; and
  - (ii) Observing a group.

**Employee.**

- (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 special appointee;
  - (ii) A volunteer;
  - (iii) An intern; or
  - (iv) Contractor.

“**Exigent circumstances**” means a set of temporary and unforeseen conditions that requires immediate action to combat a threat to the security or order of a correctional or detention facility.

“**Managing official**” has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland. (“Managing official” means the administrator, director, warden, superintendent, sheriff, or other individual responsible for the management of a correctional facility.)

“**Unit head**” means the highest authority of a unit.

28 C.F.R. § 115.5 General Definitions.
<p>(9) <b>Full compliance</b> means compliance with all material requirements of each standard except for <i>de minimis</i> violations, or discrete and temporary violations during otherwise sustained periods of compliance.</p>
<p>(10) <b>Gender nonconforming</b> means a person whose appearance or manner does not conform to traditional societal gender expectations.</p>
<p>(11) <b>Inmate</b> means any person incarcerated or detained in a prison or jail</p>
<p>(12) <b>Intersex</b> means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.</p>
<p>(13) <b>Jail</b> means a confinement facility of a Federal, State, or local law enforcement agency whose primary use is to hold persons pending adjudication of criminal charges, persons committed to confinement after adjudication of criminal charges for sentences of one year or less, or persons adjudicated guilty who are awaiting transfer to a correctional facility.</p>
<p>(14) <b>Juvenile</b> means any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail.</p>
<p>(15) <b>Juvenile facility</b> means a facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system.</p>

Comparable Maryland Definitions.
<p><b>Inmate.</b>            (a) “Inmate” means an individual in actual or constructive custody of the Department.            (b) “Inmate” includes an individual in pre-trial, sentenced, or pre-sentenced (post guilty finding but before sentencing) status.</p>
<p><b>“Intersex person”</b> means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.</p>
<p><b>“Correctional facility”.</b>            (a) Has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland.            (b) Includes a community confinement facility and detention facility.</p>
<p><b>“Correctional facility”.</b>            (a) Has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland.            (b) Includes a community confinement facility and detention facility.</p>

**28 C.F.R. § 115.5 General Definitions.**

(16) **Law enforcement staff** means employees responsible for the supervision and control of detainees in lockups

(17) **Lockup** means a facility that contains holding cells, cell blocks, or other secure enclosures that are:

- (1) Under the control of a law enforcement, court, or custodial officer; and
- (2) Primarily used for the temporary confinement of individuals who have recently been arrested, detained, or are being transferred to or from a court, jail, prison, or other agency.

(18) **Medical practitioner** means a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified medical practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

(19) **Mental health practitioner** means a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified mental health practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

**Comparable Maryland Definitions.**

**Correctional Officer.**

- (a) “Correctional officer” has the meaning stated in COMAR 12.10.01.01.
- (b) “Correctional officer” includes an employee:
  - (i) Required to meet Correctional Training Commission selection, training, and certification requirements; and
  - (ii) Performing duties and responsibilities related to the custody, control, or security of an inmate.

**“Correctional facility”.**

- (a) Has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland.
- (b) Includes a community confinement facility and detention facility.

**“Licensed health care professional”** means an individual who by virtue of education, credentials, and experience is permitted by law to practice medicine and, within the scope of that authorization, may evaluate and prescribe care for an individual identified to have a medical or mental health condition.

**“Mental Health Clinician”** means a treatment provider properly licensed as a psychiatrist, psychologist, clinical social worker, mental health counselor, certified nurse practitioner, and other professionals who by virtue of education, credentials, and experience are permitted by law to evaluate and care for the mental health needs of an individual.

**28 C.F.R. § 115.5 General Definitions.**

(20) **Pat-down search** means a running of the hands over the clothed body of an inmate, detainee, or resident by an employee to determine whether the individual possesses contraband.

(21) **Prison** means an institution under Federal or State jurisdiction whose primary use is for the confinement of individuals convicted of a serious crime, usually in excess of one year in length, or a felony.

(22) **Resident** means any person confined or detained in a juvenile facility or in a community confinement facility.

(23) **Secure juvenile facility** means a juvenile facility in which the movements and activities of individual residents may be restricted or subject to control through the use of physical barriers or intensive staff supervision. A facility that allows residents access to the community to achieve treatment or correctional objectives, such as through educational or employment programs, typically will not be considered to be a secure juvenile facility.

(24) **Security staff** means employees primarily responsible for the supervision and control of inmates, detainees, or residents in housing units, recreational areas, dining areas, and other program areas of the facility.

**Comparable Maryland Definitions.**

**“Frisk search”** means a non-intrusive examination performed by running hands over the clothed body, applying gentle pressure to determine if contraband is being concealed.

**“Correctional facility”.**

(a) Has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland.

(b) Includes a community confinement facility and detention facility.

**Inmate.**

(a) “Inmate” means an individual in actual or constructive custody of the Department.

(b) “Inmate” includes an individual in pre-trial, sentenced, or pre-sentenced (post guilty finding but before sentencing) status.

**“Correctional facility”.**

(a) Has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland.

(b) Includes a community confinement facility and detention facility.

**Correctional Officer.**

(a) “Correctional officer” has the meaning stated in COMAR 12.10.01.01.

(b) “Correctional officer” includes an employee:  
(i) Required to meet Correctional Training Commission selection, training, and certification requirements; and  
(ii) Performing duties and responsibilities related to the custody, control, or security of an inmate.

**28 C.F.R. § 115.5 General Definitions.**

(25) *Staff* means employees.

(26) *Strip search* means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person’s breasts, buttocks, or genitalia.

(27) *Transgender* means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person’s assigned sex at birth.

(28) *Unfounded allegation* means an allegation that was investigated and determined not to have occurred.

(29) *Volunteer* means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.

(30) *Youthful inmate* means any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.

(31) *Youthful detainee* means any person under the age of 18 who is under adult court supervision and detained in a lockup.

**Comparable Maryland Definitions.**

**Employee.**

(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 special appointee;
- (ii) A volunteer;
- (iii) An intern; or
- (iv) Contractor.

**“Strip search”** means a search that involves:

- (a) A systematic visual inspection of the individual’s entire body; and
- (b) Removal of all clothing to permit visual observation of the genitalia, buttocks, rectal area, breasts, or other areas of the body conducive to concealing contraband.

**“Transgender person”** means a person whose gender identity, their internal sense of feeling male or female, is different from the person’s assigned sex at birth.

**28 C.F.R. § 115.6 Definitions related to sexual abuse.**

**(A) *Sexual abuse includes—***

- (1) Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and
- (2) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

**(B) *Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:***

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

**(C) *Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:***

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;

**Comparable Maryland Definitions.**

**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(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



**28 C.F.R. § 115.6 Definitions related to sexual abuse.**

(3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(4) 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 staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(5) 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 staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;

(7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and

(8) Voyeurism by a staff member, contractor, or volunteer. Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions

**Comparable Maryland Definitions.**

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.

**“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) That is 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;

**28 C.F.R. § 115.6 Definitions related to sexual abuse.**

**Comparable Maryland Definitions.**

- (vii) Request for a sexual favor;
- (viii) A solicitation or attempt to commit any of the acts listed under §§.04B(8)(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
- (x) Retaliation.

(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.

**“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.

**(D) *Sexual harassment includes—***

- (1) 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, detainee, or resident directed toward another; and
- (2) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures

**“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.

## SUPPORTING DEPARTMENTAL STANDARDS AND POLICIES

Prevention Planning - PREA Standards	DPSCS Supporting References
<b>28 C.F.R. 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.</b>	
(a) The Department shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining DPSCS’s approach to preventing, detecting, and responding to such conduct.	DPSCS.020.0026 OPS.050.0001 OPS.200.0005 OEO.050.0024
(b) The Department shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.	DPSCS.020.0026 §§ .05A & B
(c) Each Department facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility’s efforts to comply with the PREA standards.	DPSCS.020.0026 § .05C
<b>28 C.F.R. 115.12 Contracting with other entities for the confinement of inmates.</b>	
(a) If the Department contracts for the confinement of its inmates with private agencies or other entities, including other government agencies, it shall include in any new contract or contract renewal the entity’s obligation to adopt and comply with the PREA standards.	COMAR 21.07.01.22
(b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.	COMAR 21.06.05.01 COMAR 21.07.01.02

Prevention Planning – PREA Standards	DPSCS Supporting References
<b>28 C.F.R. 115.13 Supervision and monitoring.</b>	
<p>(a) The Department shall ensure that each facility it operates shall develop, document, and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:</p> <ol style="list-style-type: none"> <li>(1) Generally accepted detention and correctional practices;</li> <li>(2) Any judicial findings of inadequacy;</li> <li>(3) Any findings of inadequacy from Federal investigative agencies;</li> <li>(4) Any findings of inadequacy from internal or external oversight bodies;</li> <li>(5) All components of the facility’s physical plant (including “blind-spots” or areas where staff or inmates may be isolated);</li> <li>(6) The composition of the inmate population;</li> <li>(7) The number and placement of supervisory staff;</li> <li>(8) Institution programs occurring on a particular shift;</li> <li>(9) Any applicable State or local laws, regulations, or standards;</li> <li>(10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and</li> <li>(11) Any other relevant factors.</li> </ol>	OPS.115.0001
<p>(b) In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan.</p>	OPS.115.0001 § .05C(1)
<p>(c) Whenever necessary, but no less frequently than once each year, for each facility, in consultation with the PREA coordinator required by § 115.11, the Department shall assess, determine, and document whether adjustments are needed to:</p> <ol style="list-style-type: none"> <li>(1) The staffing plan established pursuant to paragraph (a) of this section;</li> <li>(2) The facility’s deployment of video monitoring systems and other monitoring technologies; and</li> <li>(3) The resources the facility has available to commit to ensure adherence to the staffing plan.</li> </ol>	OPS.115.0001 § .05C(3)

Prevention Planning – PREA Standards	DPSCS Supporting References
<p>(d) Each facility shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. Each agency shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.</p>	<p>OPS.050.0001 § .05D</p>
<p><b>28 C.F.R. 115.14 Youthful inmates.</b></p>	
<p>(a) A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.</p>	<p>Not Applicable</p>
<p>(b) In areas outside of housing units, Department facilities shall either:</p> <ul style="list-style-type: none"> <li>(1) maintain sight and sound separation between youthful inmates and adult inmates, or</li> <li>(2) Provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.</li> </ul>	<p>Not Applicable</p>
<p>(c) Department facilities shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.</p>	<p>COMAR 12.03.01.27</p>
<p><b>28 C.F.R. 115.15 Limits to cross-gender viewing and searches</b></p>	
<p>(a) Department facilities shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.</p>	<p>OPS.110.0047 §§.06B(5) and .07B(4)a</p>

<b>Prevention Planning – PREA Standards</b>	<b>DPSCS Supporting References</b>
(b) As of August 20, 2015, or August 20, 2017 for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates’ access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.	OPS.110.0047 §§ .06G(1)a and .06G(3)a
(c) Each Department facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.	OPS.110.0047 § .07C(3)
(d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.	OPS.050.0001 § .04B(13)(b)
(e) Each Department facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate’s genital status. If the inmate’s genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.	OPS.110.0047 § .07B(3)a
(f) The Department shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.	OPS.110.0047 §§ .03C and .07A(3)

**28 C.F.R. 115.16 Inmates with disabilities and inmates who are limited English proficient.**

(a) The Department shall take appropriate steps to ensure that inmates with disabilities (including, for example, inmates who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the Department's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include, when necessary to ensure effective communication with inmates who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In addition, the Department shall ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities, including inmates who have intellectual disabilities, limited reading skills, or who are blind or have low vision. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans With Disabilities Act, 28 CFR 35.164.

OEO.020.0032  
OPS.200.0005 § .05C  
OPS.050.0001 § .05C  
OSPS.050.0011

(b) The Department shall take reasonable steps to ensure meaningful access to all aspects of the Department's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to inmates who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

OEO.020.0032

(c) The Department shall not rely on inmate interpreters, inmate readers, or other types of inmate assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties under § 115.64, or the investigation of the inmate's allegations.

OPS.050.0001 § .05C(6)  
OPS.200.0005 § .05C(6)

**28 C.F.R. 115.17 Hiring and promotion decisions.**

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

DPSCS.020.0026 § .05F(1)

(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 Department 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.

DPSCS.020.0026 § .05F(2)

(c) Before hiring new employees who may have contact with inmates, the DPSCS shall:

DPSCS.020.0026 § .05F(3)  
ADM.050.0041

(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 Department shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates.

DPSCS.020.0026 § .05F(3)

(e) The Department shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees.

DPSCS.020.0026 § .05I



(f) The Department shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The Department shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

DPSCS.020.0026 § .05F(4)

(g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.

DPSCS.020.0026 § .05F(5)

(h) The Department 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. A signed release from the former employee must accompany the request.

General Provisions Article, §4-311, Annotated Code of Maryland

COMAR 17.04.14.10 and .20

**28 C.F.R. 115.18 Upgrades to facilities and technologies.**

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the Department shall consider the effect of the design, acquisition, expansion, or modification upon the Department's ability to protect inmates from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the Department shall consider how such technology may enhance the Department's ability to protect inmates from sexual abuse.

Response Planning - PREA Standards	DPSCS Supporting References
<b>28 C.F.R. 115.21 Evidence protocol and forensic medical examinations.</b>	
(a) The Department is responsible for investigating allegations of sexual abuse; the Department shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.	OPS.050.0001 § .05D & G OPS.200.0005 § .05D, F & G IIU.110.0011 § .05C & D IIU.220.0002
(b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice’s Office on Violence Against Women publication, “A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,” or similarly comprehensive and authoritative protocols developed after 2011.	IIU.110.0011 § .05D
(c) The Department shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The Department shall document its efforts to provide SAFEs or SANEs.	IIU.110.0011 § .05D OPS.050.0001 § .05G OPS.200.0005 § .05G
(d) The Department shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the Department shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. The Department shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The Department may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.	IIU.110.0011 § .05C OPS.050.0001 § .05G OPS.200.0005 § .05G
(e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.	IIU.110.0011 § .05C OPS.050.0001 § .05G OPS.200.0005 § .05G

Response Planning - PREA Standards	DPSCS Supporting References
(f) The Department is responsible for investigating allegations of sexual abuse and will follow the requirements of paragraphs (a) through (e) of this section.	OPS.050.0001 § .05F OPS.200.0005 § .05F IIU.110.0011 § .03 IIU.220.0002
(g) The requirements of paragraphs (a) through (f) of this section shall also apply to:  (1) Any State entity outside of the Department that is responsible for investigating allegations of sexual abuse in prisons or jails; and  (2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.	OPS.050.0001 § .05F OPS.200.0005 § .05F IIU.110.0011 § .05D IIU.220.0002
(h) For the purposes of this section, a qualified agency staff member or a qualified community based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.	
<b>28 C.F.R. 115.22 Policies to ensure referrals of allegations for investigations.</b>	
(a) The Department shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.	IIU.110.0011 § .03 OPS.050.0001 § .05G(1) OPS.200.0005 § .05G(1)
(b) The Department shall ensure that allegations of sexual abuse or sexual harassment are referred for investigation to the Intelligence & Investigative Division, a unit with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The Department shall publish such policy on its website. The Intelligence & Investigative Division shall document all such referrals.	IIU.110.0011 § .03 OPS.050.0001 § .05(G) OPS.200.0005 § .05(G)
(c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the Department and the investigating entity.	N/A
(d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.	N/A

Training and Education - PREA Standards	DPSCS Supporting References
<b>28 C.F.R 115.31 Employee training.</b>	
<p>(a) The Department shall train all employees who may have contact with inmates on:</p> <ol style="list-style-type: none"> <li>1) Its zero-tolerance policy for sexual abuse and sexual harassment;</li> <li>2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;</li> <li>3) Inmates’ right to be free from sexual abuse and sexual harassment;</li> <li>4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;</li> <li>5) The dynamics of sexual abuse and sexual harassment in confinement;</li> <li>6) The common reactions of sexual abuse and sexual harassment victims;</li> <li>7) How to detect and respond to signs of threatened and actual sexual abuse;</li> <li>8) How to avoid inappropriate relationships with inmates;</li> <li>9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and</li> <li>10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.</li> </ol>	<p>OPS.200.0005 § .05C OPS.050.0001 § .05C</p>
<p>(b) Such training shall be tailored to the gender of the inmates at the employee’s facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.</p>	
<p>(c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the Department shall provide each employee with refresher training every two years to ensure that all employees know the Department’s current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the Department shall provide refresher information on current sexual abuse and sexual harassment policies.</p>	<p>COMAR 12.10.01.16</p>

<b>Training and Education - PREA Standards</b>	<b>DPSCS Supporting References</b>
(d) The Department shall document, through employee signature or electronic verification that employees understand the training they have received.	
<b>28 C.F.R 115.32 Volunteer and contractor training.</b>	
(a) The Department shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the Department’s sexual abuse and sexual harassment prevention, detection, and response policies and procedures.	OPS.050.0001 §§ .04B(6) and .05C
(b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the Department’s zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.	DPSCS Volunteer Services Orientation Manual
(c) The Department shall maintain documentation confirming that volunteers and contractors understand the training they have received.	DPSCS Volunteer Services Orientation Manual
<b>28 C.F.R 115.33 Inmate education.</b>	
(a) During the intake process, inmates shall receive information explaining The Department’s zero tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.	OPS.050.0001§ .05C OPS.200.0005 § .05C
(b) Within 30 days of intake, the Department shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding the Department policies and procedures for responding to such incidents.	OPS.050.0001§ .05C OPS.200.0005 § .05C
(c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate’s new facility differ from those of the previous facility.	OPS.050.0001 § .05C(3) OPS.200.0005 § .05C(3)

<b>Training and Education - PREA Standards</b>	<b>DPSCS Supporting References</b>
(d) The Department shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.	OPS.050.0001 §§ .05C(5) & (6)
(e) The Department shall maintain documentation of inmate participation in these education sessions.	OPS.001.0008B
(f) In addition to providing such education, the Department shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.	OPS.001.0008B
<b>28 C.F.R 115.34 Specialized training: Investigations.</b>	
(a) In addition to the general training provided to all employees pursuant to § 115.31, the Department shall ensure that, to the extent the Department itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.	OPS.050.0001 § .05G(2) OPS.200.0005 § .05G(2)
(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.	OPS.050.0001 § .05G(2) OPS.200.0005 § .05G(2)
(c) The Department shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.	Correctional Services Article, § 10-701, Annotated Code of Maryland

**28 C.F.R 115.35 Specialized training: Medical and mental health care**

(a) The Department shall ensure that all full-and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in: DPSCS.020.0026 § .05B(2)

- (1) How to detect and assess signs of sexual abuse and sexual harassment;
- (2) How to preserve physical evidence of sexual abuse;
- (3) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
- (4) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

(b) If medical staff employed by the Department conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations. N/A

(c) The Department shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the Department or elsewhere.

(d) Medical and mental health care practitioners shall also receive the training mandated for employees under § 115.31 or for contractors and volunteers under § 115.32, depending upon the practitioner’s status at the Department.

Screening for Risk of Sexual Victimization - PREA Standards	DPSCS Supporting References
<b>28 C.F.R 115.41 Screening for risk of victimization and abusiveness.</b>	
(a) All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.	OPS.200.0006
(b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.	OPS.200.0006 § .05B
(c) Such assessments shall be conducted using an objective screening instrument.	OPS.200.0006 § .05A
<p>(d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization:</p> <ol style="list-style-type: none"> <li>(1) Whether the inmate has a mental, physical, or developmental disability;</li> <li>(2) The age of the inmate;</li> <li>(3) The physical build of the inmate;</li> <li>(4) Whether the inmate has previously been incarcerated;</li> <li>(5) Whether the inmate’s criminal history is exclusively nonviolent;</li> <li>(6) Whether the inmate has prior convictions for sex offenses against an adult or child;</li> <li>(7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;</li> <li>(8) Whether the inmate has previously experienced sexual victimization;</li> <li>(9) The inmate’s own perception of vulnerability; and</li> <li>(10) Whether the inmate is detained solely for civil immigration purposes.</li> </ol>	OPS.200.0006 § .05A(1)
(e) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the Department, in assessing inmates for risk of being sexually abusive.	OPS.200.0006 § .05A(2)
(f) Within a set time period, not to exceed 30 days from the inmate’s arrival at the facility, the facility will reassess the inmate’s risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.	OPS.200.0006 § .05B(2)



<b>Screening for Risk of Sexual Victimization - PREA Standards</b>	<b>DPSCS Supporting References</b>
(g) An inmate’s risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate’s risk of sexual victimization or abusiveness.	OPS.200.0006 § .05B(4)
(h) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1),( d)(7),( d)(8), or (d)(9) of this section.	OPS.200.0006 §.05B(5)
(i) The Department shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate’s detriment by staff or other inmates.	OPS.200.0006 §.05B(6)
<b>28 C.F.R 115.42 Use of screening information.</b>	
(a) The Department shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.	OPS.200.0006 § .05C(1)
(b) The Department shall make individualized determinations about how to ensure the safety of each inmate.	OPS.200.0006 § .05C(1)
(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, The Department shall consider on a case-by-case basis whether a placement would ensure the inmate’s health and safety, and whether the placement would present management or security problems.	OPS.200.0006 § .05C(1)
(d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.	OPS.200.0006 § .05C(2)
(e) A transgender or intersex inmate’s own views with respect to his or her own safety shall be given serious consideration.	OPS.200.0006 § .05C(3)
(f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.	OPS.200.0006 § .05C(4)

Screening for Risk of Sexual Victimization - PREA Standards	DPSCS Supporting References
(g) The Department shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.	OPS.200.0006 §.05C(5)
<b>28 C.F.R 115.43 Protective custody.</b>	
(a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.	DOC.100.0002 § .18E
(b) Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document: <ul style="list-style-type: none"> <li>(1) The opportunities that have been limited;</li> <li>(2) The duration of the limitation; and</li> <li>(3) The reasons for such limitations.</li> </ul>	DOC.100.0002 § .18F
(c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.	DOC.100.0002 § .18E
(d) If an involuntary segregated housing assignment is made pursuant to paragraph a) of this section, the facility shall clearly document: <ul style="list-style-type: none"> <li>(1) The basis for the facility’s concern for the inmate’s safety; and</li> <li>(2) The reason why no alternative means of separation can be arranged.</li> </ul>	DOC.100.0002 § .18E
(e) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.	DOC.100.0002 § .18 B

<b>Reporting - PREA Standards</b>	<b>DPSCS Supporting References</b>
<b>28 C.F.R 115.51 Inmate reporting.</b>	
(a) The Department shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.	OPS.050.0001 § .05E OPS.200.0005 § .05E
(b) The Department shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the Department, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.	OPS.050.0001 § .05E OPS.200.0005 § .05E
(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.	OPS.050.0001 § .05E OPS.200.0005 § .05E
(d) The Department shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.	OPS.050.0001 § .05E OPS.200.0005 § .05E
<b>28 C.F.R 115.52 Exhaustion of administrative remedies.</b>	
(a) The Department shall be exempt from this standard because it does not have administrative procedures to address inmate grievances regarding sexual abuse.	COMAR 12.02.28
<b>28 C.F.R 115.53 Inmate access to outside confidential support services.</b>	
(a) Services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.	OPS.050.0001§.05G(3) OPS.200.0005 §.05 G(3)

<b>Reporting - PREA Standards</b>	<b>DPSCS Supporting References</b>
(b) Each Department facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.	OPS.050.0001 §.05 G(3) OPS.200.0005 §.05 G(3)
(c) The Department shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. The Department shall maintain copies of agreements or documentation showing attempts to enter into such agreements.	OPS.050.0001 §.05 G(3) OPS.200.0005 §.05 G(3)
<b>28 C.F.R 115.54 Third-party reporting.</b>	
The Department shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate.	OPS.050.0001 § .05E(1) OPS.200.0005 § .05E(1)

Official Response Following an Inmate Report	DPSCS Supporting References
<b>28 C.F.R 115.61 Staff and agency reporting duties</b>	
<p>(a) The Department shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part the Department; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.</p>	<p>IIU.110.0011 §.05A  OPS.050.0001 § .04D(1) &amp; (3)  OPS.050.0001 § .05A &amp; B  OPS.200.0005 § .04D(1) &amp; (3)  OPS.200.0005 § .05A &amp; B  OPS.020.0003 §§ .04B(3)(b)(i) &amp; .05A</p>
<p>(b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in the Department policy, to make treatment, investigation, and other security and management decisions.</p>	<p>OPS.050.0001 § .05E(8)  OPS.200.0005 § .05E(8)</p>
<p>(c) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph a) of this section and to inform inmates of the practitioner’s duty to report, and the limitations of confidentiality, at the initiation of services</p>	
<p>(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the Department shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.</p>	
<p>(c) The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility’s designated investigators.</p>	<p>IIU.110.0011 §§.05A and B</p>
<b>28 C.F.R 115.62 Agency protection duties.</b>	
<p>When the Department learns that an inmate is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate.</p>	<p>OPS.050.0001 § .05B(3)  OPS.050.0001 § .05D(1)  OPS.050.0001 § .05F(3)  OPS.200.0005 § .04B(3)  OPS.200.0005 § .04D(1)  OPS.200.0005 § .04F(3)</p>

Official Response Following an Inmate Report	DPSCS Supporting References
<b>28 C.F.R 115.63 Reporting to other confinement facilities.</b>	
(a) Upon receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the Department where the alleged abuse occurred.	OPS.050.0001 § .05E(6) OPS.200.0005 § .05E(6)
(b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.	OPS.050.0001 § .05E(6) OPS.200.0005 § .05E(6)
(c) The Department shall document that it has provided such notification.	OPS.050.0001 § .05E(6) OPS.200.0005 § .05E(6)
(d) The facility head or the Department office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.	OPS.050.0001 § .05E(7) OPS.200.0005 § .05E(7)
<b>28 C.F.R 115.64 Staff first responder duties.</b>	
(a) Upon learning of an allegation that an inmate was sexually abused, the first security staff member to respond to the report shall be required to: <ul style="list-style-type: none"> <li>(1) Separate the alleged victim and abuser;</li> <li>(2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;</li> <li>(3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and</li> <li>(4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.</li> </ul>	OPS.050.0001 § .05D(2) OPS.200.0005 § .05D(2) IID.110.0011 § .05C

Official Response Following an Inmate Report	DPSCS Supporting References
<p>(b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.</p>	<p>OPS.050.0001 § .05D(3) OPS.200.0005 § .05D(3)</p>
<p><b>28 C.F.R 115.65 Coordinated response.</b></p>	
<p>The facility shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.</p>	<p>OPS.050.0001 § .05F OPS.200.0005 § .05F</p>
<p><b>28 C.F.R 115.66 Preservation of ability to protect inmates from contact with abusers.</b></p>	
<p>(a) Neither the Department nor any other governmental entity responsible for collective bargaining on the Department’s behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the Department’ ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.</p>	<p>State Personnel and Pensions Article, §3-302, Annotated Code of Maryland</p>
<p>(b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern:</p> <p>(1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.72 and 115.76; or</p> <p>(2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member’s personnel file following a determination that the allegation of sexual abuse is not substantiated.</p>	

Official Response Following an Inmate Report	DPSCS Supporting References
<b>28 C.F.R 115.67 Agency protection against retaliation.</b>	
(a) The Department shall establish a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff, and shall designate which staff members or departments are charged with monitoring retaliation.	OPS.050.0001 § .04B(9) OPS.050.0001 § .05B(3) OPS.200.0005 § .04B(8) OPS.200.0005 § .05B(3)
(b) The Department shall employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.	OPS.050.0001 § .05B(3) OPS.200.0005 § .05B(3)
(c) For at least 90 days following a report of sexual abuse, the Department shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. Items the Department should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The Department shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.	OPS.050.0001 § .05B(3) OPS.200.0005 § .05B(3)
(d) In the case of inmates, such monitoring shall also include periodic status checks.	
(e) If any other individual who cooperates with an investigation expresses a fear of retaliation, the Department shall take appropriate measures to protect that individual against retaliation.	OPS.050.0001 § .05B(3) OPS.200.0005 § .05B(3)
(f) The Department’s obligation to monitor shall terminate if the Department determines that the allegation is unfounded.	



Official Response Following an Inmate Report	DPSCS Supporting References
<b>28 C.F.R 115.68 Post-allegation protective custody.</b>	
Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.	DOC.100.0002

Investigations - PREA Standards	DPSCS Supporting References
<b>28 C.F.R 115.71 Criminal and administrative agency investigations.</b>	
(a) When the Department conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.	OPS.050.0001 § .05G(1) OPS.200.0005 § .05G(1)
(b) Where sexual abuse is alleged, the Department shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34.	OPS.050.0001 § .05G(2) OPS.200.0005 § .05G(2)
(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.	OPS.050.0001 § .05G OPS.200.0005 § .05G IIU.110.0011 § .05D
(d) When the quality of evidence appears to support criminal prosecution, the Department shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.  Supporting References	IIU.110.0011 § .05H(6)
(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person’s status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an allegation.	OPS.050.0001 § .05G(6) OPS.200.0005 § .05G(6) IIU.110.0011 § .05E
(f) Administrative investigations:  1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and  2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.	IIU.110.0011 § .05D
(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.	OPS.050.0001 § .05G(4) OPS.200.0005 § .05G(4) IIU.110.0011 § .05D(7)

<b>Investigations - PREA Standards</b>	<b>DPSCS Supporting References</b>
(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.	OPS.050.0001 § .05G(4) OPS.200.0005 § .05G(4) IIU.110.0011 § .05H(6)
(i) The Department shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the Department, plus five years.	OPS.050.0001 § .05G(4) OPS.200.0005 § .05G(4)
(j) The departure of the alleged abuser or victim from the employment or control of the facility or the Department shall not provide a basis for terminating an investigation.	OPS.050.0001 § .05G(5) OPS.200.0005 § .05G(5)
<b>28 C.F.R 115.72 Evidentiary standard for administrative investigations.</b>	
The Department shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.	IIU.110.0011 § .05H(1)
<b>28 C.F.R 115.73 Reporting to inmates.</b>	
(a) Following an investigation into an inmate's allegation that he or she suffered sexual abuse in a the Department facility, the Department shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.	IIU.110.0011 § .05H(1) OPS.050.0001 § .05H(1) OPS.200.0005 § .05H(1)
(b) If the Department did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.	

<b>Investigations - PREA Standards</b>	<b>DPSCS Supporting References</b>
<p>(c) Following an inmate’s allegation that a staff member has committed sexual abuse against the inmate, the Department shall subsequently inform the inmate unless the Department has determined that the allegation is unfounded) whenever:</p> <ul style="list-style-type: none"> <li>(1) The staff member is no longer posted within the inmate’s unit;</li> <li>(2) The staff member is no longer employed at the facility;</li> <li>(3) The Department learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or</li> <li>(4) The Department learns that the staff member has been convicted on a charge related to sexual abuse within the facility.</li> </ul>	<p>OPS.050.0001 § .05H(2)</p>
<p>(d) Following an inmate’s allegation that he or she has been sexually abused by another inmate, the Department shall subsequently inform the alleged victim whenever:</p> <ul style="list-style-type: none"> <li>(1) The Department learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or</li> <li>(2) The Department learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.</li> </ul>	<p>OPS.200.0005 § .05H(1)</p>
<p>(e) All such notifications or attempted notifications shall be documented.</p>	<p>IIU.110.0011 § .05H(3)  OPS.050.0001 § .05H(3)  OPS.200.0005 § .05H(3)</p>
<p>(f) The obligation to report under this standard shall terminate if the inmate is released from The Department’s custody.</p>	

Discipline - PREA Standards	DPSCS Supporting References
<b>28 C.F.R 115.76 Disciplinary sanctions for staff.</b>	
(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.	OPS.050.0001 § .05I
(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.	
(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member’s disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories	
(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.	OPS.050.0001 § .05G(1) OPS.050.0001 § .05I(2) COMAR 12.11.01
<b>28 C.F.R 115.77 Corrective action for contractors and volunteers.</b>	
(a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.	OPS.050.0001 § .04B(6) OPS.050.0001 § .05H
(b) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.	
<b>28 C.F.R 115.78 Disciplinary sanctions for inmates.</b>	
(a) Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse.	COMAR 12.03.01—.32
(b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate’s disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories.	COMAR 12.03.01—.32

<b>Discipline - PREA Standards</b>	<b>DPSCS Supporting References</b>
(c) The disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.	COMAR 12.03.01—.32
(d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending inmate to participate in such interventions as a condition of access to programming or other benefits.	OPS.200.0005 § .05, I(2)
(e) The Department may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.	OPS.200.0005 § .05I(2)
(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.	OPS.050.0001 § .05I(5) OPS.200.0005 § .05I(4)
(g) The Department prohibits all sexual activity between inmates and may discipline inmates for such activity. The Department will not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.	OPS.200.0005 § .04B(9) OPS.200.0005 § .05A(1)

<b>Medical and Mental Health Care - PREA Standards</b>	<b>DPSCS Supporting References</b>
<b>28 C.F.R 115.81 Medical and mental health screenings; history of sexual abuse.</b>	
(a) If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.	OPS.200.0006 § .05E(2)
(b) If the screening pursuant to § 115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.	OPS.200.0006 § .05E(2)
(c) If the screening pursuant to § 115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.	OPS.200.0006 § .05E(2)
(d) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.	OPS.050.0001 § .05E(8) OPS.200.0006 § .05E(8)
(e) Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.	Medical Records Manual Appendix G & H
<b>28 C.F.R 115.82 Access to emergency medical and mental health services.</b>	
(a) Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.	OPS.050.0001 § .05B & D OPS.200.0005 § .05B & D

<b>Medical and Mental Health Care - PREA Standards</b>	<b>DPSCS Supporting References</b>
(b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.62 and shall immediately notify the appropriate medical and mental health practitioners.	OPS.050.0001 § .05D OPS.200.0005 § .05D
(c) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.	Medical Evaluation Manual Chapter 13
(d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.	OPS.050.0001 § .05G(3) OPS.200.0005 § .05 G(3)  Medical Evaluation Manual Chapter 13
<b>28 C.F.R 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers</b>	
(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.	Medical Evaluation Manual Chapter 13  Medical Administrative Manual Chapter 9
(b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.	Medical Evaluation Manual Chapter 13
(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.	Medical Evaluation Manual Chapter 13
(d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.	Medical Evaluation Manual Chapter 13
(e) If pregnancy results from the conduct described in paragraph d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.	Medical Evaluation Manual Chapter 13
(f) Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.	Medical Evaluation Manual Chapter 13



<b>Medical and Mental Health Care - PREA Standards</b>	<b>DPSCS Supporting References</b>
(g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.	Medical Evaluation Manual Chapter 13
(h) All prisons shall attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.	Medical Evaluation Manual Chapter 13

Data Collection and Review - PREA Standards	DPSCS Supporting References
<b>28 C.F.R 115.86 Sexual abuse incident reviews.</b>	
(a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.	OSPS.020.0027 § .05D
(b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.	OSPS.020.0027 § .05D
(c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.	OSPS.020.0027 § .05E
<p>(d) The review team shall:</p> <ol style="list-style-type: none"> <li>(1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;</li> <li>(2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;</li> <li>(3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;</li> <li>(4) Assess the adequacy of staffing levels in that area during different shifts;</li> <li>(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and</li> <li>(6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs d)1)-d)5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.</li> </ol>	OSPS.020.0027 § .05E
(c) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.	OSPS.020.0027 § .05F

<b>Data Collection and Review - PREA Standards</b>	<b>DPSCS Supporting References</b>
<b>28 C.F.R 115.87 Data collection</b>	
(a) The Department shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.	OSPS.020.0027 § .05A
(b) The Department shall aggregate the incident-based sexual abuse data at least annually.	OSPS.020.0027 § .05C(1)
(c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.	OSPS.020.0027 § .05B
(d) The Department shall maintain, review, and collect data as needed from all available incident based documents, including reports, investigation files, and sexual abuse incident reviews.	OSPS.020.0027 § .05C(2)
(e) The Department also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.	OSPS.020.0027 § .03B
(f) Upon request, the Department shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.	OSPS.020.0027 § .05B(4)
<b>28 C.F.R 115.88 Data review for corrective action.</b>	
(a) The Department shall review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: <ul style="list-style-type: none"> <li>(1) Identifying problem areas;</li> <li>(2) Taking corrective action on an ongoing basis; and</li> <li>(3) Preparing an annual report of its findings and corrective actions for each facility, as well as the Department as a whole.</li> </ul>	OSPS.020.0027 § .05C(3)
(b) Such report shall include a comparison of the current year’s data and corrective actions with those from prior years and shall provide an assessment of the Department’s progress in addressing sexual abuse.	OSPS.020.0027 § .05C(3)

<b>Data Collection and Review - PREA Standards</b>	<b>DPSCS Supporting References</b>
(c) The Department’s report shall be approved by the Department head and made readily available to the public through its website or, if it does not have one, through other means.	OSPS.020.0027 § .05C(3)
(d) The Department may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.	OSPS.020.0027 § .05C(3)
<b>28 C.F.R 115.89 Data storage, publication, and destruction.</b>	
(a) The Department shall ensure that data collected pursuant to § 115.87 are securely retained.	OSPS.020.0027 § .05C(4)
(b) The Department shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means.	OSPS.020.0027 § .05C(3)
(c) Before making aggregated sexual abuse data publicly available, The Department shall remove all personal identifiers.	OSPS.020.0027 § .05C(3)
(d) The Department shall maintain sexual abuse data collected pursuant to § 115.87 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.	

Audits - PREA Standards	DPSCS Supporting References
<b>28 C.F.R 115.93 Audits of standards.</b>	
The Department shall conduct audits pursuant to §§ 115.401–.405.	DPSCS.020.0026 § .05B(2)

## **APPENDIX**

### **Departmental Directives**

ADM.050.0041	Criminal History Records Check — Non-Mandated Employees
DPSCS.020.0026	Prison Rape Elimination Act - Federal Standards Compliance
IIU.110.0011	Investigating Sex Related Offenses
IIU.220.0002	Evidence and Personal Property Collection, Storage, and Disposition
OEO.020.0032	Limited English Proficiency (LEP) Policy
OPS.001.0008	Inmate Handbooks
OPS.020.0003	Reporting Serious Incidents
OPS.050.0001	Sexual Misconduct – Prohibited
OPS.110.0047	Search Protocol - Inmates
OPS.115.0001	Staffing Analysis and Overtime Management
OPS.200.0005	Inmate on Inmate Sexual Conduct - Prohibited
OPS.200.0006	Assessment for Risk of Sexual Victimization and Abusiveness
OSPS.020.0027	PREA Investigations - Tracking and Review
OSPS.050.0011	Americans With Disabilities Act of 1990, Titles I & II

### **Manuals**

Division of Correction - Case Management Manual, Section 17

Clinical Services - Medical Records Manual, Appendices G & H

Clinical Services - Medical Evaluation Manual, Chapter 13

Clinical Services - Medical Administration Manual Chapter 9

Volunteer Services- Volunteer Orientation Manual

## **Worksheets and Forms**

Incident Review

Notice of Incident (to another facility)

Screening Instrument

Screening Instrument Instructions

Screening Instrument – Spanish

Retaliation Monitoring

Staffing Plan Development Checklist

Staffing Plan Annual Review

## **Annotated Code of Maryland**

Correctional Services Article, § 10-701

Internal Investigative Division

General Provisions Article, § §4-311

Personnel Records

State Personnel and Pensions Article, §3-302

Rights of the State

## **Code of Maryland Annotated Regulations**

COMAR 10.12.02

Rape and Sexual Offense—Physician and Hospital Charges

COMAR 12.02.28

Administrative Remedy Procedure (ARP)

COMAR 12.03.01

Inmate Discipline

COMAR 12.10.01

Correctional Training Commission – General Regulations

COMAR 12.11.01

Internal Investigative Division

COMAR 21.06.05.01


Right to Inspect


COMAR 21.07.01.02 and .22


Scope of Contract and Compliance with Laws

# Executive Directive



<b>Title:</b> <b>Criminal History Records Check — Non-Mandated Employees</b>	<b>Executive Directive Number:</b> <b>ADM.050.0041</b>
<b>Related MD Statute/Regulations:</b> Correctional Services Article, §2-103, Annotated Code of Maryland	<b>Supersedes:</b> N/A
<b>Related ACA Standards:</b> 2-CO-1C-18; 4-ALDF-7B-03; 4-4061; 1-CORE-7B-01	<b>Responsible Authority:</b>  Executive Director – Human Resources Services Division
<b>Related MCCS Standards:</b> N/A	<b>Effective Date:</b> June 5, 2013 <b>Number of Pages:</b>

  
**Gary D. Maynard**  
Secretary

  
**G. Lawrence Franklin**  
Deputy Secretary  
for Administration

## .01 Purpose.

This directive establishes Department of Public Safety and Correctional Services (Department) policy and minimum responsibilities for conducting a criminal history records check on new employees.

## .02 Scope.

This directive applies to all units of the Department.

## .03 Policy.

The Department shall conduct a criminal history records check on all new employees in accordance with federal and State statute and regulation to detect criminal convictions that may be related specifically to job performance.

## .04 Definitions.

A. In this directive, the following terms have the meanings indicated.

B. Terms Defined.

(1) Employee.

(a) “Employee” means an individual assigned to or employed by the Department in a full-time, part-time, temporary, or contractual position regardless of job title or classification.

(b) “Employee” includes:



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- (i) A contractor;
  - (ii) An intern; and
  - (iii) A volunteer.
- (2) “Hiring authority” means the individual with the authority to approve the hiring of an employee.
- (3) “Mandated employee” has the meaning stated in COMAR 12.10.01.01.

**.05 Responsibility/Procedure.**

- A. A hiring authority shall ensure that before an employee begins to perform duties and responsibilities of employment that a criminal history records check is performed in order to determine the existence of criminal convictions that may specifically impact performance as an employee.
- B. A hiring authority shall ensure that a criminal history records check is performed for a mandated employee as required under COMAR 12.10.01.05.
- C. A hiring authority shall ensure that a criminal history records check is performed for a non-mandated employee as follows:
  - (1) At a minimum, the hiring authority shall ensure that a State and federal criminal history records check is conducted based on the individual’s full name and date of birth.
  - (2) A hiring authority may conduct a State and federal criminal history records check based on fingerprint identification if the hiring authority has reason to believe that the name and date of birth criminal history records check may not reflect the individual’s complete criminal history.
- D. The criminal conviction information discovered as the result of a criminal history records check under this directive shall be used in conjunction with other information available as part of the hiring process to determine the individual’s suitability for employment with the Department.

**.06 Attachments.**


There are no attachments to this directive

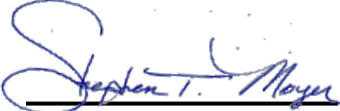
**.07 History.**

This Directive supersedes provisions of any other prior existing Department communication with which it may be in conflict.

# 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> Revised
<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>  Deputy Secretary for Operations
<b>Related MCCS Standards:</b> .05B	<b>Effective Date:</b> August 19, 2016 <b>Number of Pages:</b> 8

  
**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.**


- A
- B
- L

# Executive Directive



<b>Title:</b> Investigating Sex Related Offenses	<b>Executive Directive Number:</b> IIU.110.0011
<b>Related MD Statute/Regulations:</b> Correctional Services Article, §§2-103 and 10-701, Annotated Code of Maryland; Prison Rape Elimination Act of 2003 (P.L. 108-79)	<b>Supersedes:</b> IIU.020.0001 Dated July 26, 2007
<b>Related Standards:</b> ACA 4-4207, 4-4281, 4-4281-3, 4-4281-7 and 4-4281-8. PREA Standards 115.21, 115.22, 115.34, 115.64, 115.67, and 115.71 — 73	<b>Responsible Authority:</b>  Director - Internal Investigative Unit
<b>Related MCCS Standards:</b> N/A	<b>Effective Date:</b> April 1, 2014 <b>Number of Pages:</b> 11

  
Gregg L. Hershberger  
Secretary

  
Mark J. Carter  
Director  
Internal Investigative Unit

## .01 Purpose.

This directive establishes policy and procedures for Department of Public Safety and Correctional Services (Department) investigators conducting an investigation of an allegation of misconduct that involves a sex related offense.

## .02 Scope.

This directive applies to Department personnel assigned to conduct an investigation of an allegation of misconduct that involves a sex related offense.

## .03 Policy.

- A. The Department shall promptly, thoroughly, and objectively investigate each allegation of employee or inmate misconduct involving a sex related offense according to a uniform protocol based on recognized investigative practices that maximize evidence collection to support effective administrative dispositions and, if appropriate, criminal prosecution of the identified perpetrator.
- B. Department personnel assigned to conduct an investigation of alleged employee or inmate misconduct involving a sex related offense shall be trained in techniques related to conducting investigations of sex related offenses in the correctional setting.
- C. Department personnel assigned to conduct an investigation of alleged employee or inmate misconduct involving a sex related offense shall perform investigative activities professionally with due consideration for the emotional state of the victim resulting from the physical and emotional trauma and personal embarrassment resulting from the sex related offense.

## .04 Definitions.

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

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- (1) Employee.
  - (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) “Exigent circumstances” means a set of temporary and unforeseen conditions that require immediate action in order to combat a threat to the security or order at a facility.
- (3) “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.
- (4) “Investigator” means a Department employee permanently assigned to, or assigned to assist, the IIU with the responsibilities specified under Correctional Services Article, §10-701(a)(3), Annotated Code of Maryland.
- (5) “Licensed health care professional” means an individual who by virtue of education, credentials, and experience is permitted by law to practice medicine and, within the scope of that authorization, may evaluate and prescribe care for an individual identified to have a medical or mental health condition.
- (6) Retaliation.
  - (a) “Retaliation” means an act of vengeance, covert or overt action, or threat of action, taken against an individual because the individual:
    - (i) Filed a complaint of a sex related offense;
    - (ii) Took action to stop or prevent a sex related offense;
    - (iii) Investigated a sex related offense;
    - (iv) Took remedial action or applied penalties in response to a substantiated complaint of a sex related offense;
    - (v) Opposed any form of a sex related offense; or
    - (vi) Testified, assisted, or participated in an investigation, proceeding, or hearing concerning an alleged sex related offense.
  - (b) “Retaliation” may include, but is not limited to any unreasonable or unjustified:
    - (i) Adverse employment action, including discipline;

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- (ii) Changes in work or program assignments;
  - (iii) Transfers or placements; or
  - (iv) Denial of privileges or services.
- (c) “Retaliation” does not include reasonable and justified administrative, disciplinary, or other action intended to stop or prevent misconduct, protect an individual filing a complaint or victimized by misconduct, or resolve a complaint.
- (7) 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(9)(a)-(e) 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 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

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- (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.
- (8) “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) That is 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 favor;
    - (viii) A solicitation or attempt to commit any of the acts listed under §§.04B(8)(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
    - (x) Retaliation.
  - (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.

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(9) 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 (any type of coercion) 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.

(10) “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.

(11) Victim Advocate.

- (a) “Victim advocate” means a representative of a rape crisis center that provides confidential intervention and related assistance to victims of sex related offenses.
- (b) “Victim advocate” may include:
  - (i) A representative of a community based organization that is qualified to provide services described under .04B(11)(a) of this directive; or
  - (ii) A Department employee who is qualified to provide services described under .04B(11)(a) of this directive.
- (c) “Victim advocate” does not include a representative of another criminal justice agency that is qualified to provide services described under .04B(11)(a) of this directive.

(12) “Voyeurism”:

- (a) Means that an employee invades the privacy of an inmate for the purpose of sexual gratification and 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. An employee who observes or has knowledge of an incident, regardless of the source of the information, involving a sex related offense that occurs on Department property or in a Department vehicle shall notify the Internal Investigative Unit (IIU) of the incident as soon as possible after the occurrence or the employee first becomes aware of the incident.

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B. A sex related offense may involve an:

- (1) Employee with another employee;
- (2) Employee and an inmate;
- (3) Employee and an inmate's personal contact;
- (4) Employee and a visitor;
- (5) Inmate and an employee;
- (6) Inmate and another inmate; or
- (7) Inmate and visitor.

C. When the IIU duty officer is notified of an incident involving an alleged sex related offense, the IIU duty officer shall:

- (1) If the incident is actively occurring ensure:
  - (a) Immediate action is taken to stop the misconduct;
  - (b) The victim is protected from further harm;
  - (c) Appropriate medical attention is provided; and
  - (d) The managing official or unit head is notified of the incident;
- (2) If the proximity of the occurrence to the reporting supports, ensure that:
  - (a) The perpetrator is detained;
  - (b) Witnesses are identified;
  - (c) The scene is protected to preserve evidence;
  - (d) The victim is advised against actions that would destroy evidence that may be present on the victim's body or clothing; and
  - (e) The managing official or unit head is notified of the incident;
- (3) Comply with IIU procedures for receiving and documenting a complaint of alleged misconduct regardless of the source of the complaint;
- (4) Ensure the managing official, or a designee, is advised to arrange for a victim advocate to be available to the victim;

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- (5) Assign an investigator to conduct and report the findings of an investigation of the incident according to IIU procedures; and
- (6) If the alleged incident did not occur on Department property or in a Department vehicle:
  - (a) Notify the official with authority over the location where the incident occurred; and
  - (b) Document that notification on the appropriate IIU log.

D. An investigator assigned to investigate an incident involving a sex related offense shall:

- (1) Ensure that appropriate actions identified under §§.05C(1) and (2) of this directive have been taken and, if not, ensure that incomplete requirements are completed;
- (2) When the possibility for recovery of physical evidence from the victim exists or otherwise is medically appropriate, coordinate with appropriate Department facility staff to arrange for the victim to undergo a forensic medical examination that is performed by a:
  - (a) A Sexual Assault Forensics Examiner (SAFE);
  - (b) Sexual Assault Nurse Examiner (SANE); or
  - (c) If documented attempts to obtain the services of a SAFE or SANE are unsuccessful, a licensed health care professional who has been trained to perform medical forensic examinations of sexual abuse victims;
- (3) If the victim requests, coordinate with the managing official, or a designee, to arrange for a victim advocate to accompany the victim to provide support for the victim through the medical forensics examination and investigatory interviews;
- (4) If possible, preserve the scene of the incident and items that may be used as evidence;
- (5) If not already identified, initiate action to identify the alleged perpetrator;
- (6) Conduct post-incident investigative actions to complete a comprehensive investigation of the incident that intends to:
  - (a) Identify the perpetrator;
  - (b) Determine if employee action or lack of action contributed to the occurrence; and
  - (c) Collect and preserve evidence to effectively support an administrative and, if appropriate, criminal proceedings; and
- (7) Document all aspects of the investigation in a comprehensive investigative report that:
  - (a) Thoroughly describes, physical, testimonial, and documentary evidence;
  - (b) Explains the reasoning behind credibility assessments;



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- (c) Includes facts and findings; and
- (d) When appropriate, has related documents attached; and
- (e) Is maintained according to an established retention schedule, which requires that the report is maintained as long as the employee is employed by the Department or the inmate is under the authority of the Department plus five years.

E. Credibility of a Victim, Witness, or Suspect.

- (1) Credibility of a victim, witness, or suspect shall be determined on an individual basis, regardless of the individual's status, for example employee or inmate.
- (2) A victim may not be required to take a polygraph or other truth telling test to determine to proceed with an investigation of an incident involving a sex related offense.

F. An investigation under this directive may not be terminated based on victim or suspect departure from Department employment or custody.

G. Victim Interview - Initial.

- (1) The investigator shall determine the victim's ability to participate in an initial interview considering:
  - (a) The severity of the assault;
  - (b) Physical injury;
  - (c) Emotional state of mind;
  - (d) Immediate necessity to identify the assailant;
  - (e) The inability to apprehend the assailant if the interview is delayed,
  - (f) If requested by the victim, the availability of:
    - (i) Family;
    - (ii) Friends;
    - (iii) Clergy;
    - (iv) Victim advocate; or
    - (v) Others individuals who may assist the victim;
  - (g) The availability of an investigator of the same sex as the victim; and
  - (h) Other factors that may inhibit the victim's ability to effectively communicate information about the incident.

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- (2) If the victim is able to participate in an initial interview, the investigator shall conduct the interview focusing on:
  - (a) Obtaining:
    - (i) Basic information about the incident to aid in future interviews;
    - (ii) Information that will identify and locate the alleged perpetrator; and
    - (iii) Information concerning witnesses.
  - (b) Explaining:
    - (i) The investigative process;
    - (ii) The importance of cooperation;
    - (iii) Avenues for assistance, support, and personal protection available to the victim and witness;
    - (iv) That there will be additional contact from the investigator to provide updates on the investigation and obtain additional information concerning the incident; and
    - (v) The importance of preserving evidence that may be on the victim's person and personal items; and
  - (c) Accurately answering questions from the victim.
- (3) If appropriate, the investigator shall coordinate with facility medical and custody staff to arrange for the victim to be examined by a licensed health care professional to:
  - (a) Evaluate and treat physical or emotional illness or injury suffered as a result of the incident; and
  - (b) Obtain physical evidence from the victim using a "rape kit" available at the medical facility.
- (4) If requested by the victim, the investigator shall permit a victim advocate to be present during the interview with the victim.

**H. Follow-up Investigative Activities.**

- (1) When conducting an investigation of an incident involving a sex related offense an investigator shall:
  - (a) Provide updates to the victim concerning progress of the investigation;
  - (b) Conduct additional interviews to verify and expand on information originally provided or discuss new information developed during the investigation;

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- (c) Determine if an individual has been the target of retaliation and if so investigate the circumstances of the retaliation; and
  - (d) Provide information concerning victim rights.
- (2) Upon concluding an investigation involving an inmate as a victim of a sex related offense and based on a preponderance of evidence, the investigator shall advise the victim inmate if the investigation resulted in the incident being determined to be:
- (a) Substantiated meaning an allegation that was investigated and determined to have occurred;
  - (b) Unsubstantiated meaning an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred; or
  - (c) Unfounded meaning an allegation was investigated and determined to not have occurred.
- (3) The investigator shall document victim notification under §.05H(2) of this directive in the investigative report recording:
- (a) The name of the individual who notified the victim;
  - (b) The date, time, and location that the victim was notified; and
  - (c) How the victim was notified.
- (4) The investigator shall complete a Department Internal Investigative Unit “PREA” (Prison Rape Elimination Act) form and a United States Department of Justice “Survey of Sexual Violence”- Incident form.
- (5) If appropriate, the investigator shall work with a managing official, or a designee, to ensure:
- (a) The victim and assailant are separated during continued confinement;
  - (b) Appropriate disciplinary action is taken against:
    - (i) An inmate for violation of inmate rules; or
    - (ii) An employee for a violation of policy or procedure;
  - (c) If the incident involved an employee committing a sex related offense on an inmate and the incident was substantiated or unsubstantiated arrange for the inmate to be advised of the following conditions involving the employee:
    - (i) The employee is not assigned to the inmate’s housing unit;
    - (ii) The employee is no longer employed at the inmate’s facility;
    - (iii) If known, that the employee was indicted on a charged with a sex related offense occurring at the facility;

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- (iv) If known, that the employee was convicted of a charge related to a sex related offense occurring at the facility;
  - (d) If the incident involved an inmate committing a sex related offense on another inmate arrange for the victim inmate to be advised of the following conditions involving the perpetrator:
    - (i) If known, that the perpetrator was indicted on a charge related to a sex related offense occurring at the facility; and
    - (ii) If known, that the perpetrator was convicted of a charge related to a sex related offense occurring at the facility;
  - (e) Written confirmation is received from the managing official, or a designee, and maintained in the investigative file that documents notifications made under §.05H(5)(c) or (d) of this directive to include:
    - (i) Date and time of the notification;
    - (ii) The printed name and signature of the inmate notified; and
    - (iii) The printed name and signature of the individual making the notification.
  - (f) The victim reporting requirements under §§.05H(5)(c) and (d) of this directive shall terminate at the time the victim inmate is released from Department custody.
  - (g) Retaliation is not taking place against a victim or other individual related to the incident involving a sex related offense; and
  - (h) The incident is reviewed and, if possible, appropriate action is taken to prevent similar occurrences.
- (6) If appropriate, work with the prosecutor to develop the case for criminal prosecution.

**.06 Attachment(s).**


There are no attachments to this directive.

**.07 History.**

- A. This directive replaces Internal Investigative Unit Directive IIU.020.0001 issued July 26, 2007 by continuing applicable provisions in an Executive Directive format and updating and expanding content consistent with federal law and regulation.
- B. This directive supersedes provisions of any other prior existing Department communication with which it may be in conflict.

**.07 Operations Distribution.**

A  
S — Security Chief and Facility staff assigned to conduct administrative investigations.

<p>Department of Public Safety and Correctional Services</p>  <p>Internal Investigative Unit Procedures</p>	<p><b>Procedure Number: A01.A.09.006.001/IIU.220.0002</b></p>
	<p><b>Title: Evidence and Personal Property Collection, Storage, and Disposition</b></p>
	<p><b>Effective Date: Draft Dated: May 15, 2007</b></p>
	<p><b>Authorized By: Douglas Cloman</b> <span style="float: right;"><b>Number of Pages: 11</b></span></p>

**.01 Purpose.**

This document establishes procedures for collection, storage, and disposition of evidence and other property seized or otherwise under the control of the Department of Public Safety and Correctional Services (Department) Internal Investigative Unit (IIU).

**.02 Scope.**

This directive applies to an investigator.

**.03 Policy.**

- A. An investigator shall take possession of evidence or other personal property according to federal and state statutory and regulatory requirements and Department or agency policy and procedures.
- B. An investigator shall safeguard all evidence to prevent tampering or contamination thereby preserving the evidentiary value of the items for use in court or other administrative proceedings.
- C. An investigator shall safeguard other personal property under the control of the IIU to preserve the items in the condition received until return to the owner or disposed of according to established procedures.

**.04 Authority/Reference.**

- A. Correctional Services Article, §10-701, Annotated Code of Maryland.
- B. Secretary's Department Directive 04-2005 dated March 10, 2005.

**.05 Definitions.**

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

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- (1) “Abandoned currency” means money that an investigator has seized or has otherwise taken possession of as part of official duties and the owner of the money cannot be identified.
- (2) Chain of Custody.
  - (a) “Chain of custody” means actions taken from the time of receipt until final disposition of items seized as evidence as part of an investigation to ensure the evidentiary value and admissibility at the time of court or other administrative proceeding.
  - (b) “Chain of custody” includes:
    - (i) Documents used to record and track receipt, custody, storage, and disposition of evidence; and
    - (ii) Secured storage; and
    - (iii) Preservation techniques.
- (3) “Controlled dangerous substance (CDS)” has the meaning stated in Criminal Law Article, §5-101, Annotated Code of Maryland.
- (4) “Custodial investigator” means the IIU investigator assigned the responsibility for processing, storing, controlling access to, and final disposition of evidence and personal property in possession of the IIU.
- (5) “Evidence room” means the facility used to store and maintain items subject to chain of custody.
- (6) “Investigator” means a Department employee permanently assigned to, or on special assignment to assist, the IIU with the responsibilities specified under Correctional Services Article, §10-701(a)(3), Annotated Code of Maryland.

**.06 Responsibility/Procedure.**

**A. Evidence and Property — General.**

- (1) An investigator shall process and secure evidence or personal property that the investigator receives or takes possession of as part of assigned duties and responsibilities according to established procedures and statutory or regulatory requirements.
- (2) An investigator taking possession of evidence or other personal property considered offensive, for example sexually explicit or derogatory, shall:
  - (a) Handle this type of evidence or personal property professionally;
  - (b) Ensure the personal property is not reproduced, displayed, or disseminated except for reasons directly related to the investigation or for court; and

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- (c) Place the evidence or personal property in an opaque container or envelope for storage.
- (3) The custodial investigator shall maintain a single Property Control Book as the primary record for evidence or personal property in possession of the IIU ensuring that.
  - (a) Entries are chronological;
  - (b) Entries are complete and accurate; and
  - (c) If an error occurs, the error is lined through with a single line and initialed by the individual making the entry and correction.
- (4) An investigator shall:
  - (a) Remove evidence or personal property from storage for official purposes;
  - (b) Keep evidence or personal property out of storage for the period that the official need exists; and
  - (c) Return the evidence or personal property to storage as soon as possible after the official purpose to have the evidence or personal property out of storage ends.
- (5) An investigator receiving or seizing evidence or personal property shall immediately inventory the property and record on the appropriate form, at a minimum:
  - (a) A description of the item that, if available, includes:
    - (i) Make;
    - (ii) Model;
    - (iii) Model or serial numbers, or both; and
    - (iv) Other information useful to identifying the item;
  - (b) The source or location the item was received or taken from; and
  - (c) The name of the investigator taking possession of the evidence or personal property.
- (6) The investigator taking possession of the evidence or personal property shall complete a property held record for evidence or other personal property that has a legal resale value.
- (7) Except for currency, CDS, hazardous materials, and firearms provided for elsewhere in this document, the custodial investigator shall:

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- (a) Other than contraband, return evidence no longer needed for investigation, prosecution, or appeal and personal property to the correct owner; or
- (b) Destroy property that has no resale value.

**B. Custodial Investigator.**

- (1) The custodial investigator, designated by the Director, is responsible for:
  - (a) Establishing and maintaining secure storage for evidence and personal property seized or under the control of the IIU;
  - (b) Recording, on the appropriate log, evidence and property placed in or removed from an evidence or property storage area;
  - (c) Controlling access to evidence and personal property storage areas;
  - (d) Conducting quarterly inventories of evidence in the possession of the IIU; and
  - (e) Conducting inventories and inspections of personal property storage areas.
- (2) The custodial investigator shall:
  - (a) Maintain a file for completed forms requesting laboratory and chain of custody that tracks evidence sent to and returned from the laboratory;
  - (b) Maintain a log for recording the identity of and reason for individuals entering an area used to store evidence; and
  - (c) Maintenance and filing of the IIU Property Control Book.
- (3) The custodial investigator shall ensure that the:
  - (a) Evidence and property storage areas are locked at all times; and
  - (b) Intrusion alarm activated.

**C. Temporally Securing Evidence and Property.**

- (1) The Director shall designate locations and provide secure containers (drop boxes) at the designated location for temporally securing evidence and personal property under the control of the IIU.
- (2) An investigator may use a drop box to temporarily secure evidence or personal property when conditions exist that make placing items in the IIU evidence or property storage area unreasonable, such as:
  - (a) When the custodial investigator is not available to place the evidence or personal property items in the IIU evidence or property storage area; or



- (b) When it is not practical to transport the evidence or personal property to the custodial investigator for placement in the evidence or personal property storage area.
- (3) An investigator placing evidence or personal property in a drop box shall:
  - (a) As soon as the custodial investigator is available, notify the custodial investigator of placement of evidence or personal property in a drop box and location of the drop box; and
  - (b) Coordinate, with the custodial investigator, transfer of the evidence or personal property from the drop box to the custodial investigator for placement in the appropriate storage area.
- (4) When an investigator places evidence or personal property in a drop box, the investigator shall:
  - (a) Lock the box and remove the key;
  - (b) Maintain possession of the key until the investigator removes the item for transport of the evidence or personal property to the custodial officer; and
  - (c) Maintain the chain of custody by recording on the chain of custody the date and time of placement in and removal from the drop box.

**D. IIU Evidence Room.**

- (1) The IIU evidence room is at IIU headquarters.
- (2) The evidence room is secured by a keyed lock.
- (3) The evidence room contains a locking safe suitable for storing CDS, money, and firearms; and
- (4) The custodial officer is responsible for security of the evidence room key and combination to the evidence room safe.

**E. Evidence — Collection and Control.**

- (1) An investigator seizing items for use as evidence shall:
  - (a) Safely handle and package the item to:
    - (i) Preserve evidentiary value;
    - (ii) Prevent damage or deterioration; and
    - (iii) Protect an individual from contact with a hazardous material;

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- (b) Document, on the proper forms, seizing the item to preserve the chain of custody; and
  - (c) Ensure the item is turned over to the custodial investigator for proper storage and control.
- (2) Evidence — Hazardous Materials.
- (a) An investigator seizing a hazardous material shall comply with federal and State requirements for the safe handling and storage of the hazardous material that may be available through the:
    - (i) Maryland Occupational Safety and Health Administration (MOSH);
    - (ii) Occupational Safety and Health Administration (OSHA);
    - (iii) National Center for Disease Control and Prevention; and
    - (iv) The State Fire Marshall; and
  - (b) After a hazardous material has been properly packaged, the investigator shall process the item as required under §.06E(3) of this document.
- (3) Other than CDS or hazardous materials, an investigator seizing items as evidence shall:
- (a) When appropriate, place the item in a completed evidence envelop;
  - (b) Seal the envelop;
  - (c) Complete and attach to the evidence envelop a chain of custody form; and
  - (d) Turn the item over to the custodial investigator for recording in the IIU Property Control Book, placement in storage and recording in the evidence room log book.

**F. Special Conditions — Firearms.**

- (1) When an investigator seizes or otherwise receives a firearm, the investigator shall make the firearm safe by, if the investigator knows how to safely unload the firearm, moving to a safe location away from other individuals and removing all ammunition from the firearm.
  - (a) If the investigator is unfamiliar with the firearm and thereby cannot safely remove ammunition from the firearm, the investigator shall:
    - (i) Block the trigger by placing the strap of a handcuff through the trigger guard behind the trigger and locking the handcuff; and
    - (ii) Attach a warning that the investigator was not able to unload the firearm.

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- (b) An investigator shall transport a firearm in the locked trunk of the investigator's vehicle.
- (2) If the custodial investigator has to place a loaded firearm in a storage area, the custodial officer shall arrange to have the firearm inspected and made safe by a Department or IIU firearms instructor or armorer.
- (3) If an investigator, firearms instructor, or armorer attempts to unload a firearm and an unloading box is not available, the individual unloading the firearm shall perform the unloading:
  - (a) Outside of a building on grass or dirt;
  - (b) Away from other individuals; and
  - (b) While pointing the barrel of the firearm at the ground.
- (4) Other than an issued firearm, an investigator seizing or otherwise taking possession of a firearm shall:
  - (a) Complete the applicable paperwork to initiate a trace to identify the owner of the firearm through:
    - (i) The Maryland State Police; and
    - (ii) The Baltimore Police Department; and
  - (b) Based on the circumstances involving the seizure or IIU possession of a firearm, assign a priority for the trace.
- (5) If the firearm, seized or otherwise in possession of the IIU, is a handgun, the investigator seizing or otherwise in possession of the handgun shall:
  - (a) Complete an Maryland State Police form 97 indicating the report is a:
    - (i) "Stop and frisk" report;
    - (ii) Firearm incident to arrest report;
    - (iii) Trace report; or
    - (iv) Combination of the circumstances under §§.06F(5)(a) of this document; and
  - (b) Forward the completed form to the Maryland State Police Handgun Permit Unit.
    - (i) A handgun search request under §.06F(5)(a) of this document may be requested by telephone or Maryland Interagency Law Enforcement System (MILES) based on the urgency of the investigation.

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- (ii) An investigator requesting a handgun search under §.06F(5)(a) of this document by telephone or MILES shall complete and forward the Maryland State Police form 97 substantiating the request.
- (6) The custodial investigator shall dispose of a handgun according to requirements
- (7) under Public Safety Article §3-501, Annotated Code of Maryland.
- (8) Except for a handgun, the custodial investigator shall destroy firearms that:
  - (a) Have been in IIU possession for more than 6 months;
  - (b) No longer have evidentiary value; and
  - (c) The rightful owner can not:
    - (i) Legally own or possess the firearm; or
    - (ii) Be located or identified.

**G. Special Conditions — Currency.**

- (1) If the custodial investigator receives currency that is not evidence in an investigation and the currency is considered abandoned, the custodial investigator shall forward the currency to the Department's Division of Financial Services for deposit in the State's General Fund.
- (2) If the custodial investigator receives currency that is not evidence in an investigation and the currency came into possession of the IIU in the U. S. Mail or other public or private conveyance, the custodial investigator shall:
  - (a) If the sender can be identified, return the currency to the individual sending the currency; or
  - (b) If the sender cannot be identified, forward the currency to the Department Division of Finance for deposit in the State's General Fund.
- (3) If the custodial investigator receives currency that was taken from an inmate and is not used as evidence or connected to a criminal violation or prosecution, the custodial investigator shall deposit the currency in the inmate's Department account.
- (4) Except under §.06G(5) of this document, if the custodial investigator receives currency used as evidence or related to criminal activity or prosecution, the custodial investigator shall:
  - (a) Forward the currency to the Department Division of Finance for placement in the Department working fund until disposition of the investigation and related prosecution;
  - (b) If the court does not make a disposition as to currency associated with the prosecution and the owner cannot otherwise be determined, track the property

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record for one year from the time the currency was no longer needed in the investigation, prosecution or appeal; and

- (c). If the owner cannot be determined, declare the currency to be abandoned and notify the Department Division of Finance to deposit the currency in the State's General Fund.
- (5) If the custodial investigator receives currency in and amount over \$1,000 that is connected to an arrest of a suspect in an investigation or \$5,000 or more that is not connected to an arrest of a suspect in an investigation, the custodial investigator shall:
- (a) Notify the U. S. Drug Enforcement Administration (DEA) Adoptions Program of the seizure by forwarding to the DEA:
    - (i) A completed DEA form 453;
    - (ii) A completed DEA form DAG-71;
    - (iii) A declination letter;
    - (iv) A copy of the IIU Criminal Investigative Report;
    - (v) A copy of the IIU Ion Scan Result Report;
    - (vi) A copy of the IIU K-9 Report;
    - (vii) A copy of the IIU Property Held Report;
    - (viii) If applicable, a copy of the search and seizure warrant; and
    - (ix) If applicable, a copy of IIU Inventory Return;
  - (b) File the documents under §.06G(5)(a) of this document with the DEA no later than 30 calendar days after seizure of the currency; and
  - (c) Forward the currency to the Department Division of Finance for keeping until the DEA responds to the request filed under §.06G(5) of this document.
- (6) The DEA will notify the Department in writing of a decision to accept the currency in the Adoptions Program.
- (a) If the DEA accepts the currency into the Adoption Program, the custodial investigator shall finalize the DEA form DAG-71 and coordinate with the Department Division of Finance to obtain and forward to the DEA a check in the amount accepted into the Adoption Program.
  - (b) If the DEA declines to accept the currency into the Adoptions Program, the custodial investigator shall notify the Department Division of Finance as to the proper disposition of the currency according to the applicable procedures under §§.06G(1) – (4) of this document.

H. Special Conditions — CDS.

- (1) An investigator seizing a controlled dangerous substance (CDS) shall:
  - (a) Place the CDS in a sealable plastic bag approved by the Director;
  - (b) Heat seal the package;
  - (c) Place an approved evidence label on the package 1” from the top of the sealed end;
  - (d) Complete (typewritten) a chain of custody form;
  - (e) Attach the completed chain of custody form to the package; and
  - (f) Deliver the package and paperwork to the custodial investigator who shall:
    - (i) Verify the paperwork has been properly completed;
    - (ii) Weigh and record the weight of the items on the property form;
    - (iii) Record the item in the IIU Property Control Book
    - (iv) Issue a property held number;
    - (v) Place the package in the appropriate storage area; and
    - (vi) Record placement of the CDS in the evidence room log book.
- (2) Quarterly during January, April, July and October, the custodial investigator shall forward CDS that is no longer needed as evidence to the Maryland State Police Crime Laboratory for destruction.
- (3) In cases where CDS is eligible for destruction, but maintaining the CDS at the IIU facility until the next quarter for disposal results in a storage or security problem, the custodial investigator may coordinate with the Maryland State Police Crime Laboratory for immediate transfer and destruction.
- (4) The custodial investigator shall maintain the completed chain of custody and the property records for destroyed CDS to account for the transfer and disposal of the CDS.

I. Inventory.

- (1) Except for CDS, the custodial investigator and a representative designated by the Director shall:
  - (a) Conduct quarterly inventories of evidence and property storage rooms to reconcile and account for each item listed in the log book; and

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- (b) Record the inventory on the next available line in the evidence and property log books including:
  - (i) Date of the inventory;
  - (ii) Time of the inventory;
  - (iii) Signature of the Custodial investigator; and
  - (iv) Signature of the designee assisting with the inventory
- (2) Quarterly during January, April, July and October of each calendar year, the custodial investigator and a representative designated by the Director shall
  - (a) Conduct an inventory of CDS stored by the IIU to account for each CDS item recorded in the log book; and
  - (b) Record the inventory as required under §.06I(1)(b) of this document.
- (3) The custodial investigator shall report a discrepancy discovered during an inventory to the Director for assignment of an investigator to resolve the discrepancy.
- (4) The Director shall periodically conduct random inspections of the evidence and property storage rooms to ensure the integrity and security of the storage facility and the system used to account for stored items.

**.07 Attachments.**


There are no attachments to this document.

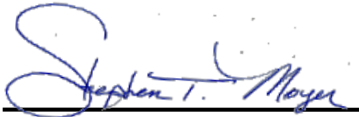
**.08 History.**

- A. This document replaces IIU Evidence/Property Collection and Storage Procedures dated March 26, 2002.
- B. This document supercedes any current IIU policy or procedure with which it may be in conflict.

# Executive Directive



<b>Title:</b> Limited English Proficiency (LEP) Policy	<b>Executive Directive Number:</b> OEO.020.0032 Revised
<b>Related MD Statute/Regulations:</b> Correctional Services Article, §§2-103 Annotated Code of Maryland; Civil Rights Act of 1964 (42 U.S.C. 2000d) Title VI; Presidential Executive Order 13166; and State Government Article, §§10-1101 — 10-1105, Annotated Code of Maryland	<b>Supersedes:</b> OEO.020.0032 dated July 25, 2014
<b>Related Standards:</b> ACA 4-4281-1; PREA Standard 115.16b.	<b>Responsible Authority:</b>  Executive Director — Office of Equal Opportunity
<b>Related MCCA Standards:</b> N/A	<b>Effective Date:</b> June 22, 2016 <b>Number of Pages:</b> 5

  
**Stephen T. Moyer**  
 Secretary

  
**Rhea Harris**  
 Assistant Secretary  
 Programs and Services

**.01 Purpose.**

This directive establishes policy and procedures to ensure effective communication with individuals with Limited English Proficiency (LEP), including individuals under the authority of the Department of Public Safety and Correctional Services (Department), in order to provide meaningful access to Department programs and services.

**.02 Scope.**

This directive applies to units of the Department, but in particular to units with direct contact with the public or with LEP individuals under the jurisdiction of the Department.

**.03 Policy.**

- A. The Department shall take reasonable steps to ensure that LEP individuals receive meaningful access to programs and services, as appropriate.
- B. The Department shall provide language assistance services, in accordance with applicable State and federal law, based on an assessment of the following factors:
  - (1) Number or proportion of LEP individuals served or encountered by the Department when providing programs or services;
  - (2) Frequency of contact with LEP individuals;
  - (3) Nature and importance of the program, activity, or service provided; and
  - (4) Resources available.



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- C. The Department's Office of Equal Opportunity shall provide central coordination and technical assistance while monitoring responsibilities to ensure Department compliance with this directive.

**.04 Definitions.**

A. In this directive, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Bilingual Staff" includes employees certified through the Office of Equal Opportunity to provide interpretive services at Department facilities.
- (2) "In-person translation services" means a translator is requested to be present at the time a service is provided in order to assist a LEP individual effectively communicate.
- (3) "Language assistance services" means verbal interpretation and written translation of vital documents into a language other than English.
- (4) "Limited English Proficiency (LEP)" means an individual is not capable of speaking, reading, writing, or understanding the English language well enough to allow effective interaction.
- (5) "Meaningful Access" means the standard required of federally-funded entities or recipients of federal funding in order to comply with Title VI of the Civil Rights Act of 1964 program requirements related to language access that ensures service providers or recipients make available to LEP individuals free language assistance for the purpose of accurate and effective communication.
- (6) "OEO" means the Department's Office of Equal Opportunity.
- (7) "Telephone translation services" includes an interpretation provided using a telephone hotline or other telephone interaction with a LEP individual.
- (4) "Vital documents" means all applications or informational materials, notices, and complaint forms offered by the Department, including the following examples:
  - (a) Consent and complaint forms;
  - (b) Intake forms with the potential for important consequences;
  - (c) Written notices of rights, denial, loss, or decreases in benefits or services, parole, and hearings;
  - (d) Rights and procedures related to the Prison Rape Elimination Act protections;
  - (e) Notices of disciplinary action;
  - (f) Notices advising LEP individuals of free language assistance;
  - (g) Correctional facility rule books;

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- (h) Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required; or
- (i) Applications to participate in a Department program or activity or to receive Department benefits or services.

**.05 Responsibility/Procedures.**

- A. A unit head or managing official shall ensure that employees at each location under the authority of the unit head or managing official:
  - (1) Are informed of the LEP policy, the need to provide meaningful access to information and services for LEP individuals, and how LEP impacts the location.
  - (2) Take appropriate steps to inform LEP individuals that language assistance services may be requested at no cost to the LEP individual.
  - (3) Depending on the circumstances, notification under §.05A(2) of this directive may be:
    - (a) Provided verbally by staff;
    - (b) Posted at appropriate entry points;
    - (c) Printed on forms or brochures; or
    - (d) Available online on the Department public website
  - (4) Have access to resources for providing language assistance services, including:
    - (a) Contact information for on-site or telephone-based interpreters;
    - (b) A certified bilingual employee registry; and
    - (c) A process, such as language identification cards, for determining the language of a LEP individual.
- B. In addition to the provisions under §.05A of this directive, when a unit has responsibilities that place employees in direct contact with the public or with LEP individuals under the jurisdiction of the Department, the unit head or managing official shall:
  - (1) Require appropriate training for employees likely to have regular contact with LEP individuals, including how to respond to in-person and telephone contact with LEP individuals.
  - (2) Designate an LEP coordinator for the unit to:
    - (a) Ensure availability of language assistance resources;
    - (b) Document and maintain records of the:
      - (i) Number of LEP individuals served;

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- (ii) Types of languages encountered; and
- (iii) Actions taken to provide language assistance services; and
- (c) When requested, report the information required under §.05B(2)(b) of this directive to the Executive Director of OEO, or a designee.

**C. Verbal Language Services.**

- (1) When verbal language services are required, depending on the circumstances and when feasible, a unit may elect to:
  - (a) Contact an interpreter, live or telephone-based, who maintains a standing contract with the State;
  - (b) Use trained community volunteers;
  - (c) Use certified bilingual employees listed in the employee registry on an as-needed basis and pay the employees in accordance with COMAR 17.04.02.10; or
  - (d) Hire employees with bilingual skills.
- (2) If contact with a LEP individual occurs weekly or more frequently, a unit shall provide face-to-face, in-house verbal language services.
- (3) If a LEP individual declines the verbal language services offered by the Department and requests to use a family member, friend, or community member as an interpreter, the Department shall:
  - (a) When possible, determine that the use of the requested interpreter does not:
    - (i) Adversely affect the provision of verbal language services; or
    - (ii) Create a conflict of interest or breach of confidentiality; and
  - (b) Document the use of the requested interpreter.
- (4) In an emergency situation, a unit may use an interpreter not provided for under §.05C(1) – (3) of this directive.

**D. Written Language Services.**

Consistent with the assessment in §.03B, a unit shall ensure that the translation of vital documents into languages spoken by more than three percent of the overall population within the geographic area served by a Department unit.

**Executive Directive Number: OEO.020.0032**

E. Compliance.

(1) The OEO shall:

(a) Monitor overall compliance with requirements established under the directive; and

(b) Investigate complaints related to LEP services.

(2) Failure to comply with requirements of this directive shall be grounds for disciplinary action, up to and including termination of employment.

**.06 Attachment(s).**

LEP Plan (Listed as a “Support Docs” on SafetyNet with this directive).

**.07 History.**

A. This directive rescinds OEO.020.0032 dated July 25, 2014 by updating titles and signatures to reflect the current organization.

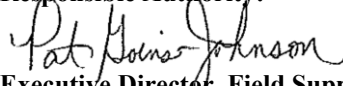
B. This directive supersedes provisions of any other prior existing Department communication with which it may be in conflict.

**.08 Operations Distribution.**

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

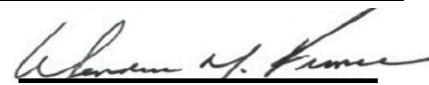
# Executive Directive



<b>Title:</b> Inmate Handbooks	<b>Executive Directive Number:</b> OPS.001.0008
<b>Related MD Statute/Regulations:</b> Correctional Services Article, §2-103, Annotated Code of Maryland	<b>Supersedes:</b> DOC.001.0008 (formerly DCD 1-8) dated 7/1/ 2007 DPDS 001.0008 dated 1/18/2011 DPDS .001.0009 dated 11/30/2010
<b>Related ACA Standards:</b> 4-4278 and 4-4288 ALDF-2A-27 and 2A-28	<b>Responsible Authority:</b>  Executive Director, Field Support Services
<b>Related MCCS Standards:</b> .05F and .08D	<b>Effective Date:</b> September 25, 2015 <b>Number of Pages:</b> 4



**Stephen T. Moyer**  
Secretary



**Wendell M. France**  
Deputy Secretary  
for Operations

## .01 Purpose.

This directive establishes policy and procedure for inmate handbooks for use in Department of Public Safety and Correctional Services (Department) correctional and detention facilities.

## .02 Scope.

This directive applies to all units responsible for the care and custody of individuals housed in a Department correctional and detention facility.

## .03 Policy.

The Department shall provide each inmate housed in a Department correctional or detention facility an inmate handbook in a format that the inmate is able to understand that supplements the orientation process by providing reliable information on programs, services, schedules, rules and regulations for the incoming inmate.

## .04 Definitions.

A. In this directive, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Correctional facility" has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland, which includes a detention facility.

(2) Inmate.

(a) "Inmate" means an individual under the custody and authority of the Department housed in a correctional or detention facility.

**Executive Directive Number: .OPS.001.0008**

- (b) “Inmate” includes:
  - (i) An individual referred to as a detainee, resident, or offender; and
  - (ii) A juvenile charged as an adult under the authority of and housed in a Department correctional or detention facility.
- (3) “Managing Official” has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland, which includes an administrator, a director, a warden, a superintendent, or other individual responsible for the management of a correctional or detention facility.

**.05 Responsibility/Procedure.**

A. Inmate Handbook Committee, (IHC)

- (1) The Executive Director — Field Support Services (Executive Director) shall:
  - (a) Establish three separate Inmate Handbook Committees to oversee development and maintenance of inmate handbooks used specifically for the following inmate populations:
    - (i) Adult inmates housed in a Department correctional facility;
    - (ii) Adult inmates housed in a Department detention facility; and
    - (iii) Juveniles charged as an adult housed in a Department correctional or detention facility.
  - (b) Designate an employee to chair each IHC.
  - (c) Assign employees to staff each IHC.
  - (d) Be the approving authority for issuance of an inmate handbook and supplemental documents used to update an inmate handbook prior to the next revision or printing.
- (2) The Executive Director shall designate a Field Support Services staff member who shall:
  - (a) Conduct a content review of inmate handbooks and related supplements sent to the Executive Director for approval;
  - (b) Coordinate with the IHC Chair to correct issues identified during a content review; and
  - (c) Present to the Executive Director the finalized inmate handbook or supplement for approval.
- (3) Each IHC Chair shall ensure that:
  - (a) At least annually the IHC reviews and, if appropriate, updates or revises the inmate handbook for which the IHC is responsible for presentation to the Executive Director for approval;
  - (b) Committee members are permitted at least a 3 weeks to review, comment, and prepare a draft of an update or revised inmate handbook for presentation to the Executive Director.

**Executive Directive Number: .OPS.001.0008**

- (c) Pertinent IHC members draft supplemental documents in relation to the IHC's inmate handbook for presentation to and approval by the Executive Director.
- (d) All completed drafts are submitted to the designated Field Support Services staff person for a content review and subsequent referral to the Executive Director — Field Support Services.

B. A managing official shall ensure that an inmate newly assigned to a facility under the authority of the managing official:

- (1) Receives a copy of the applicable inmate handbook and, if applicable, supplemental documents within 7 days of the date the new inmate arrives at the facility;
- (2) Signs a receipt for the inmate handbook and, if appropriate, supplemental documents related to the handbook; and
- (3) The completed receipt is forwarded to Case Management for inclusion in the inmate's base file.

C. A managing official shall ensure that:

- (1) A revised inmate handbook and, if appropriate, supplemental documents are issued in a timely manner to inmates in a correctional or detention facility under the authority of the managing official.
- (2) Facility information and orientation materials distributed to inmates do not conflict with the contents of the current inmate handbook or current supplemental documents.
- (3) Copies of the current inmate handbook and supplemental documents are available for reference in the inmate library.
- (4) A copy of an inmate handbook and supplemental documents are archived in accordance with the appropriate retention schedule for audit and other administrative purposes.
- (5) Copies of an inmate handbook for distribution to the adult population of a facility are reproduced by Maryland Correctional Enterprises.
- (6) Copies of an inmate handbook issued to a juvenile charged as an adult may be printed at the facility.
- (7) Best practices are followed to avoid stockpiles of potentially obsolete inmate handbooks that include:
  - (a) Smaller orders that are placed more frequently;
  - (b) Consideration of data on the facility's average monthly intake; and
  - (c) Consulting with the Executive Director concerning work being done on the respective inmate handbook.

**Executive Directive Number: .OPS.001.0008**

**.06 Attachments/Links.**

Inmate Receipt of Inmate Handbook

**.07 History.**

- A. This directive replaces DOC.001.0008 (formerly DCD# 1-8), titled Division of Correction Inmate Handbook dated July 1, 2007; DPDS.001.0008, titled Adult Detainee Handbook dated January 18, 2011, and DPDS.001.0009, titled Juvenile Detainee Handbook dated August 5, 2011 in order to establish a uniform process for the authorization, publication and distribution of inmate handbooks and related supplemental documents.
- B. This directive supersedes provisions of any other prior existing Department or Division communication with which it may be in conflict.

**.08 Correctional Facility Distribution Code**

- A
- L
- S Managing Official; Case Management Staff



**MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES**  
**OFFICE OF OPERATIONS**  
**INMATE RECEIPT OF AN INMATE HANDBOOK**

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Today I received a copy of the Inmate Handbook issued by \_\_\_\_\_  
(Name of Facility)

I understand that I must keep this handbook, know the contents, and comply with provisions referenced in the handbook.

\_\_\_\_\_  
Inmate's Signature

\_\_\_\_\_  
Inmate Identification Number

\_\_\_\_\_  
Date

---

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I personally gave the above-named inmate a copy of the Inmate Handbook issued by the facility named above, however the inmate refused to sign an acknowledgement of receipt.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

# Executive Directive



<b>Title:</b> Reporting Serious Incidents	<b>Executive Directive Number:</b> <b>OPS.020.0003</b> <b>Revised</b>
<b>Related MD Statute/Regulations:</b> Correctional Services Article, §2-103, Annotated Code of Maryland	<b>Supersedes:</b> OPS.020.0003 dated 01/01/17
<b>Related ACA Standards:</b> 1-CORE-2A-08; 1-CORE-2B-05; 1-CORE-4D-15; 4-4018	<b>Responsible Authority:</b> <i>Pat Goiner Johnson</i> Executive Director, Field Support Services
<b>Related MCCS Standards:</b> .01A and .01B	<b>Effective Date:</b> September 1, 2017 <b>Number of Pages:</b> 6

*Stephen T. Moyer*  
Stephen T. Moyer  
Secretary

*J. Michael Zeigler*  
J. Michael Zeigler  
Deputy Secretary  
for Operations

## .01 Purpose.

This directive continues policy and procedures for reporting serious incidents occurring at a Department of Public Safety and Correctional Services (Department) facility.

## .02 Scope.

This directive applies to all Department units responsible for the care and custody of an individual under the authority of the Department.

## .03 Policy.

- A. The Department shall ensure that each correctional and detention facility reports all serious incidents occurring at the facility.
- B. The Department shall use information related to serious incidents to identify practices intended to minimize disruption of Department and facility operations, ensure that appropriate action is taken to address reported incidents, and support an accurate response to official inquiries related to the reported incident.

## .04 Definitions.

- A. In this directive, the following terms have the meanings indicated.
- B. Terms Defined.
  - (1) "HDU PCO" means the Home Detention Unit Police Communications Officer.
  - (2) "PSIIS" means Preliminary Serious Incident Intranet Submission

(3) Serious Incident.

(a) "Serious incident" means a non-routine event that may:

- (i) Affect facility operation;
- (ii) Be sensitive in nature; or
- (iii) Be of potential interest to the media.

(b) "Serious incident" according to the American Correctional Association (ACA) includes a situation:

- (i) In which injury, serious enough to warrant medical attention, occurs involving an inmate, employee, or visitor on the grounds of the facility; or
- (ii) Creates an imminent threat to the security of the facility, or to the safety of inmates, employees, or visitors on the grounds of the facility.

(4) "SIR" means Serious Incident Report.

(5) "SOU" means the Security Operations Unit.

**.05 Responsibility/Procedures.**

A. Reporting a Serious Incident.

(1) An employee involved in or with knowledge of a serious incident shall:

- (a) If the incident is in progress, initiate the appropriate response based on the circumstance or summon assistance to stop the incident and protect individuals involved.
- (b) Immediately, or when safe to do so, report the incident to the on-duty senior shift supervisor.

(2) Upon notification under §.05A(1)(b) of this directive, the senior shift supervisor shall:

- (a) Ensure the serious incident is prioritized in accordance with §§.05C(1)(b) and C(2) of this directive;
- (b) Assign a control number to the incident in accordance with §.05C(3) of this directive;
- (c) Ensure the required information is recorded in the Facility Serious Incident Control Log;
- (d) Before the end of the shift on which the incident occurred, ensure:
  - (i) A preliminary SIR is submitted; and
  - (ii) The SIR information is accurately entered in the Department Offender Case Management System (OCMS); and
- (e) Make notifications in accordance with §.05B of this directive.

**B. Notifications.**

- (1) The shift commander shall immediately notify the facility's managing official and the managing official's Commissioner by telephone of all Priority 1 incidents.
- (2) A Commissioner notified in accordance with §.05B(1) of this directive shall notify the Deputy Secretary for Operations and other executive staff in accordance with procedures for reporting newsworthy event (separate directive). The following are examples of newsworthy events that require immediate notification:
  - (a) Walk-offs;
  - (b) Serious injuries to staff or inmates;
  - (c) Facility or housing unit lockdowns;
  - (d) Emergency Operations Center (EOC) activation;
  - (e) Loss of utilities that create a serious incident;
  - (f) 911 transports, which are incident-driven;
  - (g) Employees receipt of a criminal or traffic summons (e-mail notification only); and
  - (h) Other incidents determined by the shift commander to be serious or media sensitive.
- (3) The shift commander shall:
  - (a) During non-business hours, notify the facility duty officer of a Priority 2 serious incident as follows:
    - (i) Between 8:01 am and 11 :59 pm, notify the Department Intelligence and Investigative Division (IID) Duty Officer who shall follow IID procedures for documenting the incident.
    - (ii) Between the hours of 12:00 am (midnight) and 8:00 am, notify the Home Detention Unit - Police Communication Officer (HDU-PCO) who shall obtain sufficient information from the caller to complete the HDU-PCO Serious Incident Control Log and relay the information to the on-call IID investigator.
  - (b) For a Priority 1 serious incident, as soon as possible, but not later than the end of the shift on which the Priority 1 serious incident occurred, send a PSIIS distributed in accordance with instructions provided in the attached Priority 1 and 2 PSIIS Distribution List Instructions.
  - (c) For a Priority 2 serious incident, as soon as possible, but not later than the end of the shift on which the Priority 2 serious incident occurred, send a PSIIS distributed in accordance with instructions provided in the attached Priority 1 and 2 PSIIS Distribution List Instructions.
  - (d) A PSIIS sent in accordance with §.05B(3)(b) or (c) of this directive shall include in the "Subject Line":
    - (i) Initial Notification of a Serious Incident - SIR;

- (ii) Acronym for the facility where the serious incident occurred for example, “NBCI”;
  - (iii) Facility control number for example “16-001”;
  - (iv) Incident category for example “2h”; and
  - (v) Brief description of the incident, for example, “Drugs Recovered.”
- (e) A PSIIS sent in accordance with §.05B(3)(b) or (c) of this directive shall include in the body of the email information contained in section:
- (i) D of the SIR concerning the inmate; and
  - (ii) G of the SIR concerning the description of the incident.
- (h) A PSIIS sent in accordance with §.05B(3)(b) or (c) of this directive shall include a copy of the preliminary SIR as an attachment.

**C. Documenting a Serious Incident.**

- (1) A serious incident shall be:
- (a) Documented using a SIR (copy attached).
  - (b) Prioritized:
    - (i) Using a Serious Incident Category Descriptions form (copy attached); or
    - (ii) If the incident is media sensitive, media sensitive factors take priority over the Serious Incident Category Descriptions form and staff shall use good judgment when determining the priority level of the serious incident.
- (2) A serious incident may involve more than one serious incident category, all of which may be recorded on the SIR, and if this occurs, the employee completing the SIR shall prioritize the serious incident based on the incident with the highest priority.
- (3) A managing official, or a designee, shall ensure that each serious incident is assigned a facility control number created as follows:
- (a) Facility acronym (for example, JCI, ECI) followed by a dash;
  - (b) Two digits representing the current calendar year (16 for 2016) followed by a dash; and
  - (c) A sequentially assigned number representing the number of the incident at the facility in the current calendar year that:
    - (i) Consists of three digits, for example 001, 002, 003, etc.; and
    - (ii) Begins at 001 with the first serious incident of each new calendar year.

- (4) The managing official, or a designee, shall ensure:
  - (a) A Facility Serious Incident Report Control Log is maintained at the facility.
  - (b) Each control number is sequentially recorded on the Facility Serious Incident Report Control Log ensuring continuity of numbering.
  - (c) The Facility Serious Incident Report Control Log is available to staff on each shift to facilitate proper assignment of control numbers.
  - (d) Staff appropriately completes the Facility Serious Incident Report Control Log.
- (5) The individual responsible for completing a SIR, preliminary and final, shall record the assigned control number on the SIR.
- (6) A managing official, or a designee, shall:
  - (a) Submit a copy of the "Final" SIR with copies of all investigative and related reports and photographs, to the Director, SOU at Field Support Services within five business days of the date the reported incident occurred unless directed otherwise by the Director, SOU.
  - (b) If applicable, immediately forward to the Director, SOU supplemental reports submitted in relation to a report of a serious incident under this chapter (each supplemental report shall contain the control number originally assigned to the serious incident).
- (7) Maintain the Facility Serious Incident Report Control Log and the original SIR for 7 years from the:
  - (a) For a Facility Serious Incident Report Control Log, close of the calendar year the Facility Serious Incident Report Control Log was used and then destroyed, unless legal proceedings require further retention; and
  - (b) For a SIR and related documentation, date the incident was finalized by the submission of the final SIR and then destroyed, unless legal proceedings require further retention.

**D. Security Operations Unit (SOU).**

- (1) The Director, SOU shall:
  - (a) Ensure that each correctional, detention and pre-trial release facility complies with requirements established under this directive.
  - (b) Track the progression of reported serious incidents.
  - (c) Review copies of documentation received in accordance with §.05C(6)(a) of this directive and:
    - (i) Compile and analyze data and produce applicable reports related to the individual facility and Department-wide serious incidents and actions taken to address findings or recommendations resulting from data analysis;
    - (ii) Retain Serious Incident Reports for 7 years in accordance with DOC Retention Schedule

Number 2424-17; and

**(iii)** Destroy the documents when no longer needed for litigation, analysis or reporting.

**.06 Attachment(s).**

- A. Serious Incident Report (Sample)
- B. Serious Incident Category Descriptions (Sample)
- C. Facility Serious Incident Report Control Log (Sample)
- D. HDU PCO Serious Incident Report Control Log (Sample)
- E. SOU Serious Incident Report Control Log (Sample)
- F. Priority 1 and 2 PSIIS Distribution List Instructions

G. Retention Schedule No. 2424-17

**.07 History.**

- A. This directive replaces OPS.020.0003 dated January 1, 2017 by adding clarification to transmitting and filing of SIR documentation and updating the SIR.
- 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 Code.**

- A
- D

Preliminary  Final

# Serious Incident Report

Control # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Incident Date: \_\_\_\_\_ Time: \_\_\_\_\_  
 Facility Year Sequence #

Section A Incident Categories	
Priority 1	
1a	Accidental Firearm Discharge
1b	Adverse Job Action
1c	Arrest, Staff
1d	Assault, Inmate, Life Threatening
1e	Assault, Staff, Life Threatening
1f	Attempted Escape
1g	Deadly Force
1h	Death, Inmate, Accidental
1i	Death, Inmate, Homicide
1j	Death, Inmate, Suicide
1k	Death, Inmate, Unknown
1l	Death Staff
1m	Disturbance, Force Used
1n	EOC Activation
1o	Escape
1p	Fire, Fire Dept. Required
1q	Hazard, Evacuation Required
1r	Homicide, Staff
1s	Injury, Inmate, Life Threatening
1t	Injury, Staff, Life Threatening
1u	Other
1v	Security Breach Staff Needed
Priority 2	
2a	Arrest, Inmate
2b	Arrest, Visitor
2c	Assault, Inmate, Weapon Used
2d	Assault, Staff, Physical
2e	Attempted PR Escape
2f	Attempted Suicide
2g	Death, Inmate, Natural
2h	Drugs Recovered
2i	Walk-Off
2j	Hazard, No Evacuation
2k	Injury, Visitor
2l	Inmate Group Protest
2m	Other
2o	State Property Damage
2p	PREA Related Incidents

Section B Facility Notifications		
Time Notified	Title	Name
	Deputy Secretary Operations	
	Commissioner	
	Director, Security Operations	
	DPSCS PIO	
	IID	
	Warden	
	Assistant Warden	
	Security Chief	
	Facility Administrator	
	Shift Commander	
	Reg. Health Care Admin.	
	Director, Medical Services	
	Director, Mental Health	
	State Police	
	Local Police	
	Other	
	Other	
	Other	
	Other	
	Other	
	Other	
	Other	
	Other	

Section C Reporting Official		
Incident Reported to SOU/ HDU		
Date: _____	Time: _____	
To: _____	Name Last, First	Title
By: _____	Name Last, First	Title
Shift Commander/Designee		Name Last, First
_____	Signature	Date _____ Time _____



**Section D: Inmates**

DOC #	Last Name, First Name M.I.	DOB	Race	Security Level	9

**Involvement / Injury:**

**Sentence**

Years	Months	Beginning	Offenses

DOC #	Last Name, First Name M.I.	DOB	Race	Security Level	9

**Involvement / Injury:**

**Sentence**

Years	Months	Beginning	Offenses

DOC #	Last Name, First Name, MI.	DOB	Race	Security Level	9

**Involvement / Injury:**

**Sentence**

Years	Months	Beginning	Offenses

**Section E Staff and/or Public Involved**

Last Name, First Name M.I.	Title	Involvement

**Section F Escape Information**

	Date	Time
Last Accounted For	_____	_____
First Unaccounted For	_____	_____
Arrived at Pre-Release	_____	_____
Last Parole Hearing	_____	_____
Was Inmate Arrested	Yes <input type="checkbox"/>	No <input type="checkbox"/>
History of Escape	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Control # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
Facility                      Year                      Sequence #

**Section G**

**Description on Incident / Action Taken**

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## Serious Incident Category Descriptions

<b>Priority #1</b>	
1a Accidental Firearms Discharge	Anytime a firearm is accidentally discharged
1b Adverse Job Action	An organized or planned action taken by staff which adversely affects operations.
1c Arrest, Staff	An employee is arrested or served with a criminal summons.
1d Assault, Inmate, Life Threatening	Any life threatening assault on an inmate and the inmate is sent to the ER.
1e Assault, Staff, Life Threatening	Any life threatening assault on staff and the employee is sent to the ER.
1f Attempted Escape	Any attempted escape by an inmate with a minimum, medium, or maximum security level.
1g Deadly Force	Any incident where a deadly force has been used. Death did not have to result.
1h Death, inmate, Accidental	Accidental death of an inmate.
1i Death, inmate, Homicide	Inmate murder.
1j Death, Inmate, Suicide	Inmate suicide.
1k Death, Inmate, Unknown	Inmate has died from an unknown cause.
1l Death, Staff	Employee death.
1m Disturbance, Forced Used	Any disturbance, which involved five or more inmates, resulted in loss of control and required force to resolve.
1n EOC Activation	Any time an Emergency Operations Center is activated not to include exercises.
1o Escape	An escape by an inmate with a minimum, medium, or maximum security level.
1p Fire, Fire Department Required	Any fire which was extinguished by the fire department.
1q Hazard, Evacuation Required	Any hazard, manmade or natural requiring inmate evacuation.
1r Homicide, Staff	Employee was murdered on duty.
1s Injury, Inmate, Life Threatening	An inmate received a life threatening injury not brought on by assault.
1t Injury, Staff, Life Threatening	An employee received a life threatening injury while on duty that was not the result of an assault.
1u Other	Any event, incident, or circumstance that could be media sensitive or that warrants <b>immediate</b> reporting and does not have an appropriate category, i.e. Incident related 911...
1v Security Breach Staff Needed	Anytime a security breach occurs requiring additional staffing, i.e. Security Systems Failure, Major Power Failure, Perimeter Breach....
<b>Priority #2</b>	
2a Arrest, Inmate	An inmate is arrested.
2b Arrest, Visitor	A visitor is arrested.
2c Assault, Inmate, Weapon Used	Anytime an inmate is assaulted with a weapon.
2d Assault, staff, Physical	Physical assault on staff to include the use of substances or weapon.
2e Attempted PR Escape	An attempted escape by an inmate with a Pre-Release security level.
2f Attempted Suicide	An attempted suicide.
2g Death, Inmate, Natural	Inmate death from natural causes.
2h Drugs Recovered	Drugs are recovered.
2i Walk-Off	An escape by an inmate: (a) from a Pre-Release security level facility, or classified as pre-release security as referred to in the Inmate Escape and Retake Warrants policy.
2j Hazard, No Evacuation	Any hazard, manmade or natural that did not require evacuation.
2k Injury, Visitor	A visitor suffers an injury requiring a 911 call.
2l Inmate Group Protest	Anytime twelve or more inmates participate in a protest, i.e. Sit-downs, Mass Movement slows down.
2m Other	Any event, incident, or circumstance that could be media sensitive or that warrants reporting and does not have an appropriate category, i.e. Cell phone recovery.
2o State Property Damage	Damage has occurred to state property.
2p PREA Related Incidents	Prison Rape Elimination Act







## Priority 1 and 2 PSIIS Distribution List Instructions

- A. The Information Technology and Communications Division (ITCD) has created distribution lists in Google to assist sending the Priority 1 and 2 PSIIS messages required under §§.05B(3)(d) and (e) of Executive Directive OPS.020.0003:
- (1) DPSCS DL SIR Priority 1 (dlsirpriority1\_dpscs@maryland.gov), which automatically includes the:
    - (a) Secretary, Department of Public Safety and Correctional Services (Secretary);
    - (b) Executive Assistant to the Secretary;
    - (c) Director of Government and Legislative Affairs;
    - (d) Executive Director of Communications;
    - (e) Deputy Secretary for Operations;
    - (f) Director of Professional Standards, Police/Correctional Officers and Labor Relations;
    - (g) Director of the Office of Investigative Services;
    - (h) Director of the Intelligence and Investigation Division;
    - (i) Executive Director of Field Support Services;
    - (j) Director of the Security Operations Unit; and
    - (k) Assistant Director of the Security Operations Unit.
  - (2) DPSCS DL SIR Priority 2 (dlsirpriority2\_dpscs@maryland.gov), which automatically includes the:
    - (a) Deputy Secretary for Operations;
    - (b) Director of Professional Standards, Police/Correctional Officers and Labor Relations;
    - (c) Director of the Office of Investigative Services;
    - (d) Director of the Intelligence and Investigation Division;
    - (e) Director of the Security Operations Unit; and
    - (f) Assistant Director of the Security Operations Unit.
- B. The following information is provided to assist with accessing the appropriate PSIIS distribution list in Google Mail:
- (1) In Google Mail, select “Compose” from the selections listed down the left side of the screen.

## Priority 1 and 2 PSIIS Distribution List Instructions

- (2) Once the new message screen appears place the cursor in the “To” field and begin typing the appropriate distribution list (Priority 1 or 2) as the list appears under §A(1) or (2) of these instructions.
- (3) As typing progresses, the two lists should be displayed as the lists appear under §A(1) or (2) of these instructions to be selected, select the list based on the SIR incident priority.

### C. THE Priority 1 and 2 DISTRIBUTION LISTS ARE NOT COMPLETE AND THE FOLLOWING ADDRESSEES ARE REQUIRED TO BE ADDED IN THE “TO” FIELD:

#### (1) For a Priority 1 PSIIS add:

- (a) sir.doc@maryland.gov; and
- (b) DPSCS DL SIR Priority 2 distribution list with the additions listed under §C(2) of these instructions.

#### (2) For a Priority 2 PSIIS add:

##### (a) The actual name of the current:

- (i) Commissioner responsible for the facility where the SIR occurred;
- (ii) Deputy and Assistant Commissioner responsible for the facility where the SIR occurred;
- (iii) Managing official, Assistant Managing Official, and, if appropriate, the Facility Administrator responsible for the facility where the SIR occurred;
- (iv) Security Chief for the facility where the SIR occurred; and
- (v) Other individuals as directed by the managing official, or a designee; and

##### (b) sir.doc@maryland.gov.

### D. The “subject Line” and the content of the message shall be in accordance with provisions established under §§.05B(3)(f) and (h) of Executive Directive OPS.020.0003.



DEPARTMENT OF GENERAL SERVICES RECORDS MANAGEMENT DIVISION RECORDS RETENTION AND DISPOSAL SCHEDULE		Schedule No. 2424 - 17
		Page 1 of 2
Agency Department of Public Safety and Correctional Services		Division/Unit Division of Correction
Item No.	Description	Retention
	<b>This schedule supersedes Schedule No. 1406 - 17.</b>	
I.	<b><u>SECURITY AREA:</u></b> A. Use Of Force B. Post Orders Sign-Off Sheet C. Post Orders and Post Order Logbook D. Equipment Issue E. Sanitation Inspection F. Fire and Safety Inspection G. Incident Reports (Matter Of Record) H. Equipment Inspections I. Equipment Inventory J. Security Inspection Sheets K. Urinalysis Test Reports L. Contraband Reports M. Search Reports N. Key Inventory O. Key Inspection P. Weapon Inspection Q. Weapon Issue R. Meal Inspection and Count S. Vehicle Inspection T. Count Sheets	Retain seven (7) years, then destroy.
Schedule Approved by Department, Agency, or Division Representative. Date <u>6/5/08</u> Signature <u>J. Michael Stouffer</u> Typed Name <u>J. Michael Stouffer</u> Title <u>Commissioner</u>		Schedule Authorized by State Archivist Date <u>3/20/09</u> Signature <u>Edward C. Gump</u>


DGS 550-1

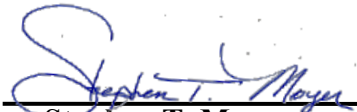
DEPARTMENT OF GENERAL SERVICES RECORDS MANAGEMENT DIVISION RECORDS RETENTION AND DISPOSAL SCHEDULE (Continuation Sheet)		Schedule No. 2424 - 17
		Page 2 of 2
<b>Agency</b> Department of Public Safety and Correctional Services		<b>Division/Unit</b> Division of Correction
Item No.	Description	Retention
I. (cont'd)	U. Traffic Sheets V. Property Inventory W. Collapsible Post X. Shift Reports Y. Bi-Weekly Overtime Z. Duty Roster AA. Mobile Radio Inspection And Issue BB. Investigation Reports CC. Post Orders/Institutional Directive (Decisions) DD. Videotaped Force Cell Moves EE. Emergency Plan Drills FF. Entrance/Exit Log GG. Legal Mail Log HH. Maintenance Repair Orders II. Inmate Telephone Log JJ. Recreation And Shower Log KK. "E" Card Issuance Card LL. Armory Equipment And Inventory/Inspection MM. Quarterly Manpower Reports NN. Escort Logs OO. First Aid Kit Inspection Report PP. Serious Incident Reports QQ. Tool Control Accountability Forms RR. Uniform Inspection SS. Inmate Transfer List	Retain seven (7) years, then destroy. <b>Exception:</b> Item I.CC - Retain one (1) year, then destroy.

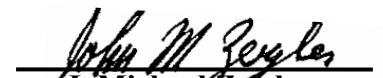
DGS 550-1A

# Executive Directive



<b>Title:</b> <b>Sexual Misconduct — Prohibited</b>	<b>Directive Number:</b> <b>OPS.050.0001</b>
<b>Related MD Statute/Regulations:</b> Correctional Services Article, §2-103, Annotated Code of Maryland; State Personnel and Pensions Article, §11-106, Annotated Code of Maryland; Criminal Law Article, §3-314, Annotated Code of Maryland; Prison Rape Elimination Act of 2003 (P.L. 108-79)	<b>Supersedes:</b> OSPS.050.0030 dated June 26, 2015
<b>Related ACA Standards:</b> 4-4069, 4-4084, 4-4084-1, 4-4090; 4-4207, 4-4281-1, 4-4281-3, 4-4281-6, 4-4281-7, 4-4281-8, 4-4226, 4-4281, 4-4406, 2-CO-1C-11. and 2-CO-3C-01	<b>Responsible Authority:</b>  PREA Coordinator
<b>Related MCCS Standards:</b> COMAR 12.14.03.06B and J; 12.14.04.05A(2) and B(6); 12.14.05.05A(2) and B(6)	<b>Effective Date:</b> June 01, 2017 <b>Number of Pages:</b> 14

  
Stephen T. Moyer  
Secretary

  
J. Michael Zeigler  
Deputy Secretary  
for Operations

## .01 Purpose.

- A. This directive continues policy for the Department of Public Safety and Correctional Services (Department) prohibiting sexual misconduct.
- B. This directive assigns responsibilities and establishes procedures for reporting, responding to, investigating, processing, and resolving a complaint of sexual misconduct.

## .02 Scope.

This directive applies to all units of the Department.

## .03 Policy.

- A. The Department does not:
  - (1) Tolerate sexual misconduct by an employee, by either omission or commission; and
  - (2) Consider alleged or actual consent as a defense to an allegation of sexual misconduct.
- B. The Department shall ensure that existing efforts and new strategies to prevent, detect, and respond to acts of sexual misconduct comply with applicable federal standards (28 CFR Part 115 – August 20, 2012) 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) Community Confinement Facility.

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- (a) “Community confinement facility” 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, who are participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during non-residential hours.
- (b) “Community confinement facility” includes, 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) Facility, except for a juvenile facility, used for similar purposes.
- (2) “Complaint” means a written or verbal statement alleging sexual misconduct regardless of the source of the allegation.
- (3) “Contractor” means an individual working, other than as a State employee, in any capacity for the Department or for a private or public organization authorized by contract, memorandum of understanding, or agreement to provide a service to an inmate or the Department.
- (4) “Correctional facility”:
  - (a) Has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland.
  - (b) Includes a community confinement facility and detention facility.
- (5) “Cross gender viewing” means an employee observes the breasts, buttocks, or genitalia of an inmate of the opposite sex while the inmate is showering, performing bodily functions, changing clothing, or any similar activity.
- (6) “Employee”:
  - (a) Means an individual assigned to or employed by the Department in a full-time, part-time, temporary, or contractual position regardless of job title or classification.
  - (b) Includes:
    - (i) A contractor;
    - (ii) An intern;

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- (iii) A volunteer; and
  - (iv) An employee of the Maryland Department of Education, Maryland Department of Labor, Licensing and Regulation, and Baltimore City Public Schools.
- (7) “Exigent circumstances” means a set of temporary and unforeseen conditions that require immediate action in order to combat a threat to the security or good order of a facility.
- (8) “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.
- (9) Retaliation.
- (a) “Retaliation” means an act of vengeance, covert or overt action, or threat of action, taken by an employee against an individual because the individual:
    - (i) Filed a complaint of sexual misconduct;
    - (ii) Took action to stop or prevent sexual misconduct;
    - (iii) Investigated sexual misconduct;
    - (iv) Took remedial action or applied penalties in response to a substantiated complaint of sexual misconduct;
    - (v) Opposed any form of sexual misconduct; or
    - (vi) Testified, assisted, or participated in an investigation, proceeding, or hearing concerning alleged sexual misconduct.
  - (b) “Retaliation” may include, but is not limited to unreasonable or unjustified:
    - (i) Discipline;
    - (ii) Changes in work or program assignments;
    - (iii) Transfers or placements; or
    - (iv) Denial of privileges or services.
  - (c) “Retaliation” does not include reasonable and justified administrative, disciplinary, or other action intended to stop or prevent sexual misconduct, protect an individual filing a complaint or victimized by sexual misconduct, or resolve a complaint.
- (10) “Sexual abuse” of an inmate by an employee includes the following acts performed with or without consent by the inmate:
- (a) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
  - (b) Contact between the mouth and the penis, vulva, or anus;

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- (c) Contact between the mouth and any body part where the employee has the intent to abuse, arouse, or gratify sexual desire;
  - (d) 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;
  - (e) 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;
  - (f) Any attempt, threat, or request by an employee to engage in the activities described in §§.04B(10)(a)-(e) of this directive;
  - (g) Any display by an employee of the employee's uncovered genitalia, buttocks, or breast in the presence of an inmate; and
  - (h) Voyeurism by an employee.
- (11) "Sexual favor" means an agreement between an employee and an inmate 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.
- (12) "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.
- (13) "Sexual misconduct":
- (a) Means any behavior or act of a sexual nature:
    - (i) By an employee directed toward an inmate; or
    - (ii) By an employee directed toward an inmate's personal or professional associate who believes the employee exercises influence or authority over the inmate.
  - (b) May include, but is not limited to:
    - (i) A sexual crime identified under Criminal Law Article, §§3-301 — 312, 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) Cross gender viewing, if performed without warning by non-medical staff at times other than incidental to a routine cell check, supervisory rounds to prevent sexual abuse and harassment, or exigent circumstances.
  - (vii) Sexual harassment;
  - (viii) Request for a sexual favor;
  - (ix) A solicitation or attempt to commit any of the acts listed under §§.04B(13)(b)(i) – (viii) of this directive;
  - (x) Action or the lack of action on the part of an employee that contributed to an incident of sexual misconduct; and
  - (xi) Retaliation.
- (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.
- (14) “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/Procedures.**

A. An employee may not:

- (1) Commit, participate in, support, or otherwise condone sexual misconduct;
- (2) Dissuade, advise, or discourage or attempt to dissuade, advise, or discourage an individual from filing a complaint of sexual misconduct; or
- (3) Retaliate, threaten to retaliate, or attempt to retaliate against an individual who files a complaint of or participates in the investigation or resolution of an allegation of sexual misconduct.

B. The head of a unit, or a designee, is responsible for ensuring that:

- (1) Each supervisor, manager, shift commander, and contractor who has contact with an inmate under the authority of the head of the unit is familiar with Department policy prohibiting sexual misconduct;

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- (2) This directive is available to each supervisor, manager, shift commander, and contractor who has contact with an inmate under the authority of the head of the unit;
  - (3) An individual (staff or inmate) reporting, participating in the investigation or resolution of, or who is a victim of alleged sexual misconduct is monitored for a minimum of 90 days from the date the incident was reported to detect actual, or feared, retaliation and if retaliation is identified or feared take action to stop the actual or feared retaliation that may include:
    - (a) Application of available medical or mental health services or counseling;
    - (b) Changes to inmate housing assignments and staff work assignments; and
    - (c) Continued monitoring as deemed appropriate;
  - (4) An allegation of sexual misconduct is reported, investigated and resolved according to established procedures; and
  - (5) Appropriate medical and mental health services and support services are made available to a victim of sexual misconduct.
- C. The head of a unit, or a designee, responsible for the custody and security of an inmate, in addition to responsibilities under §.05B of this directive, shall ensure that:
- (1) Each employee attends approved training related to preventing, detecting, and responding to acts of sexual misconduct;
  - (2) Written policy and procedures issued by the head of the unit related to the custody and security of an inmate comply with applicable federal PREA standards;
  - (3) Department and agency policy prohibiting sexual misconduct, procedures for filing a complaint, and inmate rights related to sexual misconduct are effectively communicated to an inmate:
    - (a) As part of inmate orientation;
    - (b) By inclusion in the facility's inmate orientation paperwork; and
    - (c) If applicable, the facility's inmate handbook;
  - (4) Contact information for persons listed under §.05E(4) of this directive is current and effectively available to an inmate;
  - (5) Procedures are in place that eliminate barriers that would prevent or inhibit an individual from reporting alleged sexual misconduct to any one or all of the parties listed under §.05E(4) of this directive; and
  - (6) Inmate interpreters, inmate readers, or other types of inmate assistance are not used to communicate information required under this directive to other inmates, except under limited circumstances where a delay in obtaining an effective non-inmate interpreter would compromise the inmate's safety, the performance of first responder duties, or the investigation of an inmate's allegation.



D. Responding to a Complaint of Sexual Misconduct.

(1) A supervisor, manager, or shift commander shall:

- (a) Take reasonable actions to eliminate circumstances that may result in or contribute to an incident of sexual misconduct that include conducting and documenting security rounds to identify and deter staff sexual abuse and harassment that are performed:
  - (i) Randomly on all shifts;
  - (ii) Except when necessary to prevent prohibited cross gender viewing of an inmate or as part of a legitimate facility operation, unannounced in order to prohibit staff from alerting other staff that the rounds are being conducted; and
  - (iii) At a frequency established by the managing official;
- (b) If aware of an act of alleged sexual misconduct, ensure that a complaint is immediately filed according to established procedures for reporting sexual misconduct;
- (c) Ensure the safety of a victim of inmate on inmate sexual conduct, through a coordinated response to a complaint of sexual misconduct ensuring that.
  - (i) Continued personal protection is provided;
  - (ii) Medical and mental health care follow up is conducted; and
  - (iii) Non-medical or mental health related counseling and support services are offered.

(2) The first correctional officer responding to an incident of sexual misconduct shall:

- (a) Ensure the safety of a victim of sexual misconduct by:
  - (i) Immediately stopping an incident in progress, if necessary arranging for separation of the victim from the abuser; and
  - (ii) If applicable, immediately, if qualified, providing medical attention or arranging for appropriate medical attention.
- (b) If the circumstances are such that there is evidence to preserve:
  - (i) Preserve the scene of the incident;
  - (ii) Ensure the victim is advised not to do anything that would contaminate or destroy physical evidence such as, bathing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating; and
  - (iii) Ensure the alleged abuser does not do anything that would contaminate or destroy physical evidence such as, bathing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating.

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- (3) If the first employee responding to an incident of sexual misconduct is not a correctional officer, that employee shall:
  - (a) Immediately request that a correctional officer respond to the scene; and
  - (b) Perform duties identified under §§.05D(2)(a) and (b) of this directive for which the employee is officially qualified or authorized to perform.

E. Filing a Complaint.

- (1) A complaint of alleged sexual misconduct may be submitted by the following individuals:
  - (a) The victim;
  - (b) An individual with knowledge of an incident of alleged sexual misconduct; or
  - (c) A “third party” on behalf of the victim or other individual who has knowledge of the alleged sexual misconduct.
- (2) A complaint of alleged sexual misconduct may be submitted in the following formats:
  - (a) In writing (includes electronic documents); or
  - (b) Verbally.
- (3) A complainant may remain anonymous.
- (4) To effectively reduce actual or implied barriers to filing a complaint, an individual may file a complaint of sexual misconduct with any one or all of the following without regard to chain of command or assignment:
  - (a) Within the Department:
    - (i) An employee;
    - (ii) A supervisor, manager, or shift commander;
    - (iii) The head of a unit;
    - (iv) The Intelligence and Investigative Division (IID);
    - (v) The Inmate Grievance Office; or
  - (b) Outside the Department:
    - (i) The Office of the Attorney General; or
    - (ii) Other private or public office able to receive and immediately forward the complaint of alleged sexual misconduct to the Department.

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- (5) An employee receiving a complaint of or otherwise has knowledge of alleged sexual misconduct shall immediately report the complaint to a supervisor, manager, shift commander, or head of the unit followed by the appropriate written format used to document misconduct.
- (6) If a complaint of alleged sexual misconduct is received by a supervisor, manager, shift commander, or head of a unit at a facility other than the facility where the alleged sexual misconduct occurred, the managing official responsible for the facility receiving the complaint immediately, but not later than 72 hours of being notified of the incident shall:
  - (a) Notify:
    - (i) If the incident occurred at another Department facility, the managing official of the facility where the incident occurred;
    - (ii) If the incident occurred at a facility that is not under the authority of the Department, the facility head or agency head responsible for the facility where the incident occurred; and
    - (iii) The IID, regardless of jurisdiction for the facility where the incident occurred.
  - (b) Record the notifications made in accordance with §.05E(6)(a) of this directive.
- (7) An IID representative notified under §.05E(6) of this directive and the facility where the alleged sexual misconduct occurred is a Department facility, shall follow up with the managing official responsible for the Department facility where the alleged sexual misconduct occurred to ensure that the complaint is addressed according to requirements established under this directive.
- (8) Information concerning a complaint of alleged sexual misconduct is confidential and may only be available to individuals who have an established role in the reporting, processing, investigating, and resolving the alleged sexual misconduct and immediate and continued care of the victim.

F. Processing a Complaint.

- (1) A complaint of alleged sexual misconduct received anonymously shall be accepted and processed the same as a complaint received from an identified source.
- (2) An employee receiving a complaint of alleged sexual misconduct, shall immediately notify a supervisor, manager, shift commander, or head of the unit of the complaint.
- (3) A supervisor, manager, shift commander, or head of the unit receiving a complaint under §.05E or .05F(2) of this directive shall immediately:
  - (a) If sexual misconduct is actively taking place, dispatch staff:
    - (i) To stop the alleged incident;
    - (ii) Safeguard the victim from further harm;
    - (iii) If applicable, arrange for emergency medical services;
    - (iv) Detain the alleged perpetrator; and

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- (v) Preserve evidence and the scene of the alleged incident;
- (b) If the sexual misconduct is not actively occurring, but the timeframe is such that there may be physical evidence at the scene or available from the victim or alleged perpetrator, dispatch staff to:
  - (i) Preserve evidence at the scene;
  - (ii) Detain the alleged perpetrator and prevent destruction of physical evidence;
  - (iii) Contact the victim and instruct the victim on the need to protect against the destruction of physical evidence; and
  - (iv) Refer the victim for appropriate medical and mental health follow up services.
- (c) Report the complaint of alleged sexual misconduct to the IID; and
- (d) Administratively document and process the complaint of alleged sexual misconduct according to procedures for alleged employee misconduct established under the Department's Standards of Conduct.
- (4) If the complaint of alleged sexual misconduct is received by an IID representative, the IID representative shall notify the appropriate agency head to ensure appropriate actions under §§.05F(3)(a) and (b) of this directive are initiated.
- (5) If a complaint of alleged sexual misconduct involves a contractor, in addition to requirements under §§.05F(3)(a) and (b) of this directive, the head of the unit, or a designee, shall comply with requirements under a contract, memorandum of understanding or other document establishing the relationship between the Department or agency and the contractor that address misconduct on the part of the contractor followed by written documentation used to report misconduct.

**G. Investigating, Documenting, and Resolving a Complaint.**

- (1) An IID investigator, or an investigator designated by the IID, shall conduct a prompt, thorough and objective investigation of every complaint of alleged sexual misconduct according to applicable statutory, regulatory, case law, contract, Department procedures, or other reasonably accepted standards related to:
  - (a) Collecting and preserving evidence;
  - (b) Interviewing victims, witnesses, and suspected perpetrators;
  - (c) Conducting and using polygraph examinations;
  - (d) Identifying suspects;
  - (e) Preserving an individual's personal dignity and legal rights; and
  - (f) Maintaining confidentiality of the investigation.

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- (2) To the extent possible, but in every case where the allegation of alleged sexual misconduct involves sexual abuse, the investigator assigned to investigate the allegation shall have received specialized training related to conducting sexual abuse investigations in a confinement setting that, at a minimum, specifically addresses:
  - (a) Interviewing sexual abuse victims;
  - (b) Using *Miranda* and *Garrity* warnings;
  - (c) Sexual abuse evidence collection; and
  - (d) Criteria and evidence necessary to substantiate administrative action and, if appropriate, referral for criminal prosecution.
- (3) If the alleged sexual misconduct involves sexual abuse, the assigned investigator shall:
  - (a) If medically appropriate or necessary to preserve evidence, offer the victim access to a medical forensics examination at no cost to the victim that is performed by a:
    - (i) A Sexual Assault Forensics Examiner (SAFE);
    - (ii) Sexual Assault Nurse Examiner (SANE); or
    - (iii) If after documented attempts to provide a SANE or SAFE are unsuccessful, a medical professional who has been specifically trained to conduct medical forensics examinations.
  - (b) If requested by the victim and the services are reasonably available, have one of the following accompany, for the purpose of support, the victim through the forensic examination and investigation interviews:
    - (i) A qualified victim advocate;
    - (ii) A Department employee who is otherwise not involved in the incident and has received education and training concerning sexual assault and forensic examination issues and has been appropriately screened and determined to be competent to serve in this role; or
    - (iii) A non-Department community-based organization representative who meets the criteria for a Department employee established under §.05G(3)(b)(ii) of this directive.
- (4) Upon completing an investigation of a complaint of alleged sexual misconduct, the investigator shall:
  - (a) Thoroughly document all aspects of the investigation in a written report so as to best support subsequent administrative action and, if appropriate, referral for criminal prosecution;
  - (b) Include in the report a determination indicating the complaint of alleged sexual misconduct to be:
    - (i) Substantiated (the investigation determined the sexual misconduct occurred);

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- (ii) Unsubstantiated (the investigation produced insufficient information to determine whether or not the alleged sexual misconduct occurred); or
  - (iii) Unfounded (the investigation determined that the alleged sexual misconduct did not occur);
  - (c) Make appropriate Department administrative notifications, which include the PREA Facility Compliance Manager, concerning the result of the investigation;
  - (d) If the incident possibly involves criminal activity, refer the case to the appropriate office responsible for prosecuting criminal violations in the jurisdiction where the incident occurred; and
  - (e) File and maintain the report of investigation for a period of five years after the alleged perpetrator is no longer an employee.
- (5) The departure of an employee alleged to have committed sexual misconduct or the victim of sexual misconduct from the Department is not a basis for terminating an investigation of alleged sexual misconduct.
- (6) A victim of alleged sexual misconduct may not be compelled to submit to a polygraph or other truth-telling examination as a condition for proceeding with an investigation of alleged sexual misconduct.

**H. Victim Notification.**

- (1) When notified by an investigator under §.05G(4)(c) of this directive, if the allegation was sexual abuse, the head of the unit responsible for the victim inmate shall ensure that the victim inmate is notified of the investigator's determination that the allegation was substantiated, unsubstantiated, or unfounded.
- (2) Except when an allegation of sexual abuse is determined to be unfounded, the head of the unit responsible for the victim inmate shall, for as long as the inmate is under the authority of the Department, ensure that the inmate is notified of the following situations concerning the employee who victimized or is alleged to have victimized the inmate:
- (a) The employee is no longer assigned to the inmate's housing unit;
  - (b) The employee is no longer assigned at the inmate's facility;
  - (c) If aware, the employee is criminally charged for an offense related to the sexual abuse that occurred within the facility; and
  - (d) If aware, the employee is convicted on a charge related to the sexual abuse that occurred within the facility.
- (3) A record of a notification made under §§.05H(1) and (2) of this directive shall be maintained in the victim inmate's base file and include the following information:
- (a) Case number;
  - (b) Content of the notification;

- (c) Date of the notification;
- (d) Location where the notification was made;
- (e) Printed name and signature of the employee making the notification; and
- (f) The inmate's signature acknowledging notification or, if the inmate refuses to sign for the notification, "Refused to Sign" and the employee's signature.

**I. Sanctions.**

- (1) An employee is subject to disciplinary action, up to and including termination of employment with the Department if it is determined that the employee:
  - (a) Except under exigent circumstances, did not perform responsibilities established under this directive; or
  - (b) Neglected or violated other duties or responsibilities that contributed to an incident of sexual misconduct.
- (2) An employee determined to have committed sexual misconduct is in violation of Department Standards of Conduct and is subject to:
  - (a) A penalty under the Standards of Conduct, up to and including termination of employment with the Department;
  - (b) Criminal prosecution; and
  - (c) If applicable, notification of a relevant licensing authority.
- (3) A contractor determined to have committed sexual misconduct is:
  - (a) Considered to be in violation of terms or conditions of a contract or other agreement establishing the relationship between the contractor and the Department or agency;
  - (b) Subject to sanctions according to provisions of the contract or agreement;
  - (c) Is subject to criminal prosecution; and
  - (d) If applicable, notification of a relevant licensing authority.
- (4) An inmate involved in sexual misconduct with a Department staff member may not be found guilty of a charge of committing a sexual act under the inmate disciplinary process if the involved staff member consented to the sexual act or sexual conduct in which the inmate participated.
- (5) A complaint of alleged sexual misconduct made in good faith based upon a reasonable belief that the alleged sexual misconduct occurred may not be considered a false report or lying, even if the required investigation does not establish sufficient evidence to substantiate the allegation of sexual misconduct.

**.06 Attachment(s).**

There are no attachments to this directive.

**.07 History.**

- A. This directive supersedes OSPS.050.0030, dated 06/26/15 by updating titles and names to comport with Department re-alignment and edits to include required interview of suspected perpetrator.
- B. This directive supersedes provisions of any other prior existing Department communication with which it may be in conflict.

**.08 Correctional Facility Distribution Code.**

- A
- B
- L



## EXECUTIVE DIRECTIVE



*Patricia Goins-Johnson*

**Patricia Goins-Johnson**  
Executive Director, Field  
Support Services

*J. Michael Zeigler*

**J. Michael Zeigler**  
Deputy Secretary Operations

*Stephen T. Moyer*

**Stephen T. Moyer**  
Secretary

<b>Title:</b> <b>Personal Search Protocols — Inmates</b>	<b>Executive Directive Number:</b> OPS.110.0047 - Confidential
<b>Related MD Statute/Regulations:</b> Correctional Services Article, §2-103, Annotated Code of Maryland; COMAR 12.14.03	<b>Supersedes:</b> OPS.110.0047 dated April 15, 2015
<b>Related ACA and MCCA Standards:</b> 4192— 4194; 4-4282; 4-4285; 4-ALDF-2A-20; 4-ALDF-2C-01, 04 and 05; 4-ALDF-5B-01. MCCA 02J	<b>Authorized By:</b> <i>Jim J. [Signature]</i> Director, Security Operations
<b>Variance:</b> No facility directive is necessary to implement and comply with this directive.	<b>Issued Date:</b> August 6, 2018 <b>Effective Date:</b> August 10, 2018
<b>Related Directives &amp; Manuals:</b> DOC.110.0017 – Handling, Analysis, & Disposal of CDS DRDS.110.0017 - Handling, Analysis, & Disposal of CDS OPS.110.0052 – Search and Detection Technologies OPS.110.0053 – Dry Cell Procedures and Status OPS.131.0001 - Identification, Treatment and Correctional Management of an Inmate Diagnosed with Gender Dysphoria Use of Force Procedures Manual K-9 Unit Operations Manual	<b>Number of Pages: 20</b>

**.01 Purpose.**

This directive updates existing policy and procedures for the Department of Public Safety and Correctional Services (Department) related to personal searches of an inmate and property in the possession or under control of an inmate who is detained or otherwise in the custody of the Department.

**.02 Scope.**

This directive applies to all units of the Department responsible for the custody and security of an inmate under the authority of the Department.

**.03 Policy.**

- A. The Department shall protect Constitutional guarantees, and the statutory and regulatory rights of an inmate when conducting a search of the inmate's person and property.
- B. The Department shall maximize efforts to maintain safe and secure correctional facilities free of contraband.

- C. The Department shall comply with all aspects of the federal Prison Rape Elimination Act and, in doing so, recognize the pre-authorized request of an inmate diagnosed with gender dysphoria, or a transgender or intersex inmate, with regard to a Personal Search protocol as prescribed in this directive.

**.04 Definitions.**

A. In this directive, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Authorized search” means:

- (a) A search method routinely sanctioned for an inmate under this directive; or
- (b) An otherwise restricted search protocol for which prior authorization is required from the designated authority.

(2) “Body cavity search” means a physical examination of an inmate’s body cavities following an x-ray or other type of medical scan for the purpose of detecting and recovering concealed contraband; and is conducted by a certified medical professional.

(3) “BOSS chair” means a Body Orifice Scanning System (BOSS) using a low intensity magnetic field to perform a non-intrusive electronic scan of an individual’s body for concealed metallic objects.

(4) “Bystander” means any person other than the inmate who is being screened with FBX equipment, who is not directly associated with the operation of the system.

(5) Contraband.

(a) “Contraband” has the meaning stated in Correctional Services Article, §10-801, Annotated Code of Maryland.

(b) “Contraband” as used in this directive:

- (i) Refers to a specific item or substance that an individual is not authorized to possess in a correctional or detention facility; and
- (ii) Includes quantities greater than an established limit for an authorized item or substance.

(6) Correctional Facility.

(a) “Correctional facility” has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland.

- (b) “Correctional facility” includes a:
  - (i) Detention facility; and
  - (ii) Pre-release facility.
  
- (7) Correctional Officer (as used in this directive only) includes a:
  - (a) Uniformed correctional officer, correctional dietary officer, correctional maintenance officer, and correctional supply officer; and
  - (b) Non-uniformed correctional officer, to include correctional case manager.
  
- (8) “Cross-gender search” means a search in which one or more search officers is not of the same gender as the inmate being searched.
  
- (9) Direct Intake.
  - (a) “Direct intake” means the processing of an inmate who has been sentenced by a court of law and taken directly to a detention facility for placement into a correctional facility.
  - (b) “Direct intake” does not include an individual who, subsequent to an appearance in a court of law, is returned to a detention facility without being sentenced by the court.
  
- (10) “Dry Cell or Room” means a secure room or cell:
  - (a) Where all running water has been turned off and the toilet bowl, if applicable, is covered and sealed to prevent disposal of contraband;
  - (b) That allows for unobstructed observation of the inmate by staff; and
  - (c) Is equipped with authorized furniture, lighting, and proper ventilation.
  
- (11) “Exigent circumstances” means a set of temporary and unforeseen conditions that requires immediate action to combat a threat to the security or order of a correctional or detention facility.
  
- (12) “Frisk search” means a non-intrusive examination performed by running hands over the clothed body, applying gentle pressure to determine if contraband is being concealed.
  
- (13) Ferromagnetic Detection (FMD).
  - (a) “Ferromagnetic Detection” means a device that monitors the effect of metal items, or items containing metal on magnetic fields.

- (b) “Ferromagnetic Detection” does not include a walk-through metal detector or an x-ray device.
- (14) Full Body Security X-Ray Screening System (FBX).
- (a) “FBX” means a device that that uses transmission x-radiation technology to detect metal, plastic, ceramic, wood, and other solid objects within a human body.
  - (b) “FBX” does not include a walk-through metal detector or a FMD device.
  - (c) “FBX” devices shall not be used to screen pregnant inmates.
- (15) Gender Dysphoria.
- (a) “Gender Dysphoria” means a marked incompatibility between an individual 's experienced or expressed gender and assigned gender causing significant distress or impairment in important areas of functioning, such as, school, work, social, and other similar areas.
  - (b) “Gender Dysphoria” may include a person:
    - (i) With Gender Identity Disorder;
    - (ii) Transitioning to a new gender; and
    - (iii) Who identifies as “Transgender”.
  - (c) “Gender Dysphoria”, in accordance with the Diagnostic and Statistical Manual of Mental Disorders (DSM–5), does not include “Intersex individuals”.
- (16) “Inmate” has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland: “[An] ‘Inmate’ means an individual who is actually or constructively detained or confined in a correctional facility.”
- (17) “Internal medical device” includes items such as a pacemaker or defibrillator, artificial joint, pin, stent, rod, or plate.
- (18) “Intersex person” means an individual whose sexual or reproductive anatomy or chromosomal pattern does not fit typical definitions of male or female.
- (19) “K-9 (or Canine) search” means the deployment of a dog and handler contraband detection team, operating under the Department’s K-9 Unit Operations Manual.
- (20) “Managing Official” has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland.

- (21) “OCMS — Events module” means a component of the Department’s Offender Case Management System (OCMS) automated inmate information system used to record information concerning an inmate under the authority of the Department.
- (22) “Personal Search Exception” means a search exception granted to an inmate to prevent involuntary and physical cross gender searches.
- (23) "Reasonable suspicion" means the apparent state of facts or circumstances which would lead a reasonably prudent individual to:
- (a) Believe that something is wrong; and
  - (b) Have an apprehension or to imagine that a violation has been, is being, or will be committed by a specific individual based, on only slight evidence, which does not amount to proof.
- (24) Search and Detection Technology.
- (a) “Search and Detection Technology” means non-invasive equipment used to detect, monitor, or sense the presence of contraband or illegal objects on or within an individual’s person or among items in the individual’s possession.
  - (b) “Search and Detection Technology” may refer to:
    - (i) A handheld metal detector wand passed over the body;
    - (ii) A stationary pass through metal detector that, in conjunction with a computer and digital camera, identifies areas concealing metal;
    - (iii) A stationary device that uses metal detector technology to identify internally concealed metal items (BOSS chair);
    - (iv) A stationary or mobile FMD device (e.g. Cellsense); or
    - (v) A stationary FBX device (e.g. Adani – Compass) that, in conjunction with a computer and digital camera, identifies areas in the human body concealing foreign objects.
- (25) “Search documentation” means a completed report or log entry, that is maintained by the facility for audit and investigative purposes, in compliance with Department and facility protocol.
- (26) “Strip search” means a search that involves:
- (a) A systematic visual inspection of the individual’s entire body; and

- (b) Removal of all clothing to permit visual observation of the genitalia, buttocks, rectal area, breasts, or other areas of the body conducive to concealing contraband.

(27) “Transgender person” means an individual whose gender identity, their internal sense of feeling male or female, is different from their assigned sex at birth.

## **.05 Responsibility.**

A. A managing official has the overall management responsibility for the implementation and enforcement of this directive and shall ensure that:

(1) All searches are conducted in:

- (a) Accordance with the policies and procedures established under this directive; and
- (b) A thorough and professional manner, with safety and security being the paramount concerns.

(2) Search and Detection Technology used in a Department correctional facility:

- (a) Conforms to established or recommended safety standards; and
- (b) Unless otherwise specified in this directive, is rated safe for all individuals regardless of age, sex, or medical condition.

B. The managing official, or designee, is responsible for ensuring that:

(1) Information regarding Personal Search Exceptions are made available to inmates through the Inmate Handbook and other accessible and appropriate channels;

(2) Search and Detection equipment used in a Department correctional facility:

- (a) Receives scheduled maintenance, testing, and inspections recommended by the manufacturer;
- (b) Has all appropriate warning and caution labels affixed to the device; and
- (c) Is only operated by a correctional officer who is trained and proficient in procedures consistent with the manufacturer’s instructions for safe and accurate use of Search and Detection equipment;

(3) Reasonable efforts are made to afford minimum embarrassment and maximum privacy to the inmate being searched; and

(4) Each inmate search is:

- (a) Documented on forms approved by the Deputy Secretary for Operations, or a designee;
- (b) Reported according to established procedures for reporting incidents at a correctional facility; and

(c) Entered in “OCMS–Events module” according to procedures established for OCMS reporting.

C. Each correctional officer is responsible for compliance with the procedures established in this directive.

**.06 Search Protocols (Rules) — Generally.**

A. When to Conduct a Search.

(1) Reasonable suspicion exists to believe that the inmate:

(a) Possesses contraband; or

(b) Poses a threat to the safety and security of the facility, others in the facility, or to self;

(2) In compliance with a post order or governing directive; or

(3) Before an inmate enters or leaves a:

(a) Secure perimeter;

(b) Special housing unit

(c) Visiting area;

(d) Work detail; or

(e) Storage area.

B. Resisting or Refusing to Submit to an Authorized Inmate Search.

(1) An inmate’s refusal to submit to an authorized search is grounds for disciplinary action.

(2) If during an authorized search an inmate refuses to comply or becomes violent, correctional officers may employ reactive force in accordance with the [Department’s Use of Force Procedures Manual](#).

(3) If an inmate’s refusal or resistance is clearly demonstrated before the start of BOSS chair scan, FMD search, FBX search, or strip search, correctional officers shall obtain prior authorization from the managing official, or a designee, for a planned use of force before initiating the search.

(4) If planned use of force is authorized prior to any search procedure, correctional officers shall use only the minimum force required to complete the search.

(5) Correctional officers shall be the same sex as the inmate being searched, unless the inmate presents a Personal Search Exception card which specifies a different protocol for the search being performed.

C. Recovered Contraband.

- (1) If searching an inmate results in recovering contraband, the employee conducting the search shall:
  - (a) Follow the procedures set forth in [DOC.110.0017](#) and [DPDS.110.0017 Handling, Analysis, and Disposal of Suspected CDS](#);
  - (b) Notify a correctional supervisor of the contraband found, the location of the search, and disposition of the inmate and the contraband;
  - (c) Submit a written report that, at a minimum, includes:
    - (i) Name and identification number of the inmate found in possession of contraband;
    - (ii) Name and rank of correctional officer conducting the search;
    - (iii) Date, time, location, search method, and when applicable, information regarding search authorization, planned or responsive use of force, referral to infirmary; and
    - (iv) Search results, to include the disposition of the inmate and contraband recovered.
- (2) If searching an inmate results in recovering a contraband item, that is contraband only because it exceeds the established limit for the item, the employee conducting the search shall follow facility protocol or consult with a correctional supervisor who, after considering the nature of the contraband, shall take appropriate action according to the inmate discipline process.
- (3) The employee recovering the contraband shall accurately and thoroughly document the findings in the OCMS events module as required in [Executive Directive OPS.110.0052 — Search and Detection Technologies](#).
- (4) Recovered contraband is:
  - (a) Handled, processed, and stored according to procedures for:
    - (i) Handling and disposition of property to include disposal of contraband not necessary for use in an administrative or criminal proceeding; and
    - (ii) If applicable, preserving evidence for use in an administrative or criminal proceeding; and
  - (b) Reported to the Department's Intelligence and Investigative Division (IID) in accordance with Department procedures.

D. Inmates with a Disability or Medical Condition.

- (1) Reasonable accommodations as authorized by the managing official, or a designee, and necessary to properly conduct a search for an inmate with a disability or medical condition shall be made.
- (2) Medical Appliances.



- (a) Should a search require removal of a medical appliance worn by an inmate who is compliant, the inmate shall be allowed to remove the appliance and submit the appliance to correctional staff for inspection.
- (b) If an inmate is noncompliant and refuses to remove the appliance for the purposes of the search, the managing official, or a designee, shall consult with a certified medical professional to discuss alternative options for removal of the medical appliance.
- (3) A Medical Search Exception shall be granted to an inmate determined by medical services to be pregnant.
  - (a) Once the medical exception is confirmed and the form/notice is received by the warden's office, the warden shall order the issuance of two Medical Search Exception cards (Attachment D) that specify the search protocol(s) **excluded** for the individual, (For example, "No Full Body X-Ray"):
    - (i) One Medical Search Exception card shall be issued to the inmate; and
    - (ii) One Medical Search Exception card is to be maintained with the inmate's E-card.
  - (b) If the warden requires clarification regarding the medical confirmation of the exception:
    - (i) The contractual Regional Medical Director may act as a resource; and
    - (ii) If there is a disagreement regarding the validity of the exception given, the DPSCS Medical Director shall be available for any appeals regarding the exception.
  - (c) The inmate is responsible to carry the Medical Search Exception card at all times and to present this card to the correctional officer prior to the start of a search. Failure of the inmate to present this card may subject the inmate to a FBX or metal detector search.
  - (d) If an inmate's medical condition no longer exists, as determined by Medical Services, the warden shall rescind the Medical Search Exception cards.

E. Gender Dysphoric Inmates.

- (1) Unless a Personal Search Exception Card has been granted by the warden (Attachment D) as described in OPS.131.0001, an inmate will be searched in accordance with the policies applicable to searches of the gender associated with the institution or housing assignment in which the inmate is assigned.
- (2) The inmate is responsible to carry the Personal Search Exception card at all times and to present this card to the correctional officer prior to the start of a personal search.

- (3) Failure of the inmate to present this card may subject the inmate to a frisk/strip search in accordance with the gender associated with the inmates' assigned correctional facility or housing unit.
- (4) A gender dysphoric inmate who is granted an exception by the warden pursuant to this policy may have the exception:
  - (a) Reversed by the warden if the inmate is found to have exploited the exception and violated the contraband policy or any policy concerning the safety and efficiency of the correctional facility;  
or
  - (b) Temporarily suspended during exigent circumstances.

F. Search and Detection Equipment.

- (1) An inmate and items in the inmate's possession are subject to a routine examination using search and detection equipment by custody staff.
- (2) Search and detection equipment may be used independently or in conjunction with other authorized search methods if:
  - (a) The search and detection equipment indicates possession of contraband;
  - (b) A K-9 search results in an alert; or
  - (c) A less intrusive authorized search is performed and the results are inconclusive or indicate that the inmate possesses contraband.
- (3) If search and detection equipment indicate that suspected contraband has been ingested or inserted within the inmate's body, the inmate will be:
  - (a) Strip searched in accordance with the procedures in §.07B of the directive;
  - (b) Placed in a single dry cell or room until such time as the inmate has excreted or disgorged the contraband in accordance with the procedures in Executive Directive OPS.110.0053 – Dry Cell Procedures and Status; or
  - (c) Transported to an off-site medical facility for a body cavity search in accordance with the procedures in § .07H of this directive.

G. Gender of Officer Conducting a Personal Search.

- (1) Except under provisions of §.06E of this directive a personal search of a:
  - (a) Female inmate shall be conducted by a female correctional officer; and
  - (b) Male inmate may be conducted by either a male or female correctional officer provided that a female officer does not touch the genital area of the inmate being searched.
- (2) A managing official or a designee may, based on exigent circumstances, authorize a male correctional officer to conduct a personal search on a female inmate provided that:
  - (a) A non-custody female staff member present to witness the encounter;
  - (b) The female inmate is an imminent threat to security;
  - (c) The officer does not touch the breast or genital area of the inmate; and
  - (d) The officer maintains visual contact with the female inmate until a female correctional officer is available to perform a complete frisk search.
- (3) If an inmate has been granted a Personal Search Exception as described in §.06E and produces a search exception card, the inmate shall be searched:
  - (a) By a correctional officer of the gender indicated on the card; or
  - (b) Based on exigent circumstances and the inmate's imminent threat to security, by any available correctional officer provided that the officer does not touch the breast or genital area of the inmate and maintains visual contact with the inmate until a correctional officer of the correct gender is available to perform a complete frisk search.

## **.07 Search Types and Equipment — Standard Operating Procedures.**

### **A. Inmate Frisk Search Procedures.**

- (1) Only one correctional officer is required to conduct an inmate frisk search.
- (2) Correctional staff shall routinely frisk search an inmate under, but not limited to, the conditions listed in § .06A.
- (3) Correctional staff conducting the frisk search shall:
  - (a) Advise the inmate that a frisk search is to be conducted.
  - (b) Direct the inmate to:

- (i) Empty all pockets placing the contents in the container provided;
  - (ii) Leave empty pockets turned inside out;
  - (iii) Remove and submit for inspection items such as, a jacket, coat, scarf, or headgear; and
  - (iv) Submit for inspection additional items in the inmate's possession.
- (c) Conduct the frisk search by passing hands over the entire clothed body of the inmate being searched, applying gentle pressure to detect concealed items.
- (d) Direct the inmate to position the inmate's head to permit a visual inspection of the nostrils and ears.
- (e) Instruct the inmate to open the inmate's mouth to permit a thorough visual inspection as the inmate:
- (i) Raises and rotates the tongue;
  - (ii) Pulls the lips away from the gums and teeth; and
  - (iii) If applicable, removes dentures.
- (f) Thoroughly search items submitted for inspection as required under §.07A(4)(b) of this directive or discovered during the search of the inmate, taking reasonable care not to damage the inmate's property.
- (g) Conclude the search by returning non-contraband items to the inmate who was searched.
- (h) Confiscate and process contraband in accordance with procedures in §.06C of this directive.

**B. Strip Search Procedures.**

- (1) Correctional staff shall conduct a strip search of an inmate:
- (a) When an inmate is admitted to a facility from another correctional or detention facility;
  - (b) When an inmate is committed to a jail or detention facility;
  - (c) Before an inmate is transported by Maryland Correctional Transport Unit;
  - (d) After each inmate visit, including social, legal, and other professional visits;
  - (e) Except for medical emergencies, before an inmate exits a medium or maximum correctional or detention facility;
  - (f) Upon an inmate's return to a facility from which the inmate departed, regardless of the facility's security level;

- (g) Before an inmate is placed in or released from segregation housing;
  - (h) Following the apprehension of an inmate after an escape or escape attempt;
  - (i) After being identified as an inmate who participated in a disturbance; or
  - (j) When directed by the managing official, or a designee, a post order, or governing directive.
- (2) Correctional staff may conduct an inmate strip search when a:
- (a) Search and Detection technology indicates the presence of contraband;
  - (b) K-9 search indicates the presence of contraband; or
  - (c) Less intrusive authorized search is performed and the results are inconclusive or indicate that the inmate may possess contraband.
- (3) Strip Search of Gender Dysphoric and Intersex Inmates.
- (a) A strip search of a gender dysphoric or intersex inmate may not be conducted for the sole purpose of determining the inmate's genital status. If an inmate's genital status is unknown, it is to be determined through:
    - (i) Conversation with the inmate;
    - (ii) A review of available medical records; or
    - (iii) Part of a broader medical examination conducted in private by a licensed medical professional.
  - (b) If an inmate has been granted a Personal Search Exception as described in §.06E and produces a search exception card, the inmate shall be:
    - (i) Strip searched by a correctional officer of the gender indicated on the card;
    - (ii) In a location and in a manner that ensures maximum privacy for the inmate being strip searched; and
    - (iii) In the presence of an additional correctional officer of the gender indicated on the card.
- (4) Except under the conditions specified in § .07B(3), an inmate strip search shall be conducted:
- (a) By a single correctional officer of the same gender as that of the inmate being searched;
  - (b) In a location and in a manner that ensures maximum privacy for the inmate being strip searched; and

- (c) In the presence of an additional correctional officer.
- (5) The correctional officer conducting an authorized strip search of an inmate shall advise the inmate of the search and:
- (a) Instruct the inmate in requirements established under §.07A(3) or (4) of this directive, as applicable;
  - (b) Have the inmate remove clothing as instructed;
  - (c) Instruct the inmate to run their fingers through their hair;
  - (d) Instruct the inmate to open the inmate's mouth to permit a thorough visual inspection as the inmate:
    - (i) Raises and rotates the tongue;
    - (ii) Pulls the lips away from the gums and teeth; and
    - (iii) If applicable, removes dentures.
  - (e) Instruct the inmate to turn their head from side to side, and raise and lower the head to permit visual inspection of nostrils and ears;
  - (f) Instruct the inmate to open each hand, spread the fingers, and rotate the hands to permit a visual inspection of the palm and back of each hand;
  - (g) Instruct the inmate to raise their arms to permit a visual inspection of the armpits;
  - (h) If the inmate being searched is male, direct the inmate to lift the penis and testicles to permit a visual inspection of the genital area;
  - (i) If the inmate being searched is female, direct the inmate to lift each breast to permit a visual inspection of the area around and under each breast;
  - (j) If applicable, instruct the inmate to raise layers of excess skin to permit a visual inspection of the area;
  - (k) Instruct the inmate being searched to turn so that the inmate's back is facing the correctional officer performing the search and:
    - (i) Lift each foot in turn to expose the sole, and then wiggle the toes;
    - (ii) Bend forward from the waist, approximating a 90 degree angle;
    - (iii) Spread the buttocks to expose the rectal area for a visual search; and
    - (iv) Return to an upright position, squat by bending at the knees, and cough forcefully;

- (l) If the inmate being strip searched is female and wearing a tampon or sanitary pad the correctional officer shall:
    - (i) Direct the inmate to remove and dispose of the item in a proper container provided by the correctional officer; and
    - (ii) Upon completion of the strip search, provide the female inmate with a new sanitary pad or tampon as requested by the inmate.
  - (m) Remove and search items detected on the inmate's body;
  - (n) Thoroughly search the inmate's clothing and other items the inmate possessed, taking reasonable care not to damage the inmate's property; and
  - (o) Return non-contraband items to the inmate and permit the inmate to dress.
- (6) The correctional employee conducting the strip search shall:
- (a) If applicable, confiscate and process contraband in accordance with procedures established for handling and disposition of property.
  - (b) Log or report the search in accordance with established procedures.
  - (c) If applicable, comply with procedures established under the inmate disciplinary process.

C. Ferromagnetic Detection (FMD).

- (1) At the discretion of a managing official, designee, or officer an FMD search may be conducted at any time, in any location within lawful control of custody staff.
- (2) Correctional officers shall ensure that FMD searches are conducted as follows:
  - (a) An inmate may be directed to either:
    - (i) Walk between a pair of FMD devices; or
    - (ii) Stand in front of a single FMD device and make a 360 degree turn.
  - (b) Correctional staff shall immediately notify a supervisor of an unexplained alert, repeated alerts, or concerns.
  - (c) After two unsuccessful attempts to clear a FMD device the inmate shall, with the Warden or designee's approval, be searched using a FBX device in accordance with the procedures required in §.07D of this directive.

- (d) In facilities not equipped with an FBX device, the inmate shall, with the Warden or designee's approval, be strip searched in accordance with the procedures required in §.07B of this directive.
- (e) If after completing the requirements in §§ .07C(2)(d), the contraband is not recovered, inmates, excluding inmates housed at MCI-W, shall be transported to a facility within the region that is the same security classification, or higher, as the inmate to be searched using a FBX device in accordance with the procedures required in §.07D of this directive.
- (3) The OIC shall ensure that all searches and recovered contraband are recorded in OCMS events module as required in [Executive Directive OPS.110.0052—Search and Detection Technologies](#).

D. Full Body Security X-Ray Screening System (FBX) — Adani Search Procedures.

- (1) FBX devices shall not be used to screen pregnant inmates.
- (2) An FBX search may be conducted in addition to, or instead of, a Strip Search.
- (3) Correctional facilities equipped with an FBX device **shall** conduct a FBX search of an inmate:
  - (a) Following apprehension of the inmate after an escape or escape attempt; or
  - (b) When directed by the managing official, or a designee, a post order, or governing directive.
- (4) Correctional facilities equipped with an FBX device *that is in close proximity to the inmate receiving area*, **shall** conduct a FBX search of an inmate:
  - (a) When the inmate is admitted to a facility from another correctional or detention facility;
  - (b) When the inmate is committed to a jail or detention facility;
  - (c) When, except for medical emergencies, the inmate exits a medium or maximum correctional or detention facility; and
  - (d) Upon the inmate's return to a facility from which the inmate departed, regardless of the facility's security level.
- (5) Correctional facilities equipped with an FBX device, **may** conduct a FBX search of an inmate:
  - (a) Before the inmate is transported by Maryland Correctional Transport Unit;
  - (b) After each inmate visit, including social, legal, and other professional visits;
  - (c) Before the inmate is placed in or released from segregation housing; or
  - (d) After being identified as an inmate participating in a disturbance.



(6) Types of FBX Scans.

- (a) Single View – Low Mode. A correctional officer shall conduct all FBX inmate searches using the Single View – Low Mode setting except under the conditions specified in §.07D(6)(b) or (c) of this directive.
- (b) Dual View – Low Mode. A correctional officer shall conduct a Dual View – Low Mode scan of all inmates during an initial intake occurring after an arrest.
- (c) Requests for a Dual View Scan. A correctional officer may conduct an FBX inmate search using the Dual View setting in response to a specific incident or in relation to specific intelligence:
  - (i) Upon request by an Intelligence Officer; or
  - (ii) When directed by the managing official, designee, or security chief.

(7) At minimum, two correctional staff shall be present when operating the FBX:

- (a) One officer shall be assigned as the FBX scanner operator;
- (b) Another officer shall be the Escort Officer; and
- (c) All FBX Operators assigned to the FBX post shall wear, throughout the shift, the Radiation Dosimeter badge issued by command staff.

(8) Escort Officer.

- (a) The Escort Officer does not need to be a trained FBX scanner operator.
- (b) The Escort Officer shall:
  - (i) Direct the inmate to stand on the designated spot on the platform while the FBX Operator initiates and completes the scan of the inmate's body;
  - (ii) Prior to commencement of the scan, move and direct bystanders to move outside the scan area boundaries marked on the floor and remain in a designated area away from the operator while the scan is completed; and
  - (iii) Upon completion of the scan, monitor the inmate while the operator reviews the images on the monitor.
- (c) In the event contraband is detected, the Escort Officer shall escort the inmate to an area where an intensive frisk search or a strip search can be performed to locate the suspected contraband and determine if the contraband can safely be recovered from the:
  - (i) Inmate's clothing;
  - (ii) Exterior surface of the inmate's body; or

- (iii) Partially excreted from the inmate's body.
- (d) If the Escort Officer cannot recover the contraband safely, the officer shall alert the OIC that the inmate must either be:
  - (i) Transported to a licensed medical facility, if the contraband cannot be safely recovered from the body cavity or digestive tract as required in §.07F of this directive; or
  - (ii) Placed in a dry cell or isolation room for observation, in accordance with the procedure stated in Executive Directive OPS.110.0053 - Dry Cell Procedures and Status.
- (9) FBX Scanner Operator.
  - (a) The FBX Operator shall be trained and authorized to utilize the FBX scanner.
  - (b) The FBX Operator shall:
    - (i) Be aware of any warnings, notices, or alerts indicating that an inmate:
      - (A) Is approaching the annual limit of allowable radiation exposure and perform the lowest dose scan accordingly;
      - (B) Has already reached the inmate's annual limit of allowable radiation exposure and direct the Escort Officer to have the inmate physically searched in accordance with the procedures in §§.07A or B of this directive; or
      - (C) Has received a medical exception card.
    - (ii) Initiate and monitor the full body scan of the inmate.
    - (iii) Review the scanned images and determine if contraband is present and can be safely retrieved by correctional staff without harm to the inmate.
    - (iv) In the event contraband is detected, direct the Escort Officer to escort the inmate to a specific location in accordance with § .07(8)(c) of this directive.
    - (v) If contraband is discovered, ensure that the images are printed and stored consistent with the collection of evidence in a criminal proceeding.
    - (vi) Notify the Officer in Charge (OIC) of the detection of contraband.
- (10) The OIC shall ensure that all searches and contraband are recorded in OCMS events module as required in [Executive Directive OPS.110.0052 — Search and Detection Technologies.](#)

E. K-9 Unit Search Procedures.

- (1) An inmate is subject to a routine K-9 search at any time.

- (2) A managing official, or a designee, shall ensure that trained K-9 teams are regularly deployed to support inmate searches authorized under this directive.
- (3) Inmate K-9 searches shall be conducted and documented in compliance with the Department's K-9 Unit Operations Manual and governing directives.
- (4) The K-9 search team handler, shall ensure the proper handling of recovered contraband, to include:
  - (a) The handling, processing, and storage of contraband for use as evidence in an administrative or criminal investigation;
  - (b) Reporting contraband recovery to the IID in accordance with Department procedures; and
  - (c) In accordance with procedures established for the handling and disposition of property, the disposal of contraband no longer required for administrative or criminal action.

F. Body Cavity Search Procedures.

- (1) A body cavity search of an inmate requires:
  - (a) Reasonable suspicion that the inmate possesses contraband; and
  - (b) Prior written authorization from the managing official, or a designee.
- (2) An inmate shall be transported by correctional staff to a licensed medical facility equipped to perform the necessary medical procedures, recover the contraband, and secure evidence in accordance with standard evidence collection procedures.
- (3) Only a certified medical professional, who is not under contract with the Department, may perform a body cavity search of an inmate.

G. BOSS Chair. A BOSS chair search of an inmate shall be conducted by a correctional officer trained and proficient in procedures that are consistent with manufacturer's instructions for a safe and accurate scanning of the inmate.

**.08 Attachments.**

- A. Strip Search Log -Minimum Security Inmates & Inmates Having Access to the Public
- B. Strip Search Log – Max & Medium Security Inmates, and Visitation
- C. Strip Search Log – Explanation of Confiscated Items
- D. Search Exception Cards

**.09 History.**

- A. This directive:

- (1) Supersedes OPS.110.0047 dated April 15, 2015;
  - (2) Incorporates the use of new electronic search and detection technologies; and
  - (3) Provides search procedures for searching gender dysphoric, transgender, and intersex inmates.
- B. This Executive directive is issued to align responsibilities based on Department re-organization and style and format updates.
- C. This directive supersedes provisions of EmD.DOC.110.0026, Search Plan, dated April 30, 2009, DPDS.110.0026, Search Procedures, dated April 30, 2006 specifically addressing inmate searches and provisions of any other prior existing Secretary's, Department, or facility communication with which it may be in conflict.

**.10 Correctional Facility Distribution Code.**

A

C

D

S — Medical Staff



**DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES  
STRIP SEARCH LOG**

Appendix A to  
OPS.110.0047

**Minimum Security Inmates and Inmates Having Access to the Public**

**FACILITY:** \_\_\_\_\_ **SHIFT:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

	INMATE'S NAME	DOC #	METAL DETECTOR SCAN (Y or N)	TIME of EXIT	TIME of RETURN	EXIT  Officer Conducting the Search Printed Name & Initials	RETURN  Officer Conducting the Search Printed Name & Initials	CONTRABAND CONFISCATED Y or N (If "Y", Explain on Appendix B)
1								
2								
3								
4								
5								
6			SA					
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								

- A minimum security inmate on a work detail must be strip searched each time he/she returns to the facility.
- Inmates otherwise having access to the public (i.e. courts, hospital, local trips, etc.) must be strip searched before exiting and upon returning to the facility.

**Distribution:**

Security Chief or Facility Administrator  
Shift Commander  
Facility Audit Coordinator



**DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES  
VISITING ROOM and STRIP SEARCH LOG**

Appendix B to  
OPS.110.0047

**FACILITY:** \_\_\_\_\_ **SHIFT:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

	INMATE'S NAME	SID #	CELL or DORM	SEAT	DETECTOR SCAN (Y or N)	TIME IN	TIME OUT	PRINTED NAME and SIGNATURE OF OFFICER CONDUCTING THE STRIP SEARCH	
								Printed Name	Signature
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									

Signature of Officer(s) Conducting Search of Visiting Room for Contraband Prior to Visits: \_\_\_\_\_

Signature of Officer Conducting Search of Visiting Room for Contraband After Visits: \_\_\_\_\_

Shift Commander \_\_\_\_\_

Date: \_\_\_\_\_

**Distribution:**

- Security Chief or Facility Administrator
- Shift Commander
- Institutional . Audit Coordinator

**Briefly Explain Any Confiscated Items on Reverse Side**




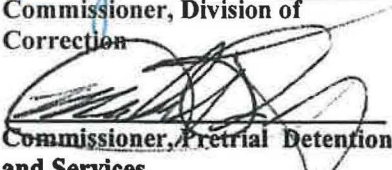
<b>DPSCS Search Exception Identifier Card</b>	
<input type="checkbox"/> Search by Female Officer	
<input type="checkbox"/> Search by Male Officer	
Inmate Name: _____	SID/DOC#: _____
_____	_____
Date	Warden' Signature

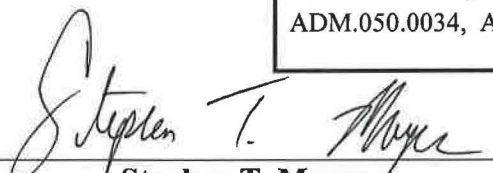
<b>Medical Search Exception Card for Pregnant Inmates</b>	
Inmate Name: _____	SID/DOC#: _____
Exception: <u>(e.g. No FBX Scans)</u> _____	
Date Issued: _____	_____
	Warden's Signature



## Executive Directive



<b>Title: Correctional Officer Staffing Analysis and Overtime Management</b>	<b>Executive Directive Number:</b> OPS.115.0001- Revised
<b>Related MD Statute/Regulations:</b> Correctional Services Article, §§2-103, Annotated Code of Maryland	<b>Supersedes:</b> OPS.115.0001 dated April 24, 2017
<b>Related ACA and MCCA Standards:</b> 4-4051 and 4052; 2CO-1C-06; 1-CORE-2A-09; 4-ALDF-2A-14	<b>Responsible Authority:</b>  Commissioner, Division of Correction  Commissioner, Pretrial Detention and Services
<b>Related Directives:</b> DPDS.050.0032, ADM.050.0032, ADM.050.0033, ADM.050.0034, ADM.050.0035	<b>Effective Date:</b> July 1, 2018 <b>Number of Pages:</b> 5

  
**Stephen T. Moyer**  
Secretary

  
**J. Michael Zeigler**  
Deputy Secretary for Operations

### .01 Purpose.

This directive continues policy, assigns administrative responsibilities, and authorizes a procedures manual for the Department of Public Safety and Correctional Services (Department) to manage security staffing and overtime at a correctional and detention facility.

### .02 Scope.

This directive applies to all Department correctional and detention facilities.

### .03 Policy.

- A. The Department shall effectively use available personnel resources to maintain security of a correctional and detention facility.
- B. The Department shall establish and maintain a uniform system to:
  - (1) Establish necessary post assignments at a correctional and detention facility;
  - (2) Assign staff to posts at a correctional and detention facility;
  - (3) Monitor and analyze staffing assignments;
  - (4) Minimize the use of overtime and compensatory time; and

- (5) Annually review staffing and posts to ensure effective security and control at the correctional and detention facility.

#### **.04 Definitions.**

**A.** In this directive, the following terms have the meanings indicated.

**B.** Terms Defined.

- (1) “Commissioner” means the Commissioner of Correction or the Commissioner of Pretrial and Detention Services.
- (2) “Facility Staffing Plan (FSP)” means a list of post assignments, approved by the Deputy Secretary for Operations, or a designee, determined to be necessary to ensure effective security and control at a correctional or detention facility that are grouped by:
  - (a) The days per week each post is authorized to be staffed; and
  - (b) The rank of the correctional officer assigned to staff the post.
- (3) “Operational Staffing Level (OSL)” means a level of facility operations (i.e. programs, services and recreation) that determines which posts are required to be staffed and which posts may be collapsed.
- (4) Post.
  - (a) “Post” means the duties and responsibilities performed by an employee while on duty at a correctional or detention facility, traditionally identified by a geographic location within a correctional facility.
  - (b) “Post” may include a title given to a variety of duties that may require the employee to perform in numerous locations, within or outside of a correctional or detention facility.
- (5) “Special Assignment Post (SAP)” means a post that is not established in the FSP, but is authorized, on a short term basis, to accommodate staffing requirements due to unexpected operational changes or exceptional circumstances.
- (6) “Staffing Analysis and Overtime Manager (SAOM)” means software designed to calculate and report:
  - (a) Staffing relief factors;
  - (b) Positions required; and
  - (c) Possible overtime drivers.

**.05 Responsibility/Procedure.**

- A.** The Commissioner, or a designee, is responsible for developing, distributing, and maintaining a detailed operations manual for use at each Department correctional and detention facility to document, report, analyze, and maintain information and data related to employee hours of work and leave, overtime, and compensatory time.
- B.** The Commissioner, or a designee, is responsible for the following related to a correctional or detention facility:
- (1) Ensuring compliance with the operational manual authorized under §.05A of this directive;
  - (2) Ensuring a written FSP is completed for each correctional and detention facility;
  - (3) Reviewing and approving a correctional and detention facility's FSP;
  - (4) In addition to the original FSP maintained at a correctional and detention facility, maintaining a copy of each correctional and detention facility's FSP;
  - (5) Ensuring that an annual review of a correctional and detention facility's FSP is conducted in addition to scheduled security audits; and
  - (6) Ensuring that the appropriate FSP data is entered in SAOM.
- C.** A managing official, or a designee, is responsible for:
- (1) Maintaining the current FSP approved by the Commissioner, or a designee, and documenting all deviations from the approved staffing plan;
  - (2) At least annually, or on an as needed basis, conducting a review of the existing FSP that includes:
    - (a) An analysis of each post to identify:
      - (i) The number of days each week the post is staffed;
      - (ii) The rank of the correctional officers assigned to the post;
      - (iii) The operational staffing level (OSL) for the post; and
      - (iv) Designation as an emergency response post;
    - (b) An evaluation of a SAP to determine if the SAP should be an established post;
    - (c) Analysis of the correctional or detention facility's operations to determine if changes warrant establishing new posts and modification of the FSP; and

- (d) When determining adequate staffing levels and the use of video monitoring equipment considering the following factors:
  - (i) Best practices used by correction and detention facilities;
  - (ii) Findings related to inadequate correctional and detention facility administrative and operational practices resulting from a court decision, federal investigation, or from an internal or external unit with oversight responsibilities;
  - (iii) The physical plant to determine the presence of “blind spots” or isolated areas;
  - (iv) Characteristics of the inmate population at the facility;
  - (v) The number and placement of supervisors;
  - (vi) Program activity taking place on each shift;
  - (vii) Applicable federal, State, or local laws or standards;
  - (viii) The prevalence of substantiated and unsubstantiated complaints of sexual abuse at the facility; and
  - (ix) Other factors related to facility security and safety.
- (3) At least annually, or on an as needed basis, consulting with the Department PREA Coordinator to review, assess, determine, and document if adjustments are necessary to the facility’s:
  - (a) Staffing plan based on topics identified under §.05C(2)(d) of this directive;
  - (b) Use and deployment of video monitoring system and other surveillance technology; and
  - (c) Resources available to commit to ensure compliance with the established staffing plan.
- (4) Reporting, using an Annual Review of Facility Staffing Plan memo (sample attached), the results of a required review to the Commissioner, or a designee, providing, at a minimum:
  - (a) The date of the review;
  - (b) The individual conducting the review; and
  - (c) If appropriate, recommendations for changes to the FSP with explanations for the requested modification; or
  - (d) A statement that the FSP accurately reflects operational requirements and current practices and no changes are recommended.
- (5) Designating emergency response posts for the FSP.

- (6) Designating the OSL for each post for inclusion in the FSP and the post assignment worksheet (PAW).
- (7) Developing the PAW for each shift.
- (8) Implementing local procedures for compliance with FSP requirements.

**.06 Attachments.**

Memo — Annual Review of Facility Staffing Plan.

**.07 History.**

- A. OPS.115.0001 (2018) supersedes OPS.115.0001 dated April 24, 2017. The changes made to the directive align policy with the appropriate statutory authority responsible for implementing and overseeing the staffing analysis and overtime management.
- B. OPS.115.0001 (2017) supersedes OPS.115.0001 dated September 4, 2015.
- C. OPS.115.0001 (2015) supersedes OPS.115.0001 dated April 20, 2013.
- D. OPS.115.0001 (2013) supersedes and rescinds DPSCS.115.0001 dated May 26, 2011.
- E. DPSCS.115.0001 (2011) supersedes DPSCS.115.0001 issued July 1, 2007.
- F. DPSCS.115.0001 (2007) supersedes DPSCSD 115-1 dated August 1, 2001
- G. DPSCSD 115-1 (2001) supersedes and rescinds SDD 01-1997 issued March 3, 1997.

**.08 Correctional Facility Distribution Code.**

A

S – Time Keeping and Scheduling Staff

## Memorandum



TO: \_\_\_\_\_

FROM: \_\_\_\_\_

FACILITY: \_\_\_\_\_

SUBJECT: Annual Review of Facility Staffing Plan

Date Reviewed: \_\_\_\_\_

The following information is submitted in accordance with §§.05C(2) — (4) of Executive Directive OPS.115.0001 — Staffing Analysis and Overtime Management:

- A.** A review of the facilities Staffing Plan was performed and included an analysis of:
- (1) Each post to determine:
    - (a) The number of days each week the post is staffed;
    - (b) The rank of the correctional officer assigned to the post;
    - (c) The operational staffing level (OSL) for the post;
    - (d) Designation as an emergency response post;
    - (e) If a Special Assignment Post (SAP) should be an established post.
  - (2) The following factors:
    - (a) Best practices used by correction and detention facilities;
    - (b) Findings related to inadequate correctional and detention facility administrative and operational practices resulting from a court action, federal investigation, or from an internal or external unit with oversight responsibilities;
    - (c) The physical plant to determine the presence of “blind spots” or isolated areas;
    - (d) Characteristics of the inmate population at the facility;
    - (e) The number and placement of supervisors;
    - (f) Program activity taking place on each shift;
    - (g) Applicable federal, State, or local laws or standards;
    - (h) The prevalence of substantiated and unsubstantiated complaints of sexual abuse at the facility; and
    - (i) Use and deployment of video monitoring equipment and other surveillance technology.
- B.** This annual review of the Facility Staffing Plan included consultation with the Department PREA Coordinator to determine if adjustments are necessary to the facility’s:
- (a) Staffing plan based on topics identified under §A(2) of this memo;
  - (b) Use and deployment of video monitoring system and other surveillance technology; and
  - (c) Resources available to commit to ensure compliance with the established staffing plan.
- The FSP accurately reflects operational requirements and current practices in our facility and no changes are recommended.
- The FSP requires modification as described in the attached recommendations.

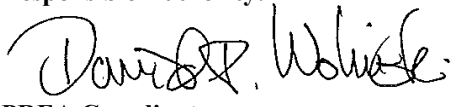
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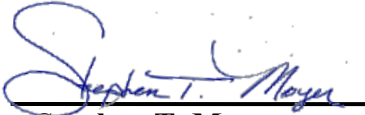
 Managing Official (Signature)

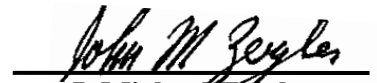
Date

# Executive Directive



<b>Title:</b> <b>Inmate on Inmate Sexual Conduct - Prohibited</b>	<b>Executive Directive Number:</b> <b>OPS.200.0005</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> OSPS.200.0004 Dated November 13, 2015
<b>Related ACA Standards:</b> 4-4069, 4-4084, 4-4084-1, 4-4090; 4-4207, 4-4281-1, 4-4281-3, 4-4281-6, 4-4281-7, 4-4281-8, 4-4226, 4-4281, 4-4406, 2-CO-1C-11. and 2-CO-3C-01, 4-ALDF-4D-22- 4-ALDF-22-8	<b>Responsible Authority:</b>  PREA Coordinator
<b>Related MCCS Standards:</b> COMAR 12.14.03.06B and J; 12.14.04.05A(2) and B(6); 12.14.05.05A(2) and B(6)	<b>Effective Date:</b> June 1, 2017 <b>Number of Pages:</b> 13

  
**Stephen T. Moyer**  
Secretary

  
**J. Michael Zeigler**  
Deputy Secretary  
for Operations

## .01 Purpose.

- A. This directive continues policy for the Department of Public Safety and Correctional Services (Department) prohibiting inmate on inmate sexual conduct.
- B. This directive continues assigned responsibilities and procedures for reporting, responding to, investigating, processing, and resolving a complaint of inmate on inmate sexual conduct.

## .02 Scope.

This directive applies to all units of the Department.

## .03 Policy.

- A. The Department does not:
  - (1) Tolerate inmate on inmate sexual conduct; and
  - (2) Consider alleged or actual consent as a defense to an allegation of inmate on inmate sexual conduct.
- B. The Department shall ensure that existing efforts and new strategies to prevent, detect, and respond to acts of inmate on inmate sexual conduct 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.

**Executive Directive Number: OPS.200.0005**

- (1) Community Confinement Facility.
  - (a) “Community confinement facility” 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) “Community confinement facility” includes, 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) Facility, except for a juvenile facility, used for similar purposes.
- (2) “Complaint” means a written or verbal statement alleging inmate on inmate sexual conduct regardless of the source of the allegation.
- (3) “Contractor” means an individual working in any capacity as a private citizen, or for a private or public organization authorized by contract, memorandum of understanding, or agreement to provide a service to an inmate, the Department, or an agency.
- (4) “Correctional facility”:
  - (a) Has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland.
  - (b) Includes a community confinement facility and a detention facility.
- (5) “Employee”:
  - (a) Means an individual assigned to or employed by the Department in a full-time, part-time, temporary, or contractual position regardless of job title or classification.
  - (b) Includes:
    - (i) A contractor;
    - (ii) An intern;
    - (iii) A volunteer; and



**Executive Directive Number: OPS.200.0005**

- (iv) An employee of the Maryland Department of Education, Maryland Department of Labor, Licensing and Regulation, or Baltimore City Public Schools.
- (6) “Exigent circumstances” means a set of temporary and unforeseen conditions that require immediate action in order to combat a threat to the security or facility order.
- (7) “Inmate” means an individual who is physically or constructively detained or confined in a Department correctional facility or otherwise under the care or supervision of the Department.
- (8) Retaliation.
  - (a) “Retaliation” means an act of vengeance, covert or overt action, or threat of action, taken against an individual because the individual:
    - (i) Filed a complaint of inmate on inmate sexual conduct;
    - (ii) Took action to stop or prevent inmate on inmate sexual conduct;
    - (iii) Investigated inmate on inmate sexual conduct;
    - (iv) Took remedial action or applied penalties in response to a substantiated complaint of inmate on inmate sexual conduct
    - (v) Opposed any form of inmate on inmate sexual conduct; or
    - (vi) Testified, assisted, or participated in an investigation, proceeding, or hearing concerning alleged inmate on inmate sexual conduct.
  - (b) “Retaliation” may include, but is not limited to unreasonable or unjustified:
    - (i) Discipline;
    - (ii) Changes in work or program assignments;
    - (iii) Transfers or placements; or
    - (iv) Denial of privileges or services.
  - (c) “Retaliation” does not include reasonable and justified administrative, disciplinary, or other action intended to stop or prevent inmate on inmate sexual conduct, protect an individual filing a complaint or victimized by inmate on inmate sexual conduct, or resolve a complaint.
- (9) “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:
  - (a) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

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- (b) Contact between the mouth and the penis, vulva, or anus;
- (c) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (e) 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.

(10) “Sexual conduct”:

- (a) Means a behavior or act 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) Sexual favor;
  - (v) Sexual harassment;
  - (vi) Indecent exposure;
  - (vii) Retaliation; and
  - (viii) Solicitation of or attempt to commit an act listed under §§.04B(10)(b)(i) – (vii) of this directive.

(11) “Sexual favor” means an agreement between an inmate and another inmate 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.

(12) “Sexual harassment” includes repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by an inmate directed toward another inmate.

**.05 Responsibility.**

A. An inmate may not:

- (1) Commit, participate in, support, or otherwise condone sexual conduct;

**Executive Directive Number: OPS.200.0005**

- (2) Dissuade, advise, or discourage or attempt to dissuade, advise, or discourage an individual from filing a complaint of sexual conduct; or
- (3) Retaliate, threaten to retaliate, or attempt to retaliate against an individual who files a complaint of or participates in the investigation or resolution of an allegation of sexual conduct.

B. The head of a unit, or a designee, is responsible for ensuring that:

- (1) Each supervisor, manager, shift commander, and contractor who has contact with an inmate under the authority of the unit head is familiar with Department policy prohibiting inmate on inmate sexual conduct;
- (2) This directive shall be made available to each supervisor, manager, shift commander, and contractor who has contact with an inmate under the authority of the head of the unit;
- (3) An individual (staff or inmate) reporting, participating in the investigation or resolution of, or who is a victim of alleged inmate on inmate sexual conduct is monitored for a minimum of 90 days from the date the incident was reported to detect actual, or feared, retaliation and if retaliation is identified or feared take action to stop the actual or feared retaliation that may include:
  - (a) Provision of available medical or mental health services or counseling;
  - (b) Changes to inmate housing assignments and staff work assignments; and
  - (c) Continued monitoring as deemed appropriate;
- (4) An allegation of inmate on inmate sexual conduct is reported, investigated and resolved according to established procedures; and
- (5) Appropriate medical and mental health services and support services are made available to a victim of inmate on inmate sexual conduct.

C. The head of a unit, or a designee, responsible for the custody and security of an inmate, in addition to responsibilities under §.05B of this directive, shall ensure that:

- (1) An employee attends approved training related to preventing, detecting, and responding to acts of inmate on inmate sexual conduct;
- (2) Written policy and procedures issued by the head of a unit related to the custody and security of an inmate comply with applicable federal PREA standards;
- (3) Department and unit policy prohibiting inmate on inmate sexual conduct, procedures for filing a complaint, and inmate rights related to inmate on inmate sexual conduct are effectively communicated to each inmate:
  - (a) As part of inmate orientation;
  - (b) By inclusion in the facility's inmate orientation paperwork; and
  - (c) If applicable, the facility's inmate handbook;

**Executive Directive Number: OPS.200.0005**

- (4) Contact information for persons listed under §.05E(4) of this directive is current and effectively available to an inmate;
- (5) Procedures are in place that eliminate barriers that would prevent or inhibit an individual from reporting alleged inmate on inmate sexual conduct to any one or all of the parties listed under §.05E(4) of this directive; and
- (6) Except under limited circumstances where a delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first responder duties, or the investigation of an inmate's allegation, inmate interpreters, inmate readers, or other types of inmate assistance are not used to communicate information required under this directive to other inmates.

**D. Responding to an Incident of Inmate on Inmate Sexual Conduct.**

- (1) A supervisor, manager, or shift commander shall:
  - (a) Take reasonable actions to eliminate circumstances that may result in or contribute to an incident of inmate on inmate sexual conduct;
  - (b) If aware of an act of alleged inmate on inmate sexual conduct, ensure that a complaint is immediately filed according to established procedures for reporting an inmate rule violation through the Inmate Disciplinary Process; and
  - (c) Ensure the safety of a victim of inmate on inmate sexual conduct, through a coordinated response to a complaint of inmate on inmate sexual conduct ensuring that:
    - (i) Continued personal protection is provided;
    - (ii) Medical and mental health care follow up is conducted; and
    - (iii) Non-medical or mental health related counseling and support services are offered.
- (2) The first correctional officer responding to an incident of inmate on inmate sexual conduct shall:
  - (a) Ensure the safety of a victim of inmate on inmate sexual conduct by:
    - (i) Immediately stopping an incident in progress, if necessary arranging for separation of the victim from the abuser; and
    - (ii) If applicable, immediately, if qualified, providing medical attention or arranging for appropriate medical attention.
  - (b) If the circumstances are such that there is evidence to preserve:
    - (i) Preserve the scene of the incident;
    - (ii) Ensure the victim is advised not to do anything that would contaminate or destroy physical evidence such as, bathing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating; and

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- (iii) Ensure the alleged abuser does not do anything that would contaminate or destroy physical evidence such as, bathing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating.
- (3) If the first employee responding to an incident of inmate on inmate sexual conduct is not a correctional officer, that employee shall:
  - (a) Immediately request that a correctional officer respond to the scene; and
  - (b) Perform duties identified under §§.05D(2)(a) and (b) of this directive for which the employee is officially qualified or authorized to perform.

E. Filing a Complaint.

- (1) A complaint of alleged inmate on inmate sexual conduct may be submitted by the following individuals:
  - (a) The victim;
  - (b) An individual with knowledge of an incident of alleged inmate on inmate sexual conduct; or
  - (c) A “third party” or other individual who has knowledge of the alleged inmate on inmate sexual conduct.
- (2) A complaint of alleged inmate on inmate sexual conduct may be submitted in the following formats:
  - (a) In writing (includes electronic documents); or
  - (b) Verbally.
- (3) A complainant may remain anonymous.
- (4) To effectively reduce actual or perceived barriers to filing a complaint, an individual may file a complaint of inmate on inmate sexual conduct with any one or all of the following without regard to chain of command or assignment:
  - (a) Within the Department:
    - (i) An employee;
    - (ii) A supervisor, manager, or shift commander;
    - (iii) The head of a unit;
    - (iv) The Intelligence and Investigative Division (IID);
    - (v) The Inmate Grievance Office; or

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(b) Outside the Department:

- (i) The Office of the Attorney General; or
- (ii) Other private or public office able to receive and immediately forward the complaint of alleged inmate on inmate sexual conduct to the Department.

(5) An employee receiving a complaint of or who otherwise has knowledge of alleged inmate on inmate sexual conduct shall immediately report the complaint to a supervisor, manager, shift commander, or head of the unit followed by submission of the appropriate written format used to document an inmate rule violation.

(6) If a complaint of alleged inmate on inmate sexual conduct is received by a supervisor, manager, shift commander, or head of a unit at a facility other than the facility where the alleged inmate on inmate sexual conduct occurred, the managing official responsible for the facility receiving the complaint immediately, but not later than 72 hours of being notified of the incident shall:

(a) Notify:

- (i) If the incident occurred at another Department facility, the managing official of the facility where the incident occurred;
- (ii) If the incident occurred at a facility that is not under the authority of the Department, the facility head or agency head responsible for the facility where the incident occurred; and
- (iii) The IID, regardless of jurisdiction for the facility where the incident occurred.

(b) Record the notifications made in accordance with §.05E(6)(a) of this directive.

(7) An IID representative notified under §.05E(6) of this directive and the facility where the alleged inmate on inmate sexual conduct occurred is a Department facility, shall follow up with the managing official responsible for the Department facility where the alleged inmate on inmate sexual conduct occurred to ensure that the complaint is addressed according to requirements established under this directive.

(8) Information concerning a complaint of alleged inmate on inmate sexual conduct is confidential and may only be available to individuals who have an established role in the reporting, processing, investigation, and resolution of the alleged inmate on inmate sexual conduct and immediate and continued care of the victim.

F. Processing a Complaint.

- (1) A complaint of alleged inmate on inmate sexual conduct received anonymously shall be accepted and processed the same as a complaint received from an identified source.
- (2) An employee receiving a complaint of alleged inmate on inmate sexual conduct shall immediately notify a supervisor, manager, shift commander, or the head of the unit of the complaint.
- (3) A supervisor, manager, shift commander, or unit head receiving a complaint under §.05E or .05F(2) of this directive shall immediately:

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- (a) If inmate on inmate sexual conduct is actively taking place, dispatch staff:
    - (i) To stop the alleged incident;
    - (ii) Safeguard the victim from further harm;
    - (iii) If applicable arrange for emergency medical services;
    - (iv) Detain the alleged perpetrator; and
    - (v) Preserve evidence and the scene of the alleged incident;
  - (b) If the inmate on inmate sexual conduct is not actively occurring, but the timeframe is such that there may be physical evidence at the scene or available from the victim or alleged perpetrator, dispatch staff to:
    - (i) Preserve evidence at the scene;
    - (ii) Detain the alleged perpetrator and prevent destruction of physical evidence;
    - (iii) Contact the victim and instruct the victim on the need to protect against the destruction of physical evidence; and
    - (iv) Refer the victim for appropriate medical and mental health follow up services.
  - (c) Report the complaint of alleged inmate on inmate sexual conduct to the Department's Intelligence and Investigative Division (IID); and
  - (d) Administratively document and process the complaint of alleged inmate on inmate sexual conduct inmate rule violations through the Inmate Disciplinary Process.
- (4) If the complaint of alleged inmate on inmate sexual conduct is received by an IID representative, the IID representative shall notify the appropriate agency head to ensure, if appropriate, actions under §§.05F(3)(a) and (b) of this directive are initiated.

**G. Investigating, Documenting, and Resolving a Complaint.**

- (1) An IID investigator, or an investigator designated by the IID, shall conduct a prompt, thorough and objective investigation of every complaint of alleged inmate on inmate sexual conduct according to applicable statutory, regulatory, case law, contract, Department or agency procedures, or other reasonably accepted standards related to:
  - (a) Collecting and preserving evidence;
  - (b) Interviewing victims, witnesses, and suspected perpetrators;
  - (c) Conducting and using polygraph examinations;
  - (d) Identifying suspects;

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- (e) Preserving an individual's personal dignity and legal rights; and
  - (f) Maintaining confidentiality of the investigation.
- (2) To the extent possible, but in every case where the allegation of alleged inmate on inmate sexual conduct involves sexual abuse, the investigator assigned to investigate the allegation shall have received specialized training related to conducting sexual abuse investigations in a confinement setting that, at a minimum, specifically addresses:
- (a) Interviewing sexual abuse victims;
  - (b) Using *Miranda* and *Garrity* warnings protecting against self-incrimination;
  - (c) Sexual abuse evidence collection; and
  - (d) Criteria and evidence necessary to substantiate administrative action and, if appropriate, referral for criminal prosecution.
- (3) If the alleged inmate on inmate sexual conduct involves sexual abuse, the assigned investigator shall:
- (a) If evidentiarily or medically appropriate, offer the victim access to a medical forensics examination at no cost to the victim that is performed by a:
    - (i) A Sexual Assault Forensics Examiner (SAFE);
    - (ii) Sexual Assault Nurse Examiner (SANE); or
    - (iii) If after documented attempts to provide a SANE or SAFE are unsuccessful, a medical professional who has been specifically trained to conduct medical forensics examinations.
  - (b) If requested by the victim and the service is reasonably available, have one of the following accompany, for the purpose of support, the victim through the forensic examination and investigation interviews:
    - (i) A qualified victim advocate;
    - (ii) A Department employee who is otherwise not involved in the incident and has received education and training concerning sexual assault and forensic examination issues and has been appropriately screened and determined competent to serve in this role; or
    - (iii) A non-Department community-based organization representative who meets the criteria for a Department employee established under §.05G(3)(b)(ii) of this directive.
- (4) Upon completing an investigation of a complaint of alleged inmate on inmate sexual conduct, the investigator shall:
- (a) Thoroughly document all aspects of the investigation in a written report so as to best support subsequent administrative action and, if appropriate, referral for criminal prosecution;



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- (b) Include in the report a determination indicating the complaint of alleged inmate on inmate sexual conduct to be:
    - (i) Substantiated (the investigation determined the inmate on inmate sexual conduct occurred);
    - (ii) Unsubstantiated (the investigation produced insufficient information to determine whether or not the alleged inmate on inmate sexual conduct occurred); or
    - (iii) Unfounded (the investigation determined that the alleged inmate on inmate sexual conduct did not occur);
  - (c) Make appropriate Department administrative notifications, which include the PREA Facility Compliance Manager, concerning the result of the investigation;
  - (d) If the incident possibly involves criminal activity, refer the case to the appropriate office responsible for prosecuting criminal violations in the jurisdiction where the incident occurred; and
  - (e) File and maintain the report of investigation for a period of five years after the alleged perpetrator is no longer an inmate.
- (5) The departure of an inmate alleged to have committed inmate on inmate sexual conduct or the victim of inmate on inmate sexual conduct from the Department is not a basis for terminating an investigation of alleged inmate on inmate sexual conduct.
- (6) A victim of alleged inmate on inmate sexual conduct may not be compelled to submit to a polygraph or other truth-telling examination as a condition for proceeding with an investigation of alleged inmate on inmate sexual conduct.

**H. Victim Notification.**

- (1) When notified by an investigator under §.05G(4)(c) of this directive, if the allegation of inmate on inmate sexual conduct included sexual abuse, the head of the unit responsible for the victim inmate shall ensure that the victim inmate is notified of the investigator's determination that the allegation was substantiated, unsubstantiated, or unfounded.
- (2) Except when an allegation of inmate on inmate sexual conduct is determined to be unfounded, the head of the unit responsible for the victim inmate shall, for as long as the victim inmate is under the authority of the Department, ensure that the victim inmate is notified of the following situations concerning the inmate who sexually abused or is alleged to have sexually abused the victim inmate:
  - (a) If aware, the accused inmate is in any way charged with a crime related to the sexual abuse that occurred within the facility; and
  - (b) If aware, the accused inmate is convicted on a charge related to the sexual abuse that occurred within the facility.

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- (3) A record of a notification made under §§.05H(1) and (2) of this directive shall be maintained in the victim inmate's base file and include the following information:
  - (a) Case number;
  - (b) Content of the notification;
  - (c) Date of the notification;
  - (d) Location where the notification was made;
  - (e) Printed name and signature of the employee making the notification; and
  - (f) The inmate's signature acknowledging notification or, if the inmate refuses to sign for the notification, "Refused to Sign" and the employee's signature.

I. Sanctions.

- (1) An employee is subject to disciplinary action, up to and including termination of employment with the Department if it is determined that the employee:
  - (a) Except under exigent circumstances, did not perform responsibilities established under this directive; or
  - (b) Neglected or violated other duties or responsibilities that contributed to an incident of inmate on inmate sexual conduct.
- (2) An inmate:
  - (a) Determined to have committed sexual conduct is subject to:
    - (i) A penalty established under Inmate Disciplinary Process; and
    - (ii) If applicable, criminal prosecution.
  - (b) If therapy, counseling, or other intervention designed to address and correct underlying reasons or motivation for sexual conduct is available, may be required to participate in available therapy, counseling, or other intervention as a condition of participation in other forms of programming or inmate benefits that are otherwise subject to sanctioning under the Inmate Disciplinary Process.
  - (c) May be disciplined for sexual conduct with staff only if it is determined that the staff did not consent to the sexual conduct.
- (3) A contractor who does not perform responsibilities established under this directive is:
  - (a) Considered to be in violation of terms or conditions of a contract or other agreement establishing the relationship between the contractor and the Department or agency;
  - (b) Subject to sanctions according to provisions of the contract or agreement; and

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(c) Is subject to criminal prosecution.

- (4) A complaint of alleged inmate on inmate sexual conduct made in good faith based upon a reasonable belief that the alleged inmate on inmate sexual conduct occurred may not be considered a false report or lying, even if the required investigation does not establish sufficient evidence to substantiate the allegation of inmate on inmate sexual conduct.

**.06 Attachment(s).**

There are no attachments to this directive.

**.07 History.**

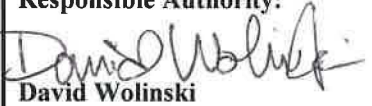
This directive rescinds Executive Directive OSPS.200.0004 dated 11/13/15 and supersedes provisions of any other prior existing Department communication with which it may be in conflict.

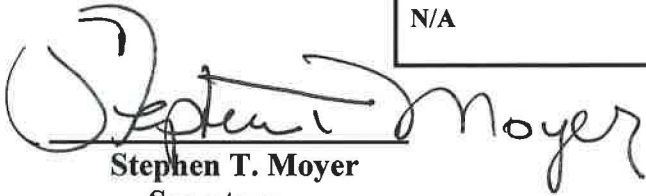
**.08 Correctional Facility Distribution Code.**


A  
B  
L

# Executive Directive



<b>Title:</b> Assessment for Risk of Sexual Victimization and Abusiveness	<b>Executive Directive Number:</b> OPS.200.0006
<b>Related MD Statute/Regulations:</b> Correctional Services Article, § 2-103, Annotated Code of Maryland;	<b>Rescinds:</b> OSPS.200.0005 dated May 25, 2016
<b>Related ACA Standards:</b> 4-4285, 4-4281-2, 4, & 5; 4-ALDF-2A-21; 2-CO-4A-01	<b>Responsible Authority:</b>  David Wolinski PREA Coordinator
<b>Related MCCS Standards:</b> N/A	<b>Effective Date:</b> April 4, 2018  <b>Number of Pages:</b> 7

  
Stephen T. Moyer  
Secretary

  
J. Michael Zeigler  
Deputy Secretary of Operations

## .01 Purpose.

This directive establishes policy and assigns responsibilities for screening individuals housed in a correctional facility under the authority of the Department of Public Safety and Correctional Services (Department) to assess the risk of the individual being sexually abused or being sexually abusive towards other inmates.

## .02 Scope.

This directive applies to Department units responsible for the care and custody of individuals housed in a Department correctional facility.

## .03 Policy.

- A. 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 PREA federal standards (28 CFR Part 115 – August 20, 2012) established under the authority of the Prison Rape Elimination Act (PREA) of 2003 (P.L. 108-79).
- B. The Department shall use a screening instrument as part of the intake and facility transfer process and at other times deemed appropriate to assess each inmate's risk for being sexually abused or being sexually abusive towards other inmates.
- C. The Department shall appropriately apply information obtained from assessing an inmate's risk related to sexual victimization and abusiveness to decisions concerning areas, such as inmate housing, programming, treatment, and work assignments in order to minimize circumstances that contribute to incidents of victimization or abusiveness.

## .04 Definitions.

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

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**B. Terms Defined.**

**(1) Employee.**

**(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 detention, correctional, or community confinement facility or otherwise under the care or supervision of the Department.**

**(3) “Gender nonconforming” means a person whose appearance or manner does not conform to traditional societal gender expectations.**

**(4) “Intersex” means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.**

**(5) “PREA Coordinator” means the individual assigned by the Secretary with authority over Departmental matters relating to the Prison Rape Elimination Act (PREA).**

**(6) “PREA Compliance Manager” means the individual designated by a managing official with authority over matters relating to PREA within the assigned correctional facility.**

**(7) “Screening instrument” means an objective survey or questionnaire that is used to assess an inmate’s risk of sexual victimization or potential for abusiveness.**

**(8) 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;**

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- (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(8)(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(8)(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.
- (9) "Transgender" means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.

**.05 Responsibility.**

- A. The PREA Coordinator shall ensure that a screening instrument is used to objectively assess an inmate's risk of:
- (1) Sexual victimization that, at a minimum, considers:
    - (a) The presence of a mental, physical, or developmental disability;
    - (b) The age of the inmate;
    - (c) The physical build of the inmate;
    - (d) Previous incarceration;
    - (e) If the inmate's criminal history was exclusively nonviolent;
    - (f) Prior convictions for sex offenses against an adult or child;

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- (g) If the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
- (h) History of sexual victimization;
- (i) The inmate's own perception of vulnerability; and
- (j) If the inmate is detained solely for civil immigration purposes; and

(2) Being sexually abusive that, at a minimum, considers:

- (a) Previous acts of sexual abuse;
- (b) Prior convictions for violence or sexual abuse; and
- (c) History of institutional violence or sexual abuse.

B. The PREA Coordinator shall ensure that procedures for using the approved screening instrument protocol at a minimum, require:

- (1) That each managing official designate sufficient intake, custody, or case management staff to assess each inmate for risk of sexual victimization or potential for abusiveness within 72 hours of arrival at a facility;
- (2) Case Management staff re-assess each inmate within 30 days of the inmate's arrival at the facility for risk of victimization or potential for abusiveness based upon additional, relevant information received by the facility since the initial screening;
- (3) That no completed screening instrument shall be filed in an inmate's confidential health record;
- (4) An inmate's risk level to be re-assessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or potential for abusiveness;
- (5) That an inmate is not disciplined for refusing to answer or not disclosing complete information in response to screening questions relating to:
  - (a) The presence of a mental, physical, or developmental disability;
  - (b) The inmate being or perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
  - (c) Previous sexual victimization; or
  - (d) The inmate's own perception of vulnerability; and
- (6) Appropriate controls to be in place for facility dissemination of information collected during screening to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

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- C. The PREA Coordinator shall ensure that the following issues are appropriately addressed in procedures for using information obtained during screening required under this directive:
- (1) Screening information shall be considered:
    - (a) When making decisions related to housing, bed, work, education, and program assignments with the goal of separating inmates who are determined to be at high risk of being sexually victimized from inmates who are determined to be at high risk of being sexually abusive.
    - (b) When making individualized determinations as how to ensure the safety of each inmate.
    - (c) When deciding to assign a transgender or intersex inmate to a facility for male or female inmates and in other housing and programming assignments and, on a case by case basis, determining if the placement or assignment:
      - (i) Ensures the inmate's health and safety; and
      - (ii) Presents management or security problems.
  - (2) Placement and programming assignments for each transgender or intersex inmate shall be re-assessed at least twice each year to review threats to safety experienced by the inmate.
  - (3) A transgender or intersex inmate's own views with respect to personal safety shall be seriously considered.
  - (4) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
  - (5) Lesbian, gay, bisexual, transgender, or intersex inmates may not be placed in dedicated facilities, units, or wings solely on the basis of such identification or status, unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting inmates.
  - (6) Placement of an inmate in special confinement housing shall be in accord with provisions for special confinement housing established in the Case Management Manual.
- D. The PREA Coordinator shall establish a sub-committee staffed by members of the PREA Committee and PREA Compliance Managers that is responsible for:
- (1) Researching, developing, or revising a screening instrument that meets requirements established under this directive and recommendations for approval by the PREA Committee;
  - (2) Researching, developing, documenting and recommending procedures for use of the screening tool and information received as a result of use for approval by the PREA Committee that, at a minimum, address:
    - (a) Training necessary for staff to properly conduct the screening and assess the information received;



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- (b) Identifying staff to perform the screening and subsequent assessment;
  - (c) Communicating information resulting from the screening and subsequent assessment;
  - (d) Documenting application of information in decisions and actions required under this directive;
- (3) Monitoring use of the screening instrument and information obtained from application to:
- (a) Ensure compliance with approved procedures;
  - (b) Identify issues related to application; and
  - (c) If appropriate, recommend updates or changes concerning application;
- (4) Reviewing incidents of sexual abuse to:
- (a) Determine the effectiveness of the screening instrument; and
  - (b) Identify issues with the screening process in need of change.

E. Each PREA Compliance Manager is responsible to:

- (1) Oversee implementation and use of the approved screening instrument within the assigned facilities; and
- (2) Develop written procedures for the use of the screening instrument that meet the requirements established under this directive and ensure:
  - (a) Facility staff, designated under §.05B(1) of this directive, conduct the required screening at intake or transfer into the facility;
  - (b) Facility Case Management staff re-assess an inmate's risk of victimization or potential for abusiveness within 30 days of intake or transfer into the facility;
  - (c) Whenever screening indicates that an inmate has experienced prior sexual victimization, whether it occurred in a facility or in the community, the inmate is offered a follow-up with medical or mental health practitioner within 14 days of the initial PREA screening;
  - (d) Documentation relating to the PREA- required screening is maintained at the facility per a retention schedule approved by the Department of General Services;
  - (e) Confidentiality of screening information is maintained;
  - (f) Facility staff responsible for making decisions related to §.05C of this directive properly consider information discovered as part of screening;
  - (g) Facility staff comply with procedures related to the use of the screening instrument;

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- (h) Screening documentation from each audit cycle which addresses PREA standards, is maintained for at least 3 years after the PREA audit; and
- (i) A copy of the written procedures developed under §.05E(2) of this directive is forwarded to the PREA Coordinator.

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

- A. PREA Intake Screening Instrument — Revised February 5, 2015
- B. Instructions for PREA Intake Screening Instrument — Revised February 5, 2015

**.07 History.**

- A. This directive rescinds OSPS.200.0005 dated May 25, 2016 and reissues the policy as OPS.200.0006 in order to conform with current Department structure and authorities.
- B. This directive replaces COS.200.0005 dated February 20, 2015.
- 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 Code.**

- A
- C
- S — Case Management, Intake, Custody, Medical and Mental Health

# PREA Intake Screening

**Inmate Name:** \_\_\_\_\_ **DOC#:** \_\_\_\_\_

**Date:** \_\_\_\_\_ **Facility:** \_\_\_\_\_ **SID#:** \_\_\_\_\_

<b>Risk of Victimization:</b>	<b>Yes</b>	<b>No</b>
1. How old are you? _____ (check yes if the inmate is under 22 or over 64 years old)		
2. What is your height and weight? Height: _____ Weight: _____ check yes if either of these apply: (men less than 5/6" and 120 lbs.) (women less than 5'0" and 118 lbs.)		
3. Do you have any physical, mental, or developmental disabilities that may affect your ability to function in a prison facility.		
4. Is this your first major incarceration?		
5. Is your criminal history exclusively non-violent, including pending charges, and your current charge?		
6. Do you have any reason to fear placement in general population?		
7. Were you ever sexually assaulted or abused as a child or adult? (if yes, offer mental health referral)		
8. Have you ever been approached for sex/threatened with sexual assault while incarcerated?		
9. Do you consider yourself <input type="checkbox"/> homosexual, <input type="checkbox"/> bisexual, <input type="checkbox"/> transgender, <input type="checkbox"/> intersex, or <input type="checkbox"/> gender nonconforming?*		
10. Have you had consensual sex while incarcerated?		
11. Do you have a criminal history of sex offenses with adult/child victims, including pending charges and your current charge?		
12. Have you ever been sexually assaulted while incarcerated? (yes response = 4 points and offer mental health referral)		

**Score of 4 or more on items 1-12 = "at risk for victimization." Each "yes" answer is 1 point.**

\*If yes, check all that apply.

**Risk of Victimization Score:**

<b>Risk of Abusiveness:</b>	<b>Yes</b>	<b>No</b>
13. Do you have a history of violent crimes including pending charges and your current charge?		
14. Do you have a history of domestic violence as a perpetrator including pending charges and your current charge?		
15. Do you have a history of administrative violations or institutional infractions for violent offenses?		
16. Do you have a history of administrative violations or institutional infractions for sexual misconduct?		
17. Do you have a criminal history of sex offenses with adults? (if yes, offer mental health referral)		
18. Have you ever sexually assaulted another inmate while incarcerated? (yes response = 3 points and offer mental health referral)		

**Please confirm these responses via file review/observation of inmate. Score of 3 or more on items 13-18 = "at risk for abusiveness."**

**Risk of Abusiveness Score:**

**Results:**

**Referral:**

- |   |  |
|---|--|
| <input type="checkbox"/> Low risk (no further action necessary)<br><input type="checkbox"/> At risk of victimization, 4 or more pts. (follow facility policy)<br><input type="checkbox"/> At risk of abusiveness, 3 or more pts. (follow facility policy) | <input type="checkbox"/> Prior victim, offer follow-up meeting<br><input type="checkbox"/> Prior abuser, offer follow-up meeting<br><input type="checkbox"/> Follow-up meeting requested<br><input type="checkbox"/> Follow-up meeting refused |
|---|--|

\_\_\_\_\_  
Screener's Signature and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Thirty-Day Reassessment (if required)

Review complete, no changes

Review complete, updated form submitted

\_\_\_\_\_  
Assessor's Signature and Title

\_\_\_\_\_  
Date

# Instructions for PREA Intake Screening Instrument

Read this Statement to the Inmate: In 2003 the Prison Rape Elimination Act, better known as PREA, was passed by the Federal government in an effort to protect prison inmates from sexual assault. I will be asking you a series of questions to help determine if you are at risk of becoming involved in a sexual assault while at this facility. These questions are being asked to help protect you and other inmates from sexual assault and abuse. If you refuse to answer a question or fail to answer a question truthfully, I or another staff member may enter an answer based on your criminal history, other written documentation, or personal observation. The information that I collect on this form is considered to be confidential and will only be made available to those staff members that have a need to know.

\*The screening instrument is not intended to diagnose any mental health or psychological conditions. Staff members that use this instrument to screen inmates for risk of victimization or abusiveness are to use their own judgment appropriate for their training, education, and job classification.

Question Number	Detailed Instructions*
1	Use the inmate's official date of birth to verify.
2	Height is measured in feet and inches. Weight is measured in pounds.
3	Allow the inmate to assess his or her ability to function in a prison environment. A "yes" answer may be entered by the screener if the inmate has physical disabilities that would make it difficult for the inmate to defend his/her self or appears to have mental or developmental disabilities that would impair the inmate's decision making processes.
4	A major incarceration for the purposes of this screening instrument means thirty or more consecutive days of detention in a local, state, or federal facility.
5	Verify, if possible. Violent criminal history includes all forms of assaultive behavior, robbery, and sexual offenses involving personal contact. Screener may override a "no" answer if supported by documentation to the contrary.
6	Enter the inmate's answer.
7	Enter the inmate's answer. Inmate must be offered a medical or mental health referral, if "yes".
8	Enter the inmate's answer.
9	<ul style="list-style-type: none"> <li>• When considering whether an inmate is <b>homosexual or bisexual</b> a "yes" response may only be indicated when self-reported or through information from past incarcerations.</li> <li>• <b>Gender non-conforming</b> is defined as displaying gender traits that are not normally associated with the person's biological sex. The screening official may determine that an inmate is <b>gender non-conforming</b> based on his or her observations.</li> <li>• <b>Transgender</b> people are defined as those whose gender identity differs from the social expectations for their birth sex. This may include transsexuals (someone who is in the process of physically/medically changing their gender) and cross-dressers (transvestites). Transgender people may have any sexual orientation. A "yes" response may only be indicated when inmate identifies him or herself as <b>transgender</b> or through information from past incarcerations.</li> <li>• <b>Intersexuality</b> is defined as a set of medical conditions that is a congenital anomaly of the sexual and reproductive system. Intersex people are born with external genitalia or internal reproductive systems that are not considered "standard" for either sex. An intersex individual may have any sexual orientation. A "yes" response may only be indicated when inmate identifies him or herself as <b>intersex</b> or through information from past incarcerations.</li> </ul>
10	Enter the inmate's answer.
11	Enter the inmate's answer. Verify, if possible. Screener may override a "no" answer if supported by documentation to the contrary.
12	Enter the inmate's answer.
13 - 16	Enter the inmate's answer. Verify, if possible. Screener may override a "no" answer if supported by documentation to the contrary. History includes documented incidents where the inmate has been identified as a suspect or perpetrator. Formal findings of guilt or responsibility are not required. Violent offenses include all assaultive behavior (except actions taken in self-defense), robbery, and kidnapping. For the purpose of these questions sexual misconduct includes sexual acts, indecent exposure and public masturbation.
17	Enter the inmate's answer. Verify, if possible. Screener may override a "no" answer if supported by documentation to the contrary. Inmate must be offered a mental health referral, if "yes".
18	Enter the inmate's answer.

**Results:** Enter the total points in the appropriate boxes for "Risk of Victimization" and "Risk of Abusiveness." Check the box or boxes in the **Results** section and follow your facility policy.


**Referral:** If the inmate reveals in questions 7, 12, 17, or 18 that he or she has been a victim or perpetrator of a sexual assault, the inmate must be *offered* a follow-up visit with mental health staff. Check the appropriate **Referral** boxes and provide the inmate with a **PREA FOLLOW UP** form. Assist the inmate with the form, if necessary, and send the letter to the psychology department through the institutional mail.

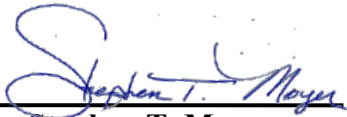
## Disposition

- Inmate screening for risk of sexual victimization and abusiveness is required by the Prison Rape Elimination Act of 2003 (PREA), §115.41. The information collected is to be used to help make decisions regarding housing, bed, work, education and program assignments. **Follow your facility policy regarding inmates that are found to be at risk.**
- Responses to the questions asked on the screening instrument are to be kept confidential and disseminated only to those individuals with a need to know. **Follow your facility policy regarding dissemination.**

# Executive Directive



<b>Title:</b> PREA Investigations — Tracking and Review	<b>Executive Directive Number:</b> <b>OSPS.020.0027</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> Executive Directive Number COS.020.0027 dated March 20, 2014
<b>Related Standards:</b> 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	<b>Responsible Authority:</b>  <b>PREA Coordinator</b>
<b>Related MCCS Standards:</b> N/A	<b>Effective Date:</b> November 13, 2015 <b>Number of Pages:</b> 7



Stephen T. Moyer  
Secretary



Rhea Harris  
Assistant Secretary  
Programs and Services

## .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.

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- (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.

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- (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

- (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.



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- (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.

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- (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.

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- (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.**

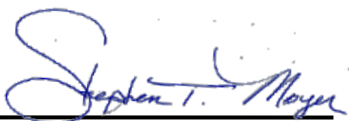
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S — Staff Assigned to Conduct an Investigation of a Sex Related Offense

# Executive Directive



<b>Title:</b> <b>Americans With Disabilities Act of 1990, Titles I and II</b>	<b>Executive Directive Number:</b> <b>OSPS.050.0011</b> <b>Revised</b>
<b>Related MD Statute/Regulations:</b> Correctional Services Article, §2-103, Annotated Code of Maryland; Americans with Disabilities Act of 1990, Title I and Title II; Executive Order 01.01.2007.16, Maryland Regulations Code, Title 01, §01.1995.19, (Code of Fair Employment Practices) (2003); Rehabilitation Act of 1973, Sections 503 and 504; State Personnel and Pensions Article, Title 5, Subtitle 2, Annotated Code of Maryland; Statewide Reasonable Accommodations Policy and Procedures; State Government Article, Title 20, Annotated Code of Maryland; Guidelines to Effectively Address Accommodations Requests in an Appropriate Manner	<b>Supersedes:</b> <b>Executive Directive OEO.050.0011 dated October 4, 2013</b>
<b>Related ACA Standards:</b> 4-4054; 4-4143 & 44; 2-CO-1C-09 & 09-1; 2-CO-2B-04	<b>Responsible Authority:</b> <div style="text-align: center;">                       Karen H. Shipley                      Executive Director – Office of Equal Opportunity                 </div> <div style="text-align: center;">                       Rhea Harris                      Director, Division of Capital Construction and Facilities Maintenance                 </div>
<b>Related MCCS Standards:</b> N/A	<b>Effective Date:</b> August 21, 2015 <b>Number of Pages:</b> 4



**Stephen T. Moyer**  
Secretary



**Rhea Harris**  
Assistant Secretary  
Programs and Services

**.01 Purpose.**

- A. This directive continues policy for the Department of Public Safety and Correctional Services (Department) concerning implementation of requirements of the Americans with Disabilities Act of 1990 (ADA), Title I (Employment) and Title II (Public Services).
- B. This directive supplements existing Department policy regarding fair employment practices and assigns responsibilities for reporting and processing complaints pertaining to ADA, Title I and Title II.

**.02 Scope.**

This directive applies to all units of the Department.

**.03 Policy.**

- A. In accordance with Title I and Title II of the Americans with Disabilities Act, the Department prohibits discrimination against a qualified individual with a disability with regard to:

**Executive Directive Number: OSPS.050.0011**

- (1) Any term, condition, or privilege of employment; or
  - (2) Access to public services, programs, or activities provided by the Department.
- B. To the extent possible, and according to federal guidelines, the Department shall make reasonable accommodations to enable a qualified individual with a disability access to:
- (1) Employment opportunities; and
  - (2) Public services, programs, or activities provided by the Department.
- C. The Executive Director, Office of Equal Opportunity (Executive Director) shall monitor and report Department compliance with ADA requirements.
- D. The Director, Capital Construction and Facilities Maintenance shall monitor and report Department compliance with Title II ADA requirements.

**.04 Definitions.**

- A. In this directive, the following terms have the meanings indicated.
- B. Terms Defined.
- (1) “Auxiliary aids and services” include:
    - (a) Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
    - (b) Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;
    - (c) Acquisition or modification of equipment or devices; and
    - (d) Other similar services and actions.
  - (2) “Disability” means, with respect to an individual:
    - (a) A physical or mental impairment that substantially limits one or more of the major life activities of an individual;
    - (b) A record of such an impairment; or
    - (c) Being regarded as having such impairment.
  - (3) “Public entity” means:
    - (a) Any State or local government; and
    - (b) Any Department, unit, special purpose district, or other instrumentality of a State or states, or local government.
  - (4) “Qualified individual with a disability” means:

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- (a) Under Title I – Employment, an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position held or desired.
  - (b) Under Title II – Access to Public Services, an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.
- (5) “Reasonable accommodation” may include:
- (a) Under Title I – Employment
    - (i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities;
    - (ii) Job restructuring;
    - (iii) Part-time or modified work schedules;
    - (iv) Reassignment to a vacant position;
    - (v) Acquisition or modification of equipment or devices;
    - (vi) Appropriate adjustment or modifications of examinations, training materials, or policies;
    - (vii) Provision of qualified readers or interpreters; and
    - (viii) Other similar accommodations for individuals with disabilities.
  - (b) Under Title II – Public Access, making reasonable modifications in a policy, practice, or procedure that denies equal access to individuals with disabilities, unless such modifications would result in a fundamental alteration in the program, or cause undue financial or administrative burden to the Department.

**.05 Responsibility.**

- A. The Executive Director, or a designee, is the Department’s Title I ADA Coordinator (Coordinator).
- B. The Coordinator shall:
  - (1) Coordinate administrative and operational activities related to filing, reporting, processing, reviewing, and resolving ADA-related complaints; and
  - (2) Report, annually, to the Assistant Secretary — Programs and Services actions taken regarding ADA compliance.
- C. Complaints.
  - (1) An individual may file a complaint of alleged discrimination based on disability:

**Executive Directive Number: OSPS.050.0011**

- (a) According to procedures established by the Office of Equal Opportunity (OEO) with any or all of the following:
    - (i) A unit head;
    - (ii) OEO; or
    - (iii) An Equal Opportunity, designee; or
  - (b) With the State or federal government according to procedures established by the State or federal government.
- (2) A unit head is responsible for notifying the Coordinator of a complaint filed with the unit according to procedures established by OEO.
- (3) The Coordinator is responsible for administration of complaints filed with the Department, including the following:
- (a) Receiving, logging, and tracking complaints;
  - (b) Investigating or assigning investigation of complaints;
  - (c) Ensuring resolution of complaints; and
  - (d) Maintaining and reporting data related to complaints.

**.06 Attachment(s).**

There are no attachments to this directive.

**.07 History.**

This directive replaces Secretary's Directive OEO.050.0011, Americans with Disabilities Act 1990, dated October 4, 2013 and supersedes provisions of any other prior existing Department or unit communication with which it may be in conflict.

**.08 Correctional Facility Distribution Code.**

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B

# Section 17

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Special Confinement Housing



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## Section 17 ~ Special Confinement Housing

### A. Generally.

The Division utilizes special confinement housing when an inmate requires close supervision, segregation from the general population, or both. It may be used to ensure the safety and security of the institution, staff, individual inmate, the general inmate population, or some combination of these factors.

- (1) Inmates confined in a special confinement housing area may be assigned to administrative segregation, disciplinary segregation, protective custody, a behavior management program (BMP), and/or Maximum II Security – Structured Housing (MIISH).
- (2) An inmate assigned to administrative segregation or protective custody who receives a disciplinary segregation sentence for violating institutional rules may remain in the inmate's current status, but shall be subject to the conditions of confinement as prescribed by [DOC.110.0006 Disciplinary Segregation](#). At the completion of the disciplinary segregation sentence, the inmate shall remain assigned to administrative segregation or protective custody, unless removal is warranted.
- (3) An inmate assigned to a behavior management program who receives a disciplinary segregation sentence shall be reviewed by the BMP Review Team within 30 days. At that review, the BMP Review Team shall determine if the segregation time is to be suspended or if the participant is to be removed from the program. In addition, the BMP Review Team will decide if a level reduction is appropriate.

### B. Administrative Segregation.

- (1) An inmate may be placed on administrative segregation in response to a potential threat to the safety, security, and good order of the institution, and there if there is reason to believe such placement will reduce that threat.

- (2) The following are examples of situations that warrant the placement of an inmate on administrative segregation:
  - (a) To prevent the escape of the inmate when there is reason to believe that the inmate is an escape risk;
  - (b) Pending an investigation, disciplinary proceedings, or both where there is reason to believe the inmate might otherwise intimidate potential witnesses or pose a threat to the security of the institution;
  - (c) Pending consideration for assignment to protective custody;
  - (d) Pending consideration for assignment to a behavioral management program;
  - (e) For medical or mental health reasons;
  - (f) Pending investigation into possible threat to the safety and wellbeing of the individual inmate; or
  - (g) When the inmate's continued misbehavior demonstrates an inability to conform to the rules and regulations of the institution, the Division, or both.
- (3) Placement.
  - (a) Designated staff shall provide the inmate with a copy of the Notice of Assignment to Administrative Segregation, [Appendix 1 to CMM-17](#), within 24 hours after the inmate's placement on administrative segregation, unless the inmate is placed pending a disciplinary hearing.
  - (b) The inmate shall sign the acknowledgement at the bottom of the original notice and the original shall be forwarded to case management for further action accompanied by the Administrative Segregation Investigative Report, [Appendix 2 to CMM-17](#).
    - (i) The inmate's voluntary signature shall be witnessed by one staff member.

- (ii) If the inmate refuses to sign, the refusal shall be witnessed by two staff members.
  - (c) An initial investigation shall be conducted by assigned staff within three days of placement on administrative segregation.
  - (d) An Administrative Segregation Investigative Report, [Appendix 2 to CMM-17](#), shall be prepared by designated staff with all available information regarding the placement of the inmate on administrative segregation, including a recommendation for or against continued assignment.
  - (e) The report shall be forwarded to case management for review and consideration by the case management team.
- (4) Initial Review.
- (a) A case management team shall review the inmate's administrative segregation status within five working days of the inmate's placement on segregation;
  - (b) The inmate shall have the opportunity to respond to the reasons stated for being placed on administrative segregation;
  - (c) The members of the case management team shall consider available alternatives to continued administrative segregation;
  - (d) Upon completion of the team's review, the chairperson of the team shall advise the inmate of the recommendation being made to the managing official or designee, and document the review on an OCMS Assignment Sheet; and
  - (e) For inmates placed on administrative segregation except those placed pending a disciplinary hearing, the managing official or designee shall review the case management team's recommendation within five working days.
  - (f) The inmate shall be advised, in writing, by designated staff, of the decision within three days of the managing official's or designee's review in OCMS.

- (5) Subsequent Reviews.
- (a) An inmate assigned to administrative segregation shall be reviewed by the case management team at least once every 30 days (every 7 days for the first 60 days, then every 30 days thereafter for ACA accredited facilities).
  - (b) An inmate may refuse to appear before the case management team, and when doing so shall sign a Waiver and Notification of Case Management Action to indicate such action.
    - (i) One staff member shall witness the voluntary signing of the waiver.
    - (ii) If the inmate refuses to appear and refuses to sign the waiver, the refusal to sign shall be witnessed by two staff members.
  - (c) In the course of the review, the case management team shall consider available alternatives to continued administrative segregation.
  - (d) The case management team may refer the inmate to a psychologist, chaplain, social worker, addictions counselor, or other staff as appropriate; and
  - (e) When an inmate has remained on administrative segregation for 12 calendar months, the scheduled monthly segregation review shall be forwarded to the Director of Case Management for review by the Commissioner, or designee, who may then direct continued administrative segregation, or any other action as deemed appropriate.
  - (f) Administrative Segregation Pending Adjustment:
    - (i) Proper service of Notification of Inmate Rule Violation and Disciplinary Hearing shall satisfy the placement requirement listed in section B(1); and
    - (ii) At any time prior to the disciplinary hearing, the inmate may be removed from administrative segregation and returned to the general population by order of the managing official, Assistant Warden, chief of security, or shift commander with documentation provided to case management.

(g) Medical Placement on Administrative Segregation:

- (i) An inmate may be placed on administrative segregation for medical or psychological reasons upon the recommendation of a health care provider. The health care provider shall complete a Notice of Assignment to Administration Segregation. A case management team review is not necessary for the duration of the assignment to administrative segregation;
- (ii) The health care provider recommending placement on administrative segregation shall submit the notice to the managing official within four working days of the initial placement on administrative segregation; and
- (iii) The inmate shall only be removed from Medical or Psychological administrative segregation by written request to the managing official from the health care provider, at which time the inmate shall be returned to the general population. Documentation of the request for removal shall be forwarded to Case Management.
- (iv) If an inmate remains on administrative segregation for medical or psychological reasons for more than 60 days, a report shall be forwarded by the managing official to the Executive Director of Field Support Services, detailing the date of, and reason(s) for, placement and the estimated date of release from administrative segregation.

C. Disciplinary Segregation.

- (1) When an inmate receives a disciplinary segregation sentence as the result of a guilty finding for a rule violation, the assigned case management specialist shall meet with the inmate within 30 days to review the hearing officer's finding and sanction(s). The case management specialist shall document the review on a Disciplinary Segregation Review form, [Appendix 3 to CMM-17](#) with the exception of those inmates assigned to BMP.
- (2) Subsequent reviews shall be conducted and documented on the *Disciplinary Segregation Review* form at least every 30 days. All segregation reviews shall be

forwarded to a supervisor for review and consideration prior to submission to the managing official, or designee, for review. When the inmate has completed his/her segregation sentence, or the document has been completed in its entirety, the document shall be uploaded as an Assignment Sheet under Case Forms in OCMS.

- (3) The assigned case management specialist shall request and review behavioral updates from custody staff monitoring the inmate. During the inmate's segregation sentence a reduction can be recommended to the managing official. If an early removal is being recommended, it shall be submitted on a Case Management Assignment Sheet in OCMS.

#### D. Behavior Management Program (BMP).

- (1) Prior to implementation, the managing official shall forward a summary of the program and related institutional directives to the Executive Director of Field Support Services for review and approval.
- (2) An inmate identified by staff that has acted in a way seen as a threat to the security of the institution, has a pattern of acts of violence, especially if there are connections to Security Threat Groups (STG), drugs or other contraband distribution, or the use of physical threats or coercion is sufficient rationale to be considered for assignment to a behavior management program. Identification of such threats may occur as a result of, but not limited to:
  - (a) Intelligence information;
  - (b) Staff reports;
  - (c) Disciplinary reports;
  - (d) Reduction in Violence Committee information; or
  - (e) Case record information.

- (3) Inmates being referred for placement in a BMP shall be placed on administrative segregation if not currently serving a disciplinary segregation sentence pending the review process. Inmates referred to the BMP shall be classified to maximum security prior to transfer to NBCI.
    - (a) When referring an inmate for BMP placement, a case management team at the sending institution shall be convened to consider a BMP referral and, if appropriate, an increase in security. The team's recommendation shall include detailed and specific rationale in support of the recommendation. The review shall be completed utilizing the Case Management Assignment Sheet or the Security Reclassification Instrument in OCMS as applicable. The team's recommendation shall be approved by the managing official. This process and accompanying paperwork shall be completed prior to an inmate being transferred to the institution facilitating the program, unless unique circumstances prohibit following the defined process.
    - (b) Upon transfer to an institution facilitating a BMP, the inmate shall be placed on administrative segregation pending the Admission, Review and Discharge (ARD) committee review, at which time suitability for program participation shall be considered and, if recommended for placement, specifics of the program shall be discussed with the inmate. The BMP Review Team shall then make a recommendation to the managing official for, or against, placement using the BMP Screening Sheet, Appendix 1 to the [BMP Manual](#). The managing official of the institution facilitating a BMP shall serve as the final appointing authority for an inmate's placement in the program. Upon signature, the form shall be uploaded in OCMS as an Assignment Sheet and, if approved, an Automatic Program Change shall be completed to show the BMP as the inmate's assignment.
    - (c) Participation in the program is voluntary. If the inmate is accepted and refuses to participate, the inmate shall be maintained on administrative or disciplinary segregation as appropriate until suitable housing can be arranged.
  - (4) The Program.
-

- (a) The inmate shall have the opportunity to study behavior control methodology and put learned techniques into practice.
  - (b) The inmate shall earn an increased number of privileges as the inmate demonstrates progress with each higher level achieved.
  - (c) The specific components of the BMP may vary by institution.
- (5) Reviews.

The BMP Review Team shall conduct an initial review of the inmate's case within 30 days of the inmate's assignment to the BMP, and at least every 30 days thereafter. Results of the review shall be entered on an OCMS Assignment Sheet. The BMP Review Team shall be comprised of the program facilitator, case management staff, and a custody supervisor. Other members may include, but are not limited to, the following staff:

- (a) Social work;
  - (b) Intelligence unit or investigative lieutenant or captain;
  - (c) Mental health;
- (6) Additional Information.
- (a) Inmates serving a disciplinary segregation sentence shall have their sentences stayed by the managing official upon entry into the program. Upon successful completion, the stayed segregation time shall be probated.
  - (b) If appropriate, inmates may be removed having not successfully completed the program. In that instance, any disciplinary segregation sentence may be re-imposed in its entirety.

#### E. Maximum II Structured Housing (MIISH).



Designated inmates shall be classified to this status in order to address the most serious behavior concerns. Maximum II Structured Housing is a four (4) phase approach designed to address security threats to life (of self or other inmates), property, staff, and the facility. Inmates participating in structured housing shall have goals set and scheduled. Multi-disciplinary team reviews shall be held to assess the issues of suitability placement, discharge, and individual assignments. Policy related to MIISH may be found in [DOC.100.004 Maximum Security II – Structured Housing \(MAX II SH\)](#).

F. Protective Custody.

- (1) Protective custody housing is appropriate only when required for the protection of the inmate. Every effort shall be made by case management staff and the managing official to find suitable alternatives to protective custody housing. These may include, but are not limited to:
  - (a) Transfer of the inmate to a different housing unit within the institution;
  - (b) Lateral transfer of the inmate to another institution of the same security level;
  - (c) Transfer of the inmate’s documented enemy or enemies to another institution;
  - (d) Transfer of the inmate to another state under the provisions of the Interstate Corrections Compact (ICC); or
  - (e) Assignment to home detention (if eligible).
- (2) A case management team may consider an inmate for transfer to a designated protective custody institution to ensure the consistent and safe management of inmates who are deemed to be at risk if housed in general population in any Division of Correction institution.
- (3) Staff shall utilize the Notice of Assignment to Administrative Segregation, [Appendix 1 to CMM-17](#), when considering an inmate for placement on protective custody.
- (4) Inmates may not be placed on protective custody for punitive reasons.

- (5) If the inmate is recommended by the case management team for transfer to a protective custody facility, the supporting rationale shall be documented on an OCMS Assignment Sheet and forwarded to the managing official for consideration.
- (6) If placement on protective custody is approved, the transfer shall be coordinated through designated transportation staff.
- (7) If the managing official or designee disapproves placement on protective custody, the managing official or designee shall provide direction for housing the inmate.
- (8) Reviews.
  - (a) An inmate's protective custody status shall be initially reviewed upon arrival at the institution designated to house protective custody inmates and at least annually thereafter (every 30 days thereafter for ACA accredited facilities).
  - (b) Upon receipt of information that may warrant reconsideration of an inmate's continued assignment to protective custody, the status shall be reviewed by a case management team.
  - (c) When the case management team does not recommend removal of an inmate placed on protective custody who has requested removal, or when the managing official or designee disapproves a case management recommendation for such an inmate's removal, the inmate shall remain on protective custody.
  - (d) When the case management team recommends continuing an inmate on protective custody and the managing official or designee disapproves that recommendation, the inmate shall be removed from protective custody unless the managing official specifies otherwise. If the managing official or designee directs further case management action or review, the managing official or designee shall provide written rationale for such action.

#### G. Record of Segregation Confinement.

The conditions of confinement for inmates serving a disciplinary segregation sentence are governed by [DOC.110.0006](#). Inmates assigned to a BMP or MIISH shall be subject to the conditions of confinement as specified at each level or phase of the program, as dictated by institutional policy and procedures.

- (1) Correctional officers assigned to a special confinement housing unit shall establish and maintain a Record of Segregation Confinement, DOC Form 110-5aR, for each inmate assigned to the housing unit.
- (2) The Record of Segregation Confinement sheet shall contain detailed information regarding the inmate's behavior, movement, appointments, group participation, or other significant factors relative to the inmate's case.
- (3) At the end of each month, or when the inmate is removed from special confinement housing, the housing unit officer shall send this form to the case management office for placement in the inmate case record.

## MARYLAND DIVISION OF CORRECTION

**NOTICE OF ASSIGNMENT  
TO  
ADMINISTRATIVE SEGREGATION**

Institution: \_\_\_\_\_ Current Housing Location: \_\_\_\_\_ Date: \_\_\_\_\_

Last Name	First Name	M.I.	DOC Number

Date/Time of Placement \_\_\_\_\_

Per \_\_\_\_\_

It has been determined that reasons exist (as categorized below) to remove you from general population and assign you to administrative segregation pending review of the circumstances and case management team action. You will be seen by the case management team within five days of your placement on administrative segregation (excluding weekends and holidays) and given the opportunity to be heard as to whether or not you should be continued in this status.

**Reason** (check applicable categories):

- Reasons exist to believe that you are an escape risk.
- Reasons exist to believe that you are dangerous to the security of the institution and/or inmates and/or staff.
- An investigation is pending in your case.
- You are being considered for placement on voluntary or involuntary protective custody.
- Medical or psychological reasons exist, as determined by a health care provider, that require your removal from general population.
- Your continued behavior documents that you are not able to conform to the rules and regulations of the institution and/or the Division of Correction.
- Other (specify) \_\_\_\_\_

I have read (or have had read to me) and  
acknowledge receipt of a copy of this notice:

\_\_\_\_\_  
Inmate's Signature

**Distribution:**

Original: Base File  
Copy: Inmate

Notice Served by: \_\_\_\_\_

Date/Time \_\_\_\_\_

MARYLAND DIVISION OF CORRECTION

**Administrative Segregation Investigative Report**

Inmate: \_\_\_\_\_ DOC #: \_\_\_\_\_

Date of Placement: \_\_\_\_\_ Time of Placement: \_\_\_\_\_

**Reason for Investigation:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Inmate's Claim:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Persons Contacted:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Findings:** \_\_\_\_\_  
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\_\_\_\_\_

**Recommendations:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Investigator Date

MARYLAND DIVISION OF CORRECTION  
**DISCIPLINARY SEGREGATION REVIEW**

Name: \_\_\_\_\_ DOC #: \_\_\_\_\_ Inst: \_\_\_\_\_

Date of Hearing: \_\_\_\_\_ Security Level: \_\_\_\_\_

Add'l Information: \_\_\_\_\_

Date of Last Rule Violation: \_\_\_\_\_ Guilty of: \_\_\_\_\_ Sanction: \_\_\_\_\_

MSR Date: \_\_\_\_\_ Total Segregation: \_\_\_\_\_ From: \_\_\_\_\_ Expires: \_\_\_\_\_

Recommendation: \_\_\_\_\_

CM Specialist's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Concur  Non-Concur Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

Comments: \_\_\_\_\_

Approve  Disapprove Warden/Designee: \_\_\_\_\_ Date: \_\_\_\_\_

Comments: \_\_\_\_\_

**New Information:** \_\_\_\_\_

Recommendation: \_\_\_\_\_

CM Specialist's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Concur  Non-Concur Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

Comments: \_\_\_\_\_

Approve  Disapprove Warden/Designee: \_\_\_\_\_ Date: \_\_\_\_\_

Comments: \_\_\_\_\_

**New Information:** \_\_\_\_\_

Recommendation: \_\_\_\_\_

CM Specialist's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Concur  Non-Concur Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

Comments: \_\_\_\_\_

Approve  Disapprove Warden/Designee: \_\_\_\_\_ Date: \_\_\_\_\_

Comments: \_\_\_\_\_

**New Information:** \_\_\_\_\_

Recommendation: \_\_\_\_\_

CM Specialist's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Concur  Non-Concur Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

Comments: \_\_\_\_\_

Approve  Disapprove Warden/Designee: \_\_\_\_\_ Date: \_\_\_\_\_

Comments: \_\_\_\_\_

### MENTAL HEALTH INFORMED CONSENT

Institution \_\_\_\_\_

Program \_\_\_\_\_

Inmate Name \_\_\_\_\_ ID # \_\_\_\_\_

Type of Service \_\_\_\_\_ DATE \_\_\_\_\_

I acknowledge that I have had the nature of the offered mental health services explained to me and that I understand the benefits and side effects (if any) of the prescribed treatment. I understand that I have the right to refuse this service. I fully understand that the results of these services shall be shared with employees of DPSCS who have a need to know for decision-making purposes. I also understand that the confidentiality of this service is governed by the provisions of Maryland Annotated Code, Courts and Judicial Proceedings Article, § 9-109. Under these provisions, disclosure of mental health information without written authorization is permitted under certain circumstances including the following:

1. Confidentiality does not apply if the service provider becomes aware of a threat to institutional security.
2. Confidentiality may not be honored if the service provider becomes aware of the inmate's intent to harm him or herself or another person.
3. Confidentiality will not be honored if the service provider has reason to believe that there has been suspected or actual child abuse, which is not presently managed by the Department of Social Services or other appropriate agency.
4. Confidentiality may not be honored if the inmate or his/her representative raises the inmate's mental status as a question or issue in legal proceedings.
  1. Confidentiality shall not be honored in court ordered evaluations.
  2. Confidentiality shall not be honored for the purpose of clinical supervision or quality assurance.

I have been informed and understand the limitations of confidentiality.

Inmate Signature \_\_\_\_\_ Date: \_\_\_\_\_

I agree to participate in this service despite the limits of confidentiality set out above.

Inmate Signature \_\_\_\_\_ Date \_\_\_\_\_

Practitioner \_\_\_\_\_ Date \_\_\_\_\_ Supervisor initials: \_\_\_\_\_ Date: \_\_\_\_\_

**INFORMED CONSENT  
Psychological Evaluation**

Institution \_\_\_\_\_

Program \_\_\_\_\_

Inmate Name \_\_\_\_\_ ID # \_\_\_\_\_

Type of Service \_\_\_\_\_ DATE \_\_\_\_\_

I acknowledge that the purpose of this current evaluation is to assist with an administrative decision by employees of the Department of Public Safety and Correctional Services (DPSCS). I fully understand that results of this evaluation shall be shared with employees of DPSCS who have a need to know for decision-making purposes.

I acknowledge that I have had the nature of the offered mental health services explained to me. I understand that I have the right to refuse this service. I also understand that the confidentiality of this service is governed by the provisions of Maryland Annotated Code, Courts and Judicial Proceedings Article, § 9-109. Under these provisions, disclosure of mental health information without written authorization is permitted under certain circumstances including the following:

1. Confidentiality does not apply if the service provider becomes aware of a threat to institutional security.
2. Confidentiality may not be honored if the service provider becomes aware of the inmate's intent to harm him or herself or another person.
3. Confidentiality will not be honored if the service provider has reason to believe that there has been suspected or actual child abuse, which is not presently managed by the Department of Social Services or other appropriate agency.
4. Confidentiality may not be honored if the inmate or his/her representative raises the inmate's mental status as a question or issue in legal proceedings.
5. Confidentiality shall not be honored in court ordered evaluations.
6. Confidentiality shall not be honored for the purpose of clinical supervision or quality assurance.

I have been informed and understand the limitations of confidentiality.

Inmate Signature \_\_\_\_\_ Date: \_\_\_\_\_

I agree to participate in this service despite the limits of confidentiality set out above.

Inmate Signature \_\_\_\_\_ Date \_\_\_\_\_

Practitioner \_\_\_\_\_ Date \_\_\_\_\_ Supervisor initials: \_\_\_\_ Date \_\_\_\_\_



# DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS SERVICES

## OFFICE OF CLINICAL SERVICES/INMATE HEALTH

### MEDICAL EVALUATIONS MANUAL

#### Chapter 13

### SEXUAL ASSAULT ON AN INMATE

- I. Policy: Detainees/inmates reporting to have been sexually assaulted while in DPSCS custody shall be managed using guidelines consistent with the Prison Rape Elimination Act (PREA). An initial medical evaluation and subsequent intervention focused solely upon injury or trauma sustained during the assault shall be conducted. DPSCS medical vendors will not participate in or conduct a forensic examination. All specimen collection for forensic examinations will be done after the patient is transferred to an approved off site medical facility for assessment by an independent provider or nurse who conducts forensic examinations.
- II. Procedures:
  - A. Any contractor or state psychology staff who becomes aware of or receives report of sexual assault on an inmate/detainee shall notify Custody without sharing medical details, and shall notify other vendor staffs, facility PREA compliance manager, medical vendor's Regional Administrator and additional authorities following PREA National Standards CFR 115.61(a-e). All notifications must be documented in the victim's medical records.
  - B. Following any report by an inmate concerning sexual assault, the inmate will be brought to medical for an examination to address any immediate medical needs.
  - C. The clinician will identify and triage detainees/inmates that require medical intervention, and provide treatment (First Aide type, ice bandages etc.) necessary to stabilize the inmate prior to and during transfer to a facility for forensic examination. No attempt to wash blood, semen or any other

body fluids off of the inmate, clean or remove clothing or potential evidence shall be done.

1. If the reported sexual assault incident occurred beyond 72 hours from the date of presentation to medical, unless there is rectal tear or associated trauma, an ER visit or assessment by a Sexual Abuse Forensic Examiner (SAFE)/Sexual Abuse Nurse Examiner (SANE) would not be indicated as there is no data to support that forensic evidence would still be recoverable beyond 72 hours of a sexual assault incident. The notifications to the mental health psychology staff, social work and PREA coordinator will be done irrespective.
  2. If the event is within the 72 hours guideline regarding the sexual assault allegation and the provider believes the event is indicative of one that would yield forensic information if testing occurred then the decision to refer the inmate offsite for evaluation can be made by the clinician.
  3. The clinician will make the call to the local ER and discuss the indications regarding a PREA incident and any pertinent medical or mental health information including disabilities (hearing, intellectually challenged, blind, etc.). Any noted disability should be documented.
  4. Fondling, kissing, external rubbing of genitalia without skin to skin contact, buttocks patting, does not usually warrant off site referrals but do require referrals to licensed mental health professionals, state psychologist, notification to the PREA coordinator, medical vendor's Regional Administrator, and custody staff and documentation of referrals in the electronic medical record and the completion of an incident report (SEIR).
- D. If no clinician is available on site to make a determination regarding off site assessment by SAFE/SANE, the following will occur:

1. The nurse will contact the on call clinician to make a determination regarding the need for offsite transport for forensic evaluation and to notify the local ER of the allegations of sexual assault.
  2. The nurse will document all measures taken in the patient's medical record.
  3. All facts regarding injuries as reported by the patient will be included in the medical record including any disabilities.
  4. If the alleged sexual assault precipitates a determination that the event necessitates an offsite forensic examination or there are medical indications or concerns that an examination should be performed, where possible, inmates will be taken to an offsite medical facility that has a SAFE or SANE to conduct the forensic examination related to the sexual assault allegation. If this expertise is not available then an external provider/nurse who has training regarding forensic examination related to sexual assault can be substituted by the community facility.
  5. The medical vendor staff will notify the mental health contractor, state psychology, state social work and the facility PREA compliance manager of the allegations of a PREA incident as soon as possible and will document the notifications in the electronic health record within the shift.
  6. The medical vendor will complete a Serious Event Incident Report—PREA using the contractor's Serious Event Incident Report (SEIR) form and fax it within 12 hours to the designated DPSCS Clinical Services contact person and copy Psychology, Social Work and Mental Health staff, of the facility. Hot line allegations of PREA related incidents notifications should follow the same alert route.
- E. No forensics activity will be performed by the DPSCS Medical Contractors including but not limited to nail scrapings, cultures, smears, in-depth genital examinations (except as needed to perform "first-aid").

- F. The nurse in the examination area shall make arrangements for transfer of the patient to a community hospital where all forensic evidence will be collected and a thorough examination of the patient will be completed.
1. The clinician will call the Emergency Room to which the patient is being transported to inform the receiving facility of the event and the patient's observed condition.
  2. A copy of the clinician's findings of the initial history and cursory examination shall accompany the patient to the hospital.
  3. The contractor nurse will contact the facility PREA compliance manager to let them know the patient has been seen, stabilized and sent to the hospital within one hour of the transfer.
  4. Nurse will make a referral to the mental health vendor for follow up of the patient upon his or her return to the facility along with state psychology.
  5. Within 4 (four) hours of return to the DPSCS facility, a clinician will review the emergency room notes, and write appropriate orders for care in the patient's medical record. If the provider is off site the ER protocol for review will be conducted and the disposition of care executed.
  6. All inmates shall be seen for medical follow-up within the first 24 hours following the initial offsite medical visit regarding the allegations of sexual assault.
  7. All follow-up testing related to Sexually Transmitted Infections (STI), pregnancy, HBV, RPR shall be reviewed with the inmate within 5 business days, including any additional testing or required treatment.
  8. All of the PREA related post assault follow-up clinical activities for medical, and mental health care must be completed whether or not an off-site visit was indicated including testing and prophylactic treatment for STIs and pregnancy (if female).

9. If pregnancy results from the sexual abuse the detainee or inmate shall receive timely and comprehensive information about access to all pregnancy related medical services including abortion, as outlined in the DPSCS Clinical Service Pregnancy Management Manual along with a referral to Mental Health/Social Work.
  10. If custody indicates an inmate should not be transported offsite for care, the contractor regional and statewide medical directors must be notified ASAP by the staff to confer and make recommendations. The DPSCS Medical Director must be notified if there is an inability to resolve the issue of the dispositions.
- G. Juvenile offenders who report allegations of sexual assault or coercion shall be separated from the other offenders.
1. Medical staff, custody staff or any other vendor staff, (Mental Health, Dental, Etc.) shall develop a process to report and respond to any PREA related incidents that are identified via Hot Line or Department of Juvenile Services or Social Services reporting number. The incident, name and facility location and return number shall be documented in the inmates/detainee record.
  2. A Serious Incident Report (SEIR) should be generated using the contractor SEIR form and DPSCS ACOM notification of the allegations or assault should be done with copies to DPSCS Clinical Services contact person, psychology, mental health, and social work staff of the facility.
- H. A Mental Health Professional will see the patient within 24 (twenty-four) hours of his or her return to evaluate for any treatment needs, and document findings in the patient's medical record.
- I. If the patient's situation did not generate the need to have an off-site hospital visit, a mental health professional shall conduct a mental health evaluation within 24 hours of initial report of incident and document disposition and follow-up needs as indicated.

J. Upon repeated, recurrent allegations of Sexual Assault by offenders facility staff shall convene at the direction of the DPSCS statewide Medical/Mental Health Directors, and /or Jail Administrator or Warden of a facility, a multidisciplinary clinical/custody team to review offenders who have repeated allegations of sexual threat, assault or conduct to glaring evidence of an environment that precludes the possibility of a sexual infraction occurring. A plan of action for these cases will be reviewed and supported by the team with documentation of the disposition placed within the inmates' record.

Offenders who are not in general population but are separated from other offenders and are within sight and sound of custody staff, who repeatedly report incidences of sexual misconduct in an environment that is not accessible to other inmates *may on a case by case basis* post review and recommendation of the multidisciplinary committee, not be transported for evaluation off site. Medical and Mental Health staff will case manage his or her complaints, and document that the environment the inmate resides in is safe.

- K. The alleged abuser shall be offered mental health evaluation by a mental health professional within 30-60 days of the alleged assault or abuse.
- L. The alleged abuser shall be offered testing related to STIs within 5 business days.
- M. The patient and alleged abuser shall be offered follow-up STI testing within 60-90 days of initial testing to include HIV, HCV, and syphilis serology.
- N. If the patient or alleged abuser refuses the offered testing, the DPSCS procedure for refusal of care shall be followed.
- O. All treatment services shall be provided to both parties (the victim, and the alleged abuser) without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

- P. The Contractor shall comply with any standards adopted by the Attorney General of the United States in conjunction with the Prison Rape Elimination Act (PREA). Training of Clinicians and Healthcare Professionals on identification of evidence of unreported sexual assault and appropriate referral processes for possible sexual assault cases shall be entered into the Contractor's database confirming that the training has been provided within 90 days of staff hire and in accordance with the DPSCS zero-tolerance policy.
- Q. A query of documented DPSCS PREA incidents from Clinical Services will be sent to the Health contractors to review for compliance with PREA standards. The contractor shall conduct PREA compliance audits on a monthly basis; and will submit audit results and a trending report by region and facility on the DPSCS NetDocs site. The contractor shall submit a corrective action plan for non-compliant areas.
- R. The contractor shall present PREA findings and trending reports at the monthly/quarterly MAC meetings.

III. References

- NCCHC Standards for Health Services in Jails J-B-05
- NCCHC Standards for Health Services in Prisons P-B-05
- ACA Correctional Health Care 1-HC-3A-13
- Prison Rape Elimination Act – Part 115 National Standards
- Medical RFP
- DPSCS Inmate on Inmate Sexual Conduct-Prohibited (COS.200.0004)
- DPSCS Pregnancy Management Manual

- IV. Rescissions: None
- Date Issued: March 29, 2011
- Date Reviewed: September 27, 2011
- Date Reviewed: February 12, 2012
- Date Revised: October 12, 2013
- Date Revised: February 28, 2014
- Date Reviewed: December, 2014
- Date Reviewed: December, 2015

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

OFFICE OF CLINICAL SERVICES/INMATE HEALTH

ADMINISTRATIVE MANUAL

Chapter 9  
CONTINUITY OF CARE

Section A  
GENERAL

- I. Policy: Inmates leaving the Department of Public Safety and Corrections facilities (Pre-Trial, Sentenced, and Home Detention Units) will be provided with information and access to systems that will enable them to continue care for diagnosed disease processes that was received while the inmate was incarcerated.
- II. Procedure:
  - A. The medical vendor's Nurse Manager or discharge planner in a facility will review the monthly summary of all projected releases obtained through the Offender Case Management System (OCMS) or through other means in the Department by the middle of each month. The Nurse Manager/Discharge planner will also review the MAP Mutual Agreement Program (MAP) provided by Case Management to assure that all known projected releases are addressed.
    1. The Nurse Manger/Discharge planner or designee will review the projected release summary and MAP with the Pharmacy and identify all patients who are eligible to receive discharge medication by DPSCS guideline.
    2. The Nurse Manager/Discharge planner shall generate a roster of the inmates who will require a 30 day supply of chronic care medications as well as the remaining doses of any short term antibiotics or drugs.
    3. A copy of the final release list as it is known by medical shall be faxed to the Regional Pharmacy vendor, the Social Work Department of the facility and the medical records room.



- B. The Nurse Manager/Discharge planner will request Social Work to send a current monthly list of release planning completed to that date at the beginning of each month to the Nurse Manager/Discharge planner in each facility for inclusion in the continuity of care (COC) form. Social Work will have documentation of the planning completed in the inmate medical record via the Electronic Medical Record (EMR).
- C. Fourteen days (or as soon as a release date is known) prior to the patients release date, all of the following processes will have been addressed:
1. All after care follow-up that has been planned will be reviewed prior to the medical release date.
    - a. Medications will be ordered by the physician for “mandatory release” no more than two weeks prior to the known date of release for a specific prescription (not to exceed 30 day supply), including but not limited to medications equating a 30 day supply of psychotropic medications, up to a 30 day supply for chronic care medication. The clinician ordering the medications will specify in the written order that the order is for discharge medications.  
  
No medication will be sent for INH/B6 or DEA controlled medications (TB Inmates will be referred for immediate follow up with the local health department in the jurisdiction in which they plan to reside.)
    - b. The treatment plan for M-2 status inmates (chronic but stable conditions) will be outlined on the Continuity of Care form (NCR paper MD DPSCS Form 130-237 aR (revised 6/2009) that will also include a short medical summary.
  2. A nurse assigned to the dispensary will interview the patient at least 24 hours prior to release and will assure that the following criteria are met:
    - a. The Continuity of Care form will be discussed with the patient and completed. This will include details regarding ongoing treatment, medications, diet, and general guidelines for continued care. The form will also include the amount of medications (numbers of each pill or amount of liquids, or tubes for topical, etc.) that will be provided to the inmate, and

how long these medications should last prior to the patient leaving the institution unless the inmate is released directly from court.

- b. The nurse, including his or her title and the patient will sign, and date the form.
  - c. For person being released from the facility where the interview takes place, one of the two following processes will occur:
    - i. The nurse will give the completed COC form and the discharge medications to the patient as he leaves the facility, or
    - ii. The nurse will go over the information with the patient, provide the discharge medications and completed COC form (with a copy) to the release officer or case manager to be placed in the sealed envelope that is issued to the patient upon release. If this occurs, the release officer or case manager will sign for the COC form and that will be placed in the sealed envelope with the discharge medications that are issued to the patient upon his or her release.
  - d. The original of the completed form will be returned to the Medical Records Department for filing with the inmate's medical record.
- D. If there is no notice to the Medical Department of a release, nursing will provide medications to the patient as follows:
1. Nurse will count the remaining medication by medication name and record these counts on the medication administration record (MAR).
  2. Patient will be given those remaining medications and ask to sign that he or she has received them on the MAR beside the count.
  3. Patient will also be asked to sign the pharmacy form that indicates the medications are not in discharge form i.e., the medications are not in child-proof containers.
  4. The nurse will give the remaining medications still in the packaging as they were received from the pharmacy and sign the MAR that this was done.
  5. Nurse will remind patient that he or she is taking these medications for a specific reason and that follow up in the community is essential.
  6. Nurse will note these transactions in the EMR.

- E. In the event, it may be medically necessary to send medical equipment home with a patient (such as CPAP, wheelchair, crutches, etc.):
1. The nurse discharging the patient shall record the DPSCS assigned number that has been placed on the equipment at purchase onto the COC form before it is given to a patient.
  2. The nurse shall notify custody staff that a piece of equipment will be going out with the patient to avoid any confusion at the time of release.
  3. The equipment numbers of any equipment released with a patient shall be entered into the medical vendor's spreadsheet for monitoring the status of equipment belonging to the State.
- F. In the event that a patient is transferred to a different facility before his or her release, the above procedure shall be followed with the exceptions noted here:
1. When the nurse meets with the patient twenty-four (24) hours prior to his or her release (D 2 above), the nurse will provide the COC information and will advise the patient that his or her discharge medication will be placed in a sealed envelope that will be provided to the patient as he or she leaves the releasing facility.
  2. The nurse will also prepare the current medications for transfer with the patient in the same manner used for all transfers.
    - a. The patient should be asked to bring all KOP medications to the medical station when he or she arrives for the COC interview as described above.
    - b. The patient shall be advised that all of his current medications will be administered at pill call so that the medications are not packed away pending the transfer.
    - c. On the day of the transfer, the nurse shall provide the transportation officer a sealed envelope that contains the current medications, a photocopy of the MAR, and a hard copy of the completed transfer screening form. A list of the contents of the envelope shall be attached to the front of the envelope with any special instructions (such as a medication due to be administered at a given time that day).

- d. The nurse will obtain a signature from the transportation officer indicating that these items have been placed in his or her possession. The signature may be given on the MAR with a nursing note of what has been included in the envelope.
- G. If the patient is released directly by the court, i.e., he or she does not return to the facility for release, medical will send one letter to the released patient advising him or her of their COC form status as described below. NO medications will be sent through the mail system.
1. In the event that an inmate is released from the court or in any other manner that would preclude the continuity of care policy process, the Continuity of Care Form, which will have been initiated at Intake Screening will be completed with the information known, i.e.; Inmate did not return to facility for whatever reason that caused that to occur.
  2. The completed form will be forwarded by the nurse completing the form, to Medical Records.
  3. Medical Records Staff will develop and maintain a log of forms received in an electronic format (preferably Excel or some other software that will enable the manipulation of the log to find an individual name if necessary).
  4. The Form will then be placed in the Patient's medical record if the patient does not appear in medical to receive it before discharge/release. If there is a recent address on file, the form (but no medication or equipment) may be mailed to the patient at his or her home.

III. Reference: DPSCS Directive 130-100-186  
 DPSCS Division of Pre-Trial Services Directive 130-124  
 DPSCS Emergency Directive DOC.230.0005

IV. Rescissions: DPSCS Directive 130-100-186

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MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

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VOLUNTEER ORIENTATION GUIDE

**July 28, 2016**

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**MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL  
SERVICES**

***“We Are Public Safety”***

**Overview**

**Mission**

The Department of Public Safety and Correctional Services protects the public, its employees, and detainees and offenders under its supervision.

**Vision**

The Maryland Department of Public Safety and Correctional Services will be nationally recognized as a department that believes its own employees are its greatest strength, and values the development of their talents, skills, and leadership.

We will be known for dealing with tough issues like gang violence, by capitalizing on the strength of interagency collaboration.

We will be nationally known as the department that takes responsibility for the greatest of problems, and moves quickly and quietly to bring about successful change.

The Department of Public Safety and Correctional Services will be known as one of the national leaders in the development and use of technology through system interoperability.

Others will look to this department for its effective leadership and evidence-based practices.

We will be known for our belief in the value of the human being, and the way we protect those individuals, whether they are members of the public, our own employees, those we are obligated to keep safe and in custody, or victims of crime.

The Maryland Department of Public Safety and Correctional Services will be known as an organization that focuses on its mission and takes care of its people.

**Website**

Additional information about the Department can be found at:

<http://www.Department.maryland.gov/>

and information about the Volunteer Program is at

<http://www.Department.state.md.us/agencies/odvp.shtml>.



## **Organization**

The Department of Public Safety and Correctional Services (Department) is one of the largest departments in Maryland with nearly 12,000 employees and a budget of more than \$1 billion. In order to fulfill our mission of promoting safety, we have increased security at our facilities while leading the way in innovative restorative justice projects that will help offenders reintegrate into society upon release.

## **Department**

The Department operates 27 institutions, including Baltimore City's pre-trial facility, as well as 45 Parole and Probation offices throughout the State.

Our primary objective is to ensure safety so that all Marylanders can enjoy living and working in the State. We are achieving this by increasing security in our institutions and supplying offenders and former-offenders the tools necessary to stay out of the criminal justice system.

We are also working with partner agencies, sharing important intelligence information in order to reduce crime and violence.

The Department is also responsible for maintenance of Maryland's Criminal Justice Information Repository, the Criminal Injuries Compensation Board, Maryland Police and Correctional Training Commissions, the Emergency Number Systems Board and many other valuable criminal justice functions.

From incarceration to reentry into the community, the Department strives to provide seamless, integrated supervision services for all offenders that result in lower recidivism rates (fewer ex-offenders committing new crimes when they get out). Through a belief in the value of every human being, the Department is proactive about public health issues and offers offenders programming opportunities to improve his or her life and become a productive taxpaying citizen. We also provide victim services for those impacted by the crimes of offenders under our supervision.

## **Operations - Corrections**

The correctional side of the Department includes all Maryland State prisons and pre-release centers. Facility security is a key priority of the Department for both staff and the offender population. A commitment to returning offenders to society with the tools necessary to keep offenders from the former life of crime is evident in the vast array of job skill opportunities, educational programming, psychological and health sessions, and drug treatment.

Correctional facilities are a place of confinement for individuals who have been convicted of crimes and are serving sentences handed down by the courts. The five security levels are administrative, minimum, medium, maximum, and maximum II. Offenders are permitted to move freely without restraints in some areas.

## **Operations - Detention**

Each individual arrested in Baltimore City, or arrested on a warrant from Baltimore City, comes through the Department's detention facilities. The Department facility in Baltimore City houses a unique high school behind bars: the Eager Street Academy. A wide array of mental health, social, educational, recreational, spiritual, and rehabilitative programs are available for the offenders detained in the Department Baltimore City facility.

## **Operations – Division of Parole and Probation**

Offenders on parole or probation, living in our neighborhoods and working in our local businesses, require supervision and guidance to keep focused on the ultimate goal of overcoming the "revolving door" of the criminal justice system. The community supervision portion of the Department ensures these offenders are meeting this goal and upholding individual requirements set forth by courts and the Parole Commission.

The Pretrial Release Services Program serves clients in four areas: investigative, case management, case diversion and detention. The program assesses criminal history, provides community supervision to defendants awaiting trial and risk classification for bail review.

In addition to supervising parolees, probationers and those on mandatory release from the correctional facilities, community supervision staff also conducts pre-sentence investigations and supervises Marylanders who've been court-ordered into the Drinking Driver Monitor Program. A Community Supervision Enforcement Program monitors offenders on home detention.

## **Initiatives**

The Department is focused on keeping communities' safe, believing in human capital and making public safety work leads to the foundation of success for many innovation initiatives including:

- Public Safety Works – gives offenders the chance to pay society back, while simultaneously learning valuable employment skills and intangible, but important traits such as a patience, compassion, and community appreciation.
- Second Chances Farm – is a restorative justice tool that the Department utilizes to give our offender population work skills while also teaching compassion through the care of a living animal.
- Maryland Correctional Enterprises (MCE) – is the industrial arm of corrections, one of the largest correctional industries in the nation by sales, and also offers an employment setting that mirrors the private sector.
- Fostering Animals in Prison – includes partnerships to foster and train dogs inside correctional facility walls.
- Smart, Green and Growing – addresses sustainability of resources and impact on the environment.

## **VOLUNTEER EXPECTATIONS**

In this guide and all other Department-issued policy and procedure documents, the following terms have the meaning indicated.

- “Employee” means an individual assigned to or employed by the Department in a full-time, part-time, temporary, or contractual position regardless of job title or classification. “Employee” includes:
  - A volunteer;
  - An intern; and
  - A contractor.
- “May not” means an absolute prohibition and does not infer discretion.
- “Shall” means the action is mandatory.

### **Role and Authority of a Volunteer**

#### **Expectations and Limitations**

Volunteers are engaged to enhance Department administration, programming, activities, etc. and are not meant to replace a permanent employee.

Volunteers serve in an unpaid capacity and will not be receiving monetary or other forms of compensation from the State for the duration of the volunteer period. Volunteers are expected to be informed and conduct themselves by the same standards as employees. Volunteer status does not guarantee future employment. The Department reserves the right to terminate any volunteer for any reason or no reason at all, except as precluded by law.

Volunteers who offer professional services shall provide appropriate credentials and certifications with the initial application. Faith-based volunteers shall provide ecclesiastical/religious endorsements.

Each volunteer shall serve under the direction of a designated supervisor who approves all schedules and access to information. Volunteers shall cooperate at all times with suggestions, requests and instructions from staff.

A volunteer shall be respectful of all staff and volunteers and do not proselytize or disparage any faith.

All facilities, administrative offices and property are under the supervision and control of the Department. A volunteer may only be authorized to bring into a facility or office what is approved and allowed for volunteer position or role. **A Volunteer may only take out items brought in and nothing more.**

Volunteers shall inform the assigned supervisor or volunteer activity coordinator of any changes in contact information; if arrested; if friends or family members are incarcerated or transferred to a facility to which the affected volunteer is authorized to provide services.

If a volunteer would like to do more than originally agreed upon, the volunteer shall talk with the assigned supervisor about formalizing additional duties. A volunteer may not engage in unauthorized activity. If a volunteer wants to volunteer at another facility or office, the volunteer shall discuss the request with the volunteer activities coordinator at the current assignment who shall contact the appropriate staff member to handle the request. If approved to volunteer at additional facilities, the volunteer shall complete additional training specific to each approved facility.

## **Identification and Security Requirements**

### **Volunteer ID Badge**

A volunteer may not enter a Department facility or office without a state-issued identification. Each volunteer shall be issued a Maryland Department of Public Safety and Correctional Services Volunteer I.D. badge while in the facility or office. The volunteer is responsible for following instructions for obtaining the badge, wearing the badge, **above the waist while at the facility or office**. If a volunteer loses a badge, the volunteer shall report the loss to the assigned supervisor immediately. There may be a charge for replacing a badge. Volunteer identification badges are the property of the issuing correctional or detention facility and shall remain within the correctional or detention facility at all times.

### **Entrance Procedures for Correctional Facilities, Community Supervision and Administrative Offices**

Volunteers shall follow the entrance procedure at the assigned facility or office or when authorized to enter additional locations. Each volunteer shall display or surrender the volunteer's state-issued identification to obtain a volunteer badge while at a Department facility or office. The volunteer ID badge shall be clearly displayed and visible to others. **A volunteer may not bring anything into a facility or office or take anything out without authorization from the managing official or unit head.** Volunteers shall only be admitted to a location on the designated day and time, unless prior approval is received from the assigned supervisor. Vehicles are to be locked and parked in the appropriate location.

At a correctional or detention facility, routine searches may occur that include:

- Belongings search;
- Search of pockets of outerwear and clothing;
- Search of headwear, including religious headwear;
- Walk-through metal detector (metal implants require medical documentation);
- Handheld metal detector;
- Clothed pat-down (frisk search) search;
- Drug detection dog;
- Vehicle search; and
- Fast ID (single fingerprint records search)

A volunteer who does not submit to the required search shall result in instruction to leave the premises.

## **Emergency Plans**

The safety and security of visitors, staff and offenders are the most important concerns in any facility or office. A volunteer shall immediately follow instructions given by staff. Volunteers shall know how to return to the building entrance.

A volunteer may encounter the following emergency situations while on Department property and are required to respond accordingly as indicated below:

### **Actions to take in every emergency**

- Leave the area - floor plans with evacuation routes are posted in all buildings and offices. Locate and familiarize yourself with the appropriate escape route and emergency phone numbers for your location;
- When possible, secure any personal or State-owned property for which you are responsible;
- Tell a staff member, as well as others in your immediate area; and
- Follow direction from staff.

### **Fire**

- Pull the fire alarm nearest the emergency if one is available;
- Call the emergency number for reporting a fire; and
- Use available fire extinguishers.

### **Natural Disaster**

- Report any damage, emergency, medical needs, etc. to staff immediately.

### **Utility Failure**

- Report failure to staff, including any damage.

### **Bomb or Explosive Device**

- In the event you see something that appears to be an explosive device, tell the nearest staff person. **DO NOT TOUCH OR DISTURB THE DEVICE!**

### **Computer Login**

A volunteer in certain positions and locations may need a Department email address and log in. In those instances, a review of State security policies and security awareness training shall be provided. **The volunteer is required to sign an email and internet use agreement, which will be placed in the volunteer service file.**

## **Standards of Conduct**

### **Professional Conduct**

Volunteers are expected to conduct themselves professionally at all times and are accountable for personal behavior while performing services under the authority of the Department. Volunteers are expected to abide by the same policies and expectations that State and Department staff follow.

The Department and staff agree to treat you with respect and consideration, give you sufficient information, orientation, training and supervision necessary to complete assigned tasks.

A volunteer is expected to fulfill the assignment as agreed upon. A volunteer shall inform the assigned supervisor immediately if the assignment is too demanding or not fulfilling, experiencing difficulties in completion, or have any problems or challenges. A volunteer shall maintain open communication and dialogue with staff, be punctual, use volunteer time wisely, maintain confidentiality, and not go beyond the volunteer's personal level of competence and authority.

A volunteer shall comply with the State Smoking Policy which states that "smoking or carrying any lighted tobacco product is prohibited in all State buildings and facilities, in all space leased or rented by the State and in government operated shuttle buses".

A volunteer shall comply with the State Substance Abuse Policy. This means not performing volunteer service while under the influence of alcohol or inappropriate influence of prescription or non-prescription drugs.

A volunteer shall agree to hold harmless the Department of Public Safety and Correctional Services and officials and employees for any claims arising from the course of provision of volunteer services to the Department.

When dealing with offenders, a volunteer:

- Shall report to the assigned supervisor any requests by an offender to mail letters or packages, deliver messages, etc. A volunteer may not contact any family or friends of offenders on the offender's behalf.
- May not accept gifts, favors, or any items or articles from an offender or the offender's family or friends.
- May not give an offender any personal information about the volunteer, volunteer's family or other volunteers. This includes last name, address, phone numbers, social security number, work locations, marital status, family details, personal interests or date-of-birth.
- Shall report any information heard or received concerning planned events which may result in a security breach or injury to an individual. This includes an escape, disturbance, assault, etc.
- Shall always be aware of and alert to the volunteer's own behavior, as well as the behavior of others.

## **Personal Appearance and Dress Code**

Each volunteer is expected to maintain high standards of dress and personal appearance, consistent with the volunteer's duties, fostering a favorable impression of the volunteer and the Department.

A volunteer may not wear:

- Or display clothing, emblems, monograms, insignia, body art (permanent or temporary), body ornamentation, jewelry or other items that depict images or subject matter that is offensive or inflammatory;
- Any uniform or equipment contrary to existing policy;
- “See through” or otherwise revealing clothing;
- Leisure clothing that includes, but is not limited to:
  - Athletic wear;
  - Beach attire;
  - Tank, halter or tube tops (as an outerwear garment or under a “see through” outer garment);
  - Shorts;
  - Tee shirts (as an outerwear garment or under a “see through” outer garment);
  - Beach sandals, running or jogging shoes, “flip-flops” or other similar footwear; or
  - Pants, trousers or slacks designed with the hem above the ankle, such as, “Capri pants”;
- Form fitting clothing, such as, a leotard, spandex wear, or leggings (as an outerwear garment or under a “see through” outer garment).
- Clothing that leaves the midriff uncovered (as an outerwear garment or under a “see through” outer garment).
- Clothing with an extremely revealing neckline.
- Extremely short dresses or skirts.
- Denim clothing, regardless of the color.

## **Domestic Violence**

The State of Maryland is dedicated to the prevention and elimination of domestic violence and has a zero tolerance policy for domestic violence. A volunteer should feel safe while on Department property. A volunteer shall direct any questions to the assigned supervisor or the volunteer activities coordinator.

## **Supervision and Evaluation**

The goal of volunteer supervision is to assess a volunteer's performance to ensure, to the degree possible, that the volunteer and the service provided are effective in the intended purpose. A Volunteer Activities Coordinator (VAC) is responsible for supervising or arranging for supervision of the volunteer.

The assigned supervisor shall use either a critique or performance evaluation (based on the nature of the assignment) to record observations and discuss performance with the volunteer. For an intern receiving credit, the supervisor shall also complete documentation required by the educational institution.

### **Removal of a Volunteer**

A volunteer is accountable for personal behavior while performing services under the authority of the Department. Action taken to correct inappropriate volunteer behavior shall be commensurate with the severity of the infraction. When possible, corrective action shall be progressive and may range from discussion up to and including termination from the Program. The Department may terminate a volunteer's participation for any reason.

Depending on the nature of the inappropriate behavior, a volunteer may be subject to civil or criminal prosecution, or both. Allegations of volunteer misconduct may be investigated in accordance with established Department policy and procedures for administrative and criminal investigations.

The Department has an Internal Investigative Division (IID). This unit investigates alleged acts of criminal and administrative wrongdoing against all offenders and employees, including volunteers. If a volunteer is suspected of engaging in, or knowing about, any such acts that would be criminal or administrative violations, the volunteer may be interviewed by IID personnel and the volunteers shall cooperate with the IID action.

### **Confidentiality of Records and Information**

A volunteer shall respect the confidentiality of information that is utilized or accessed during the course of volunteering regarding or from an offender, facility or office. A volunteer shall treat the official business of the Department of Public Safety and Correctional Services as confidential. Information regarding official business shall be disseminated only to those for whom the information is intended, in accordance with established Department procedures.

### **Public Information Act and Release of Information and Documents**

Release of information, if requested by an outside person or agency shall be referred to the Public Information Act designee within the facility or office. All information released shall go through proper channels in accordance with the Maryland Public Information Act. A volunteer may not disclose information to any unauthorized third party. Violation may result in criminal prosecution or civil lawsuit.

Enacted in 1970, Maryland's Public Information Act (PIA), grants the public a broad right of access to public records while protecting legitimate governmental interests and the privacy rights of individual citizens. The PIA covers public agencies and officials in Maryland and includes all branches of state government (legislative, judicial, and executive). The PIA is similar in purpose to the federal Freedom of Information Act (FOIA).



A public record is defined as the original or copy of any documentary material in any form, to include written materials, books, photographs, photocopies, films, microfilms, records, tapes, computerized records, maps and drawings created or received by the Department in connection with the transaction of public business.

A volunteer may not use information obtained as a result the volunteer experience, from the Department or an offender, for a purpose that is not specifically authorized by the Department.

A volunteer may not use volunteer status to obtain information for research. Requests to conduct research shall be made through the Department Research Committee.

**Remember - the rule is, “What you hear and see here stays here”.**

### **Electronic and Social Media**

A volunteer may not address a public gathering, appear on radio or television, prepare any article for publication, act as a correspondent to a newspaper or periodical that would release or divulge investigative information, any Department business, or inmate affairs, either in an official or unofficial capacity.

A volunteer may not share any information about Department staff, offenders, ex-offenders or volunteers on any social media outlet. This includes, but is not limited to, Facebook, Twitter, Linked-In, Instagram, etc.

Approval from the facility’s managing official is required in order to take pictures inside, as well as outside a facility. A volunteer shall discuss bringing a recording device of camera into the facility with the assigned supervisor.

### **Injury or Illness**

#### **Handling and Reporting**

To permit staff to attend to the volunteer’s needs and make any needed adjustments to the schedule, a volunteer shall immediately contact the assigned supervisor or volunteer activities coordinator if:

- The volunteer is unable to report to the volunteer assignment for the day; or
- After reporting to the volunteer assignment, the volunteer is injured or becomes ill.

#### **Emergency Contact information**

A volunteer shall provide the name, relationship and contact information for an emergency contact. If this information changes at any time during the volunteer period, the volunteer shall inform the assigned supervisor or volunteer activities coordinator.

## VOLUNTEERING WITH THE OFFENDER POPULATION

### Keeping the Relationship Professional

#### Personal Motivation

Volunteers want to help an offender enrich the offender's life and to enable the offender to succeed in daily living while incarcerated and after release. Sometimes, though, the volunteer becomes personally involved with an offender at the cost of breaking a commitment to provide an authorized and much valued service to a group of offenders. This can be prevented by being aware of the volunteer's potential contribution to this dynamic, the offenders' patterns of manipulation, and employing simple techniques for maintaining focus.

Sharing a volunteer's current life circumstances and views about self and society can make the volunteer vulnerable to forming unexpected emotional attachments with an offender. Sharing personal information can result in making the volunteer hesitant to take charge when necessary, as illustrated by this often heard phrase, "Well, I didn't want to get anyone in trouble."

Each volunteer is encouraged, on a regular basis, to do a self-examination to make sure the volunteer remains purely professional when working with offenders, considering:

- Are you:
  - In an unhappy relationship?
  - Going through a divorce?
  - Afraid of getting older?
  - Bored?
  - Depressed?
  - Lonely?
  - Subject to health issues or concerns?
  - Facing major life changes, such as job loss?
  - A rescuer?
  - Co-dependent?
  
- Do you tend toward the following stereotypes?
  - Offenders are victims of society.
  - Corrections deny offenders their rights.
  - Offenders are tough and brooding on the outside, soft and tender on the inside.
  - Offenders just need someone to love them.
  - Offenders are forbidden fruit.

If a volunteer has a "yes" response when conducting a personal assessment to any of the circumstances listed above, the volunteer may need to work particularly hard to keep interaction with offenders professional and resist offender manipulation.

## **Personal Safety**

Each volunteer is responsible for personal awareness surroundings and circumstances while on Department property, especially when in the proximity of offenders.

- Be cautious and know the surroundings at all times.
- Always know the locations of emergency exits and panic buttons.
- Do not walk alone in the dark.
- Do not walk into a mass movement.
- If directly escorting offenders, keep the offenders in front when walking.
- Know all universal alert code words that are used at the assigned location.

Volunteers shall report to the assigned supervisor issues or circumstances that may compromise safety of employees, volunteers, or offenders and facility security.

## **Working in a Group — More Ways to “Keep It Professional” and Focused**

- Be aware of your surroundings and know the exit plan.
- Start and end on time. The unstructured time before and after group is the opportune time for offenders to approach with inappropriate agendas.
- Divide your attention among many offenders. An offender may easily misinterpret constant attention. If an offender needs individual attention, speak with the assigned supervisor who will determine appropriate follow up.
- If an offender is disruptive group or exhibits inappropriate behavior, ask to have the offender removed or dismissed from the group.
  - Offenders need to be reminded that behaviors not conducive to good group dynamics are reasons for immediate termination from one session or the entire program with our without cause.
- Plan a structure for each session. If the discussion gets off track, go back to the structure.
- Be sure to collect any supplies, (i.e. pens, pencils), provided for the program before dismissing the offenders.
- Make the beginning of group session the time for announcements, including the following that should be announced at every session:
  - Volunteers work in a group setting only, and the purpose of this group is\_\_\_\_\_.
  - Successful completion of the program requires\_\_\_\_\_.
  - What is said here stays here, except that a volunteer is required to report planned acts of harm.
  - Everyone’s contributions are valued; there be no side conversations and that full attention is to be given to the speaker.
  - A volunteer does not accept from an offender notes, letters, mail or phone calls.
  - A volunteer does not accept or handle any offender personal requests. All personal requests must be directed to the supervisor.
  - Offenders shall sign the sign-in sheet.
  - A volunteer or an offender does not use profanity.
  - Tonight the group will cover\_\_\_\_\_, let’s begin.

## **Offender Manipulation: Keeping on Track**

Sometimes offenders manipulate individuals by forming the illusion of a relationship. On rare occasions an offender and an individual meet during incarceration and develop what appears to be a lasting personal relationship. Research shows that 95% of offender and non-offender relationships that last until the offender is released end within the first year release.

Many offenders are emotionally needy and form immature relationships with the offender as the center. Feelings of attraction are genuine, but offender commitment is shallow and self-serving. Offenders demand much, but give little in return. The offender may have other similar “commitments” and may share what the partner regards as private letters with other offenders.

Sometimes offenders fantasize a relationship where there is none. This may be happening if the volunteer notices an offender excessively staring at the volunteer or receiving unanticipated correspondence asking for personal attention. Volunteers may be removed from the volunteer position due to the discomfort the offender’s presence creates. It is possible that the offender may be removed from the group as well.

The usual reason an offender forms a relationship with a volunteer is to use the apparent closeness to convince the volunteer to do something that is not permitted. The usual pattern is to “woo” the volunteer, *compromise* or *set up* the volunteer (creating a situation so that the volunteer cannot refuse the unauthorized favor), “use” the volunteer, and then “discard” the volunteer when the risk becomes greater than the potential reward. Usually the volunteer is being cultivated to bring in or carry out contraband, to provide sexual favors or to aid an escape.

The following are some of the ways offenders with these intentions start a relationship, and some undesirable and desirable ways to respond (focus).

<b>Offender Tactic</b>	<b>Into the Trap</b>	<b>Avoiding the Set-up and Trap</b>
Asks a favor	Doing it	Say <i>I'm not able to do that</i>
Is overly complimentary, with compliments often becoming overly familiar	Allowing it to continue	Say <i>Thank you...change the subject to your approved activity</i>
Asks for contraband	Bringing it in	Say, <i>Sorry, I cannot do that...and report it</i>
Passes you a note	Accepting it	Turn it in
Appeals to racial, religious or other commonalities to get you to do something	Doing it	Say <i>I can't do that...here's what I can do</i>
Asks about your personal life	Giving details about your life, your family, your problems	Direct – <i>I am not here to discuss my personal life</i>
Touches you inappropriately	Doing nothing about it because it is too embarrassing or you don't want to get the offender into trouble	Report it

Breaks a minor rule in your presence	Ignoring it	Report it before you leave
Asks you to leave the area or building to talk privately	Doing it	Stay with the group and talk
Asks you to write or accept calls	Saying <i>Okay</i>	Let the offender know you are not authorized to do that, but what you can do is _____
Offender pits you and him/her against the system	Forming an alliance (to what end?)	Acknowledge the difficulties in navigating systems, and remind that you are a _____
Makes sexual remarks	Ignoring them, you are too cool to complain	Excuse yourself and talk with someone else; report this to an officer and supervisor
Alleges his or her rights are being denied constantly	You are in awe and agree to help him or her take on the system	Say <i>I am here to.....</i>
Sometimes offenders in the group have formed an unauthorized subgroup	Allowing it to continue because they really aren't bothering anyone	Report this to your supervisor
An offender has decided to be your personal butler	Great! You deserve one.	Say <i>thanks</i> , there should be no level of obligation

### **Contraband**

**Contraband** means any item, material, substance or other item that is not authorized for offender possession by a managing official or is brought into a correctional facility in a manner prohibited by the managing official.

**Contraband includes, but may not be limited to:**

- An alcoholic beverage;
- A controlled dangerous substance;
- Telecommunication device including a cellular telephone, cellular accessories (Bluetooth devices, chargers, etc.), digital telephone, picture telephone and modem equipped device. (This does not include a Department owned and issued telecommunication device necessary for a Department employee to conduct Department business while at a place of confinement.)
- Weapon means a gun, knife, club, explosive or other article that can be used to kill or inflict bodily harm.

**Basic Rules About Contraband**

- Do not give an offender anything that has not received approval from the managing official, or designee.
- Do not take anything from an offender that has not received approval from the managing official, or designee.

- If an offender asks, “Please, mail this for me.” Do not do it!

Everyday items not considered contraband in an office may become contraband in a correctional facility. Contraband is determined by the managing official or unit head. A few common examples of these are: paper clips, pens, pencils, stamps, envelopes, Chapstick, chewing gum, and candy.

## **Gangs**

Gangs also known as a Security Threat Group (STG), gang activity and its subsequent problems are an issue confronting corrections staff at every facility, both adult and juvenile. Gang activities in the facilities so closely parallel those on the streets, it is often impossible to separate the two. In fact, it is safe to say that the only separation between the major gangs is the walls and fences around the facilities.

- Approximately *one out of every four* offenders may be associated with a gang.
- In the prison system crime can be carried out individually or in small groups, and often in an organized and continuing fashion. These groups seek **power, control, and profit**.
- In order to achieve power, control, and profit gang criminal activities may include selling contraband, phones, credit card scams, loan sharking, recruiting and extortion. Gang members may also attempt to exercise control over offender comforts, as well as housing unit, living areas, and job assignments.
- It is essential that volunteers recognize gangs as a growing threat, regardless of the size or location. Acknowledgment and action are the only tools available to respond to the violence and intimidation accompanying gangs.
- **It is not illegal to be a member of a gang.** That status is protected by the freedom of association guaranteed by the United States Constitution. However, if the gang participates in criminal activity the gang may be targeted for investigation and prosecution. Gang affiliation can also be used in court (in most states) to prove motive and other aspects of a crime.

Volunteers with concerns regarding an offender should immediately contact the assigned supervisor or staff member to discuss the circumstances.

## **Offender Rights**

### **An Offender:**

- May not be subjected to bodily punishment, personal abuse, personal injury, disease, property damage, harassment or use of unnecessary force.
- Cannot be a part of a medical, drug or cosmetic experiment.
- Will be advised of what to do in an emergency, such as an evacuation or fire and can direct questions to a Corrections Officer.
- May not be controlled or supervised by other offenders.
- Has equal access to all programs, services and activities without regard to race, religion, national origin, sex, disability, or political beliefs. If an offender believes

that the offender's rights were violated, the offender should contact the appropriate correctional staff.

- May not be punished or rewarded with food.

### **An Offender is entitled to:**

- Nutritional and well-balanced meals.
- Access to health care.
- Sufficient clothing, personal hygiene, bathing and bedding items.
- Access to courts and lawyers.
- Practice religion if it does not conflict with facility rules.
- Send and receive mail according to Department rules.
- Have postage for seven letters a week (if an offender has no money).
- Make requests and state opinions about classification to case management.
- Refuse to participate in programs except those that are mandatory.
- Receive special education services set forth in federal and State law, if the offender is under 21 years old and has a disability that interferes with learning.
- Access to news media according to Department rules.
- Be informed of the rules and regulations and to have an impartial hearing if he/she gets a notice of rule violation.
- Regular exercise and recreation periods, when possible.
- Timely computation of good conduct, work time and special project credits.
- Access to the Administrative Remedy Procedure and the Offender Grievance Office.
- Proper and secure storage of the personal property taken by staff.
- Wear clothing and hair based on personal preference, if it does not violate facility rules and is safe and clean.

### **Offender Rules**

Offenders receive a list of facility rules and must learn and comply with the rules. Questions concerning rule violations shall be directed to a staff member. Offenders shall:

- Obey all rules, regulations, and lawful commands from any official in the facility.
- Respect the rights and property of officials, employees, offenders, and visitors.
- Follow the rules about clothing in each facility.
- Be responsible for keeping body and clothing clean and neat.
- Remain properly clothed except while attending to personal hygiene.
- Keep living areas clean.
- Be responsible for the offender's personal property. Offenders must keep papers to show ownership of property.
- Not trade, buy, sell, give away or receive any property or possessions without the approval of appropriate staff.
- If necessary, write only business (not personal) letters or notes to staff.
- Be responsible for the condition of each State-owned item assigned to the offender.
- Take prescribed medicine as directed.
- Submit to or present personal property for search upon request.



- Follow the rules about telephone calls at the facility.

### **Reporting Rule Violations**

Offender rules of conduct have been created to provide for public safety, facility security, and the safety of staff, offenders and visitors. It is required and expected that offenders obey the rules of conduct. The rules of conduct also apply to an offender when in the community, whether or not under the supervision of staff.

If a volunteer is aware that an offender has committed an offense involving the rules of conduct, the volunteer shall report the violation to a staff member. The staff member shall file a written report citing the offender's conduct and rule violation. This report shall be served on the offender and serve as notice of a pending disciplinary hearing. The offender may appear for a hearing that shall provide due process for the offender and a decision as to the rule violation.

### **Airborne and Blood Borne Pathogens**

#### **Airborne pathogens (Tuberculosis)**

Tuberculosis (TB) is an infectious disease spread through the air from person to person when droplet nuclei become airborne. Covering the mouth and nose when coughing or sneezing is an important preventive measure because it prevents the pathogen from becoming airborne.

Although the TB bacteria are an airborne pathogen, you cannot contract TB simply by walking into or through a room. Usually, you will need to have prolonged and repeated indoor exposure to someone with active TB.

Having a TB infection is NOT the same as having an active case of disease. Testing by a medical professional is the only way to be certain if TB is active.

The incubation period is usually between 2 and 10 weeks. After exposure, the immune system will limit the spread of bacteria and keep the infection from becoming active. However, if the immune system is weakened for any reason, the bacteria can multiply and spread throughout the body and develop into active disease.

If a doctor diagnoses active TB, the individual will be placed on an anti-tubercular drug, usually some form of antibiotic. These medications will relieve the symptoms and make the patient noninfectious to others. While infectious, the individual shall be separated from other people to ensure that the individual does not expose others to TB. If properly treated, TB patients can become noncontagious in two to three weeks.

Anyone is at risk to contract TB if exposed, but there are five groups that are more likely to be susceptible:

- Immunocompromised individuals, people with HIV, diabetes, silicosis, malnutrition and people undergoing chemotherapy.
- Individuals in certain socioeconomic circumstances; the homeless, current or past offenders, drug-users, alcoholics.



- Foreign-born people from countries where TB rates are still high; such as Mexico, the Philippines, Vietnam, Haiti and China.
- Anyone living with someone who has active TB.
- Anyone who regularly comes in contact with a member of these high-risk groups, especially in crowded, poorly ventilated conditions.

Understanding TB is crucial to fighting the disease. All facility employees are required to be vaccinated annually. If you volunteer at a facility, we recommend that you seek to be vaccinated. A volunteer should discuss this with the volunteer's personal practitioner.

### **Blood-borne Pathogens**

The two most prevalent blood borne diseases are:

- Hepatitis; and
- HIV.

These diseases are transmitted only if:

- The source of blood is infected, and,
- The infected blood gains a direct route into the body through broken skin, body openings, and penetration by sharp objects.

HIV is not transmitted by:

- Casual skin contact;
- Sharing food;
- Coughing or sneezing.
- Sharing protective equipment; or
- Insects and animals.

### **Preventive Measures for All Pathogens**

Always take universal precautions to reduce the risk of or prevent exposure:

- Use protective equipment (e.g., gloves, masks, eye protection);
- Wash your hands; and
- Use bleach or other germicidal disinfectant for decontamination.

If an exposure occurs:

- Clean the exposed area immediately;
- Notify your supervisor;
- File a formal report; and
- Follow-up with a personal health care professional, if appropriate.

## **Summary**

The best defense to protect against air and blood-borne infections is understanding the new environment and high risk population where a volunteer serves . Volunteers are encouraged to consult with a personal medical practitioner regarding recommended individual health precautions..

## **Offender Emergency Procedures**

Department staff are trained and planned for emergency situations. A volunteer shall always know the name and location of the closest staff member, summon that staff member when needed and comply immediately with the instructions given by staff. A volunteer may not interfere with security staff action or personally attempt to resolve the situation. A volunteer may be asked to provide a written report related to the incident.

The following are examples of emergencies that may occur while in a facility.

### **Hostile Offender:**

- Talk calmly to the offender and avoid being argumentative; and.
- If you are alone with the offender, assume a position in the field of vision or hearing range of a staff person.

### **Offender Fight:**

- Do not get between offenders;
- Stay clear of the altercation and do not try to break up the fight; and.
- Notify correctional staff immediately.

### **Riot/Mass Disturbance:**

- Do not intervene;
- Stay where you are and find cover; and
- If a phone is available, contact staff give your location.

### **Medical:**

- Do not attempt to interfere.

### **Escape:**

- Report any activity that may indicate an escape is occurring or information that leads to believe an escape is planned.

### **Suicide Threat or Attempt:**

- Specify the offender's actions, words or mood that indicate self-harm or suicide is a possibility.

### **Hostage Taking:**

The likelihood of being taken hostage is remote. A trained hostage negotiation team shall communicate with hostage takers with one end in mind, your safe release. In the event you are taken hostage, follow these guidelines:

- Do not act foolishly-be cautious of heroics;
- Cooperate with hostage takers and obey commands;. failure to cooperate increases the potential for violence;
- Look for a protected place to dive or roll if either authorities or offenders attempt to infiltrate the location;
- Remain calm and do not make eye contact with hostage takers;
- Keep a low profile to avoid the appearance of observing hostage takers;
- Do not make threats against hostage takers or give an indication of being a witness against them;
- Be reluctant to give up identification and clothing, but avoid physical resistance;
- As a result of the stress of the hostage situation, an individual may have difficulty retaining fluids, if available, drink water and eat even if you are not hungry;
- Act neutral and be a good listener if the hostage takers want to talk;
- Do not attempt to negotiate, efforts will not be deemed creditable by the hostage takers;
- Even though appearing disinterested while being held hostage, observe what is taking place, there will be a de-briefing following release;
- A volunteer will not get any special consideration from hostage takers or offenders; and
- When a rescuer enters the location, do not rush the rescuer; lie on the floor or remain seated and follow the instructions given by the rescuers exactly.

### **Prison Rape Elimination Act (PREA)**

The Prison Rape Elimination Act (PREA) of 2003 is federal law which established a set of standards designed to prevent, detect and respond to sexual abuse in confinement facilities. After the standards were finalized in 2012 the Department committed to integrating these standards into Department operating procedures. The Department demonstrates compliance with these standards through a series of independent audits conducted at each facility on a three year cycle.

### **Zero Tolerance Policy**

The Department has a ZERO tolerance policy regarding sexual misconduct. Any form of sexual conduct, consensual or otherwise, is prohibited in a correctional facility. This includes offender on offender, as well as staff (including volunteers) on offender contact, coercion or sexual violence. Zero Tolerance means no excuses, no jokes, and no brushing aside as unimportant or ignoring any incidents or offender complaints. Offenders have the right to be free from sexual abuse and sexual harassment.

## Sexual Misconduct

Sexual misconduct is any behavior or act of a sexual nature directed toward an offender. Sexual misconduct includes acts of sexual abuse and sexual harassment. Sexual abuse of an offender means any attempted or completed sexual act by another offender, staff member or volunteer. Sexual abuse of an offender by a volunteer includes any of the following acts, with or without consent of the offender:

- Any physical contact with an offender that is performed for the sexual arousal or gratification of any person involved in such contact;
- Any intentional contact with an offender, either directly or through the clothing, that is unrelated to official duties or where the volunteer has the intent to abuse, arouse, or gratify sexual desire;
- Any display by a volunteer of his or her intimate body parts in the presence of an offender;
- Acts of voyeurism by the volunteer; and,
- Any attempt, threat, or request by a volunteer intended to coerce an offender to engage in the activities described above.

Sexual harassment includes:

- Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by a volunteer directed toward offender;
- Repeated verbal comments or gestures of a sexual nature to an offender by a volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.
- Influencing, promising, or threatening an offender or offender's safety, supervision status, work status or program involvement in exchange for sexual favors, sexual acts, or sexual contact; or
- Creating or encouraging an atmosphere of intimidation, hostility, or offensiveness by engaging in sexually offensive behavior or language.

## Volunteer Responsibilities

Each volunteer is required to understand that a volunteer's duty is to report all acts of sexual misconduct. If observing an act of sexual misconduct, in progress, report the incident to the nearest correctional officer **immediately**. Do not attempt to intervene in a situation, which can be confrontational or dangerous. A volunteer's responsibility is to report the incident.

If a volunteer gains knowledge or becomes aware of suspect acts of sexual misconduct the volunteer shall report that information immediately. A report may be made to a supervisor, the most senior staff in the area; a chaplain; a medical practitioner; the volunteer activities coordinator; or a social work, psychology or case management staff member. The report may be made by calling the Internal Investigative Division or the "Secretary's Tip Line." A report may be verbal, written, anonymous or third party. The information shall be kept strictly confidential. Allegations of sexual misconduct shall be thoroughly investigated and may be reported to

appropriate law enforcement officials in accordance with Department policy. Prompt reporting assures effective investigations, facilitates the collection of evidence, improves crisis intervention and affords specialized mental health services to victims.

To help volunteers better understand if sexual abuse should be suspected, the following warning signs of victimization can be considered:

Withdrawal or isolating themselves	Lashing out in anger or fear
Development of depression or hopelessness	Refusing to shower
Suicidal thoughts or actions	Seeking protective custody
Refusing to leave segregation nicknames	Offenders being given female
Developing anxiety, fear or paranoia	Experiencing nightmares
Increased medical complaints	Self-abuse
Increased concerns regarding sexually transmitted diseases	

### **Retaliation**

Retaliation against victims, witnesses, and individuals reporting sexual misconduct is not permitted. PREA standards require that individuals involved in an investigation be protected from all forms of retaliation.

### **Sanctions**

A volunteer accused of sexual misconduct shall be prohibited from contact with offenders until an investigation is conducted. If the accusation is substantiated the individual's volunteer status shall be terminated and the individual shall be subject to criminal prosecution if the behavior is deemed to be criminal in nature.

## **VOLUNTEER GUIDELINES (Rules of Conduct)**

**These are important rules of conduct. Violation may result in suspension and/or rescission of volunteer status Department-wide and criminal prosecution. Remember:**

**Nothing in - Nothing out - Nothing personal  
(including cell phones).**

1. Know the name of your supervisor. That person:

- Prepares for your entering the facility or office.
- Will answer questions.
- Addresses any special requests (for example: participants, camera, etc.).
- Ensures the room is available.
- Arranges for the offenders to get to the program.
- Resolves any recurring problems you may experience.

2. Volunteer Participant

- If your supervisor determines that it is appropriate for volunteer participants to attend your activity, each volunteer participant shall read, complete, sign and return the Volunteer Participant paperwork packet, which includes the application, Participant guidelines and emergency information. This information is required to enter a facility as a participant volunteer.
- Lead or Contact volunteers may be asked to assist with this process. An approved Volunteer Participant shall be accompanied by a volunteer or staff member at all times.

3. Facility Entry and Exit

- Obtain and wear a Volunteer ID Badge above the waist so that it is visible to others. You are responsible for maintaining and having the badge with you at all times.
- Lock your vehicle and leave all items not authorized for your volunteer duties in your vehicle. Most, but not all facilities have lockers for your personal belongings. Cell phones, pagers, tobacco products and lighters/matches must be left in your vehicle.
- You will be refused admittance if you are acting unruly.
- You may bring materials used for your activity. Prior to the event, give a list of the items to your supervisor, who will get the necessary approvals to add the items entry to the facility.
  - This information shall be provided no later than one week before the activity. Some facilities may require more notice.
- Bring any personal items such as glasses and pen in a clear plastic container
- A briefcase must be clear view and approved, in writing, by the managing official.

- If you want to bring in a recording device or camera, speak with your supervisor to seek approval. (Pictures inside the facility, as well as outside, are not permitted without the prior permission of the managing official or unit head.)
  - Contact your supervisor to determine if any items or participants have been disapproved for entry.
  - If there is no facility entry paperwork when you arrive, ask the officer to contact the shift commander. The shift commander's office should have a copy of the paperwork.
  - Sign in as instructed.
  - Routine search procedures are listed below. Failure to cooperate will result in instruction to leave the premises and you may lose your volunteer privileges.
    - Belongings search.
    - Search of pockets of outerwear and clothing.
    - Search of headwear, including religious headwear.
    - Walk-through metal detector (a metal implant may require documentation from your physician).
    - Handheld metal detection wand.
    - Clothed pat-down search.
    - Drug detection dog.
    - Vehicle search.
    - Fast ID (electronic fingerprinting devices for preliminary record checks).
  - Go directly to your assigned location. It is imperative not to deviate from your route.
  - Refrain from having conversations with offenders until you have reached your assigned location. Continue moving and do not stop on the compound to talk with offenders. This may place the facility or office at risk and cause a security issue.
  - When leaving the facility:
    - Make sure you have everything you brought in with you.
    - Do not take out anything you did not bring in with you.
    - Return the Volunteer ID Badge before leaving the facility.
    - Sign out as instructed.
4. Arrive about 20 minutes early (or an appropriate amount of time for the location of your volunteer assignment).
5. Inquire about the policy regarding late volunteer arrival for activities.
6. If you know you will be late, please call ahead and staff will do their best to accommodate your arrival. However, you may be denied entry if you arrive late.
7. Understand that your activity may be cancelled or you may be refused admittance to a facility or office without notice or explanation due to security needs. While every effort will be made to contact you so you will not make an unnecessary trip, sometimes this is not possible. If you travel a long distance you are always encouraged to call ahead to see if there is a reason you may not enter the facility, such as lockdown. If this occurs, contact your supervisor or the Volunteer Coordinator the next business day.

8. Always follow instructions, suggestions and requests from any correctional officer or staff member. Uncooperative behavior will result in dismissal from the volunteer program and the facility or office.
9. Never interfere with a correctional officer or staff member acting in the line of duty. While every attempt will be made to not interrupt a program, from time to time an officer will enter your program to account for offenders, to call an offender or for other purposes.
10. Begin and end your program according to schedule. Structure your activity and remain focused on the task-at hand.
11. Remain in your designated program area. Try to seat yourself between the door and the offenders. Do not leave the assigned area to confer privately with an offender.
12. Do not give offenders anything not authorized for use in your program. Non authorized items such as candy, gum, a note, a newspaper are considered contraband in a facility.
13. Limit physical contact with offenders to a handshake and utilize program exercises that include all offenders in the group.
14. Respect the confidentiality of what offenders share with you about feelings and personal events. Do not ask an offender about his or her crime unless you have been instructed by your supervisor as part of your volunteer position. Remember, **what you hear and see here stays here.**
15. Proselytizing and making disparaging remarks about a faith or someone's faith are prohibited.
16. Do not engage in any significant interaction with any offenders other than those in your program.
17. Report to the correctional officer or staff member if you have information about a planned act of homicide, assault, suicide, disturbance, drug or contraband smuggling, hostage taking, escape or any other act that may threaten the safety of others or the security of the facility or office.
18. Do not accept anything from offenders or their families. This includes gifts, favors, articles or items. Report attempts to give you something to a correctional officer or staff member.
19. Do not accept phone calls from offenders unless you have written authorization from your supervisor. All offenders' calls are collect.
20. Do not place money in an offender's account. Indigent offenders are provided hygiene and writing supplies (including stamps), monthly.
21. Report to staff any offender requests for you to mail a package or letters, deliver messages, contact friends or family, etc.
22. If an offenders asks you to do something you know or suspect is prohibited, some suggested responses are to say that you:



- Don't think you are allowed to do that, but you will ask your supervisor or
  - Are not allowed to do that, or
  - Do not want to do that, as your interest is working with the group as a whole and not assisting offenders with individual needs.
23. In most instances, you may not have contact with an offender's family or friends. There are exceptions and you must discuss specific situations with your supervisor.
24. Never give offenders or their families any personal identifying information about you, other volunteers or your family members. This includes last name, address, phone numbers, social security number, work locations, marital status, family details, personal interests or DOB.
25. Do not send anything to an offender. In special circumstances, you may receive permission from your supervisor to correspond with an offender, but do not send the offender anything in the mail other than what you have been approved to send. Use the address of the organization you represent; do not use your home address.
- The content of your letters must be professional, not personal.
  - If you would not show your spouse, children or clergy person the letters you and the offenders write, you should not be writing or volunteering!
  - Inappropriate contact in a letter or envelope will be regarded as an indication of a personal relationship and will result in your dismissal as a volunteer.
  - Tell your supervisor if an offender sends you an inappropriate or unauthorized letter or item.
26. You may not volunteer at a facility where a friend or relative resides.
27. You may not be on a visiting list of an offender currently incarcerated in a federal, state, or local correctional facility or living in a household with an individual under home detention.
28. Volunteers may not perform marriage ceremonies.
29. Dress professionally and conservatively; follow the Department's dress code. Leave excess jewelry at home.
30. Conduct yourself in a professional manner at all times.
31. You may not smoke, be under the influence of alcohol or be under the inappropriate influence of prescription or non-prescription drugs while on State of Maryland property.
32. Respect the confidentiality of all Department staff, offenders, ex-offenders and volunteers. Do not share any information or photographs you have access to while performing volunteer service. This includes, but is not limited to friends and family, the media, and social media sites such as Face Book, Twitter, Linked-In, Instagram, etc.
33. As a volunteer, it is critical that you understand your duty to report sexual misconduct immediately. Additionally you must immediately report any complaint, or notification, of sexual abuse or harassment made to you by a victim or third party.

34. The Department has an Internal Investigative Division (IID), responsible for investigating alleged acts of criminal and administrative wrongdoing. If you are suspected of engaging in or knowing about such acts, you may be interviewed by IID staff, in which case your full cooperation is expected.
35. If you want to do more as a volunteer than you had originally agreed upon, talk with your supervisor about formalizing those additional duties. Do not engage in unauthorized activity.
36. If you want to volunteer at another facility or office, discuss your options with the Volunteer Coordinator at your current location. The coordinator will refer you to the coordinator at the new location. You will need to complete additional training prior to beginning.
37. You must notify the Volunteer Coordinator if your personal information or status changes during your volunteer service to the Department. This includes a move, change in phone number or email, being arrested or charged with a crime, having a friend or family member being incarcerated, etc.

## **HANDOUTS**

- Volunteer Program Orientation Guide
  - Volunteer Guidelines – Rules of Conduct
  - Volunteer Agreement and Acknowledgement of Orientation
  - Emergency Contact Information
- Directives
  - Prison Rape Elimination Act – Federal Standards Compliance
  - Sexual Harassment – Prohibited
  - Sexual Misconduct – Prohibited
  - Executive Directive Volunteer, Intern and Contractor Contact and Personal Information
  - Executive Directive Employee and Inmate Visiting and Communications

## **SOURCES**

- Secretary's Directive Volunteer Program
- Volunteer Program Administrative Manual
- Executive Directive Sexual Harassment – Prohibited
- Secretary's Directive Sexual Misconduct – Prohibited
- Secretary's Directive Prison Rape Elimination Act – Federal Standards Compliance
- Standards of Conduct Policy
- State of Maryland Ethics/Standards of Conduct
- Executive Directive Personal Appearance Policy
- State of Maryland Domestic Violence in the Workplace Policy
- Executive Directive Policy Statement – Workplace Violence
- State of Maryland Executive Order - Policy on Smoking
- State of Maryland Executive Order - State of Maryland Substance Abuse Policy
- Executive Directive Contraband-Criminal Violations
- Executive Directive Entry and Exit Procedures for Correctional Facilities

- Religious Services Program Manual
- Division of Correction Directive Inmates
- Maryland Division of Correction Inmate Handbook
- Executive Directive Volunteer, Intern and Contractor Contact and Personal Information
- Executive Directive Employee and Inmate Visiting and Communications

## VOLUNTEER AGREEMENT and ACKNOWLEDGEMENT of ORIENTATION

I participated in the Department of Public Safety and Correctional Services Volunteer Orientation at

\_\_\_\_\_ (location) on \_\_\_\_\_ (date)

completed by \_\_\_\_\_ (name of trainer).

I attest that I have received, been fully advised, read and clearly understand the following documents and materials:

1. Volunteer Program Orientation guide \_\_\_\_ (Initials)
2. Volunteer Guidelines – Rules of Conduct \_\_\_\_ (Initials)
3. PREA guidelines and duty to warn \_\_\_\_ (Initials)
4. Policies
  - a. Prison Rape Elimination Act \_\_\_\_ (Initials)
  - b. Sexual Harassment \_\_\_\_ (Initials)
  - c. Sexual Misconduct \_\_\_\_ (Initials)
  - d. Volunteer, Intern and Contractor Contact and Personal Information \_\_\_\_ (Initials)
  - e. Employee and Inmate Visiting and Communications \_\_\_\_ (Initials)

I agree to comply with all security and program regulations and requirements as set forth in writing in the material given to me (orientation guide, rules of conduct, guidelines, and handouts) and explained verbally.

I understand that

- I assume all risks that result in normal operation at my location or anywhere else in the Department. I agree to hold harmless the Department of Public Safety and Correctional Services and officials and employees for any claims arising from the course of my provision of volunteer services to the Department
- Any and all information that I may utilize or have access to during the course of volunteering shall remain confidential. I agree not to disclose such information to any unauthorized third parties.
- Violation of any regulations, policies, or requirements may result in termination as a volunteer with the Department of Public Safety and Correctional Services and may result in civil litigation or criminal prosecution, or both.
- The State or the Department of Public Safety and Correctional Services reserves the right to terminate any volunteer for any reason or no reason at all, except as precluded by law.
- Under the Prison Rape Elimination Act (PREA), I have a duty to report any sexual misconduct I observe or become aware of during the course of my volunteer service.

\_\_\_\_\_  
Volunteer printed name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Volunteer signature

\_\_\_\_\_  
Trainer's Signature

\_\_\_\_\_  
Date

## EMERGENCY CONTACT FORM

Name of facility or office \_\_\_\_\_

Volunteer name \_\_\_\_\_

Street address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Home phone \_\_\_\_\_ Mobile phone \_\_\_\_\_

Email address \_\_\_\_\_

List any medications that must be carried into the facility:

\_\_\_\_\_  
\_\_\_\_\_

List any condition that may require emergency attention and medications that you may be allergic to: \_\_\_\_\_

\_\_\_\_\_

Affiliation \_\_\_\_\_

Emergency contact name \_\_\_\_\_

Relationship \_\_\_\_\_

Home phone \_\_\_\_\_ Mobile phone \_\_\_\_\_

Work phone \_\_\_\_\_

Emergency contact name \_\_\_\_\_

Relationship \_\_\_\_\_

Home phone \_\_\_\_\_ Mobile phone \_\_\_\_\_

Work phone \_\_\_\_\_

Volunteer assignment:

Location \_\_\_\_\_

Supervisor \_\_\_\_\_



# SEXUAL ABUSE INCIDENT REVIEW

PREA Standard §115.86

IID Case Number: \_\_\_\_\_ Facility: \_\_\_\_\_

Victim: \_\_\_\_\_ Alleged Abuser: \_\_\_\_\_

Incident Date: \_\_\_\_\_ Investigation Complete Date: \_\_\_\_\_

Investigation Finding:  Substantiated  Unsubstantiated Review Date: \_\_\_\_\_

Incident Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Incident Motivation:  Unknown

Race  Ethnicity  Gender Identity  Gang Affiliation  Other: \_\_\_\_\_

Review of location to assess whether physical barriers in the area may enable abuse:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Review of staffing levels in area of incident during different shifts:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Need for additional or augmented monitoring technology:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Recommended changes/improvements to policy or practice:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
PREA Compliance Manager

\_\_\_\_\_  
Date

cc: Warden/Facility Administrator  
PREA Coordinator

Recommendations Completed:

N/A  Yes, Date Completed \_\_\_\_\_  No, Attach Explanation PCM Initials: \_\_\_\_\_









# Retaliation Monitoring

PREA Standard §115.67

IID Case Number: \_\_\_\_\_ Facility: \_\_\_\_\_

Subject's Name: \_\_\_\_\_ Report Date: \_\_\_\_\_

Inmate – Victim     Inmate – Reporter     Inmate – Other     Staff – Reporter     Staff - Other

Retaliation Monitor: \_\_\_\_\_ Title: \_\_\_\_\_

Preliminary Protection Measures (if any): \_\_\_\_\_

Meetings with Subject Monitor & Subject Must Initial	Check housing changes, programming changes, disciplinary record, etc.	Negative interactions with staff or inmates
Within two weeks Date: Monitor & Subject Initials:		
Within 30 days Date: Monitor & Subject Initials:		
Within 60 days Date: Monitor & Subject Initials:		
Final 90 days or more Date: Monitor & Subject Initials:		
Extended Monitoring (if required) Date: Monitor & Subject Initials:		
Extended Monitoring (if required) Date: Monitor & Subject Initials:		

Date Monitoring Completed: \_\_\_\_\_

Check if monitoring discontinued because case was determined to be unfounded.

**FORWARD TO FACILITY PREA COMPLIANCE  
MANAGER FOR FILING**

\_\_\_\_\_  
PREA Compliance Manager

\_\_\_\_\_  
Date

## PREA Intake Screening

**Inmate Name:** \_\_\_\_\_

**DOC#:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Facility:** \_\_\_\_\_

**SID#:** \_\_\_\_\_

<b>Risk of Victimization:</b>	<b>Yes</b>	<b>No</b>
1. How old are you? _____ (check yes if the inmate is under 22 or over 64 years old)		
2. What is your height and weight? Height: _____ Weight: _____ check yes if either of these apply: (men less than 5'6" and 120 lbs.) (women less than 5'0" and 118 lbs.)		
3. Do you have any physical, mental, or developmental disabilities that may affect your ability to function in a prison facility.		
4. Is this your first major incarceration?		
5. Is your criminal history exclusively non-violent, including pending charges, and your current charge?		
6. Do you have any reason to fear placement in general population?		
7. Were you ever sexually assaulted or abused as a child or adult? (if yes, offer mental health referral)		
8. Have you ever been approached for sex/threatened with sexual assault while incarcerated?		
9. Do you consider yourself <input type="checkbox"/> homosexual, <input type="checkbox"/> bisexual, <input type="checkbox"/> transgender, <input type="checkbox"/> intersex, or <input type="checkbox"/> gender nonconforming?*		
10. Have you had consensual sex while incarcerated?		
11. Do you have a criminal history of sex offenses with adult/child victims, including pending charges and your current charge?		
12. Have you ever been sexually assaulted while incarcerated? (yes response = 4 points and offer mental health referral)		

*Score of 4 or more on items 1-12 = "at risk for victimization." Each "yes" answer is 1 point.*

\*If yes, check all that apply.

**Risk of Victimization Score:**

<b>Risk of Abusiveness:</b>	<b>Yes</b>	<b>No</b>
13. Do you have a history of violent crimes including pending charges and your current charge?		
14. Do you have a history of domestic violence as a perpetrator including pending charges and your current charge?		
15. Do you have a history of administrative violations or institutional infractions for violent offenses?		
16. Do you have a history of administrative violations or institutional infractions for sexual misconduct?		
17. Do you have a criminal history of sex offenses with adults? (if yes, offer mental health referral)		
18. Have you ever sexually assaulted another inmate while incarcerated? (yes response = 3 points and offer mental health referral)		

*Please confirm these responses via file review/observation of inmate. Score of 3 or more on items 13-18 = "at risk for abusiveness."*

**Risk of Abusiveness Score:**

**Results:**

- Low risk (no further action necessary)
- At risk of victimization, 4 or more pts. (follow facility policy)
- At risk of abusiveness, 3 or more pts. (follow facility policy)

**Referral:**

- Prior victim, offer follow-up meeting
- Prior abuser, offer follow-up meeting
- Follow-up meeting requested
- Follow-up meeting refused

\_\_\_\_\_  
Screener's Signature and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Thirty-Day Reassessment (if required)

Review complete, no changes

Review complete, updated form submitted

\_\_\_\_\_  
Assessor's Signature and Title

\_\_\_\_\_  
Date

## Instructions for PREA Intake Screening Instrument

Read this Statement to the Inmate: In 2003 the Prison Rape Elimination Act, better known as PREA, was passed by the Federal government in an effort to protect prison inmates from sexual assault. I will be asking you a series of questions to help determine if you are at risk of becoming involved in a sexual assault while at this facility. These questions are being asked to help protect you and other inmates from sexual assault and abuse. If you refuse to answer a question or fail to answer a question truthfully, I or another staff member may enter an answer based on your criminal history, other written documentation, or personal observation. The information that I collect on this form is considered to be confidential and will only be made available to those staff members that have a need to know.

Question Number	Detailed Instructions*
1	Use the inmate's official date of birth to verify.
2	Height is measured in feet and inches. Weight is measured in pounds.
3	Allow the inmate to assess his or her ability to function in a prison environment. A "yes" answer may be entered by the screener if the inmate has physical disabilities that would make it difficult for the inmate to defend his/her self or appears to have mental or developmental disabilities that would impair the inmate's decision making processes.
4	A major incarceration for the purposes of this screening instrument means thirty or more consecutive days of detention in a local, state, or federal facility.
5	Verify, if possible. Violent criminal history includes all forms of assaultive behavior, robbery, and sexual offenses involving personal contact. Screener may override a "no" answer if supported by documentation to the contrary.
6	Enter the inmate's answer.
7	Enter the inmate's answer. Inmate must be offered a medical or mental health referral, if "yes".
8	Enter the inmate's answer.
9	<ul style="list-style-type: none"> <li>• When considering whether an inmate is <b>homosexual or bisexual</b> a "yes" response may only be indicated when self-reported or through information from past incarcerations.</li> <li>• <b>Gender non-conforming</b> is defined as displaying gender traits that are not normally associated with the person's biological sex. The screening official may determine that an inmate is <b>gender non-conforming</b> based on his or her observations.</li> <li>• <b>Transgender</b> people are defined as those whose gender identity differs from the social expectations for their birth sex. This may include transsexuals (someone who is in the process of physically/medically changing their gender) and cross-dressers (transvestites). Transgender people may have any sexual orientation. A "yes" response may only be indicated when inmate identifies him or herself as <b>transgender</b> or through information from past incarcerations.</li> <li>• <b>Intersexuality</b> is defined as a set of medical conditions that is a congenital anomaly of the sexual and reproductive system. Intersex people are born with external genitalia or internal reproductive systems that are not considered "standard" for either sex. An intersex individual may have any sexual orientation. A "yes" response may only be indicated when inmate identifies him or herself as <b>intersex</b> or through information from past incarcerations.</li> </ul>
10	Enter the inmate's answer.
11	Enter the inmate's answer. Verify, if possible. Screener may override a "no" answer if supported by documentation to the contrary.
12	Enter the inmate's answer.
13 - 16	Enter the inmate's answer. Verify, if possible. Screener may override a "no" answer if supported by documentation to the contrary. History includes documented incidents where the inmate has been identified as a suspect or perpetrator. Formal findings of guilt or responsibility are not required. Violent offenses include all assaultive behavior (except actions taken in self-defense), robbery, and kidnapping. For the purpose of these questions sexual misconduct includes sexual acts, indecent exposure and public masturbation.
17	Enter the inmate's answer. Verify, if possible. Screener may override a "no" answer if supported by documentation to the contrary. Inmate must be offered a mental health referral, if "yes".
18	Enter the inmate's answer.

\*The screening instrument is not intended to diagnose any mental health or psychological conditions. Staff members that use this instrument to screen inmates for risk of victimization or abusiveness are to use their own judgment appropriate for their training, education, and job classification.

**Results:** Enter the total points in the appropriate boxes for "Risk of Victimization" and "Risk of Abusiveness." Check the box or boxes in the **Results** section and follow your facility policy.

**Referral:** If the inmate reveals in questions 7, 12, 17, or 18 that he or she has been a victim or perpetrator of a sexual assault, the inmate must be *offered* a follow-up visit with mental health staff. Check the appropriate **Referral** boxes and provide the inmate with a **PREA FOLLOW UP** form. Assist the inmate with the form, if necessary, and send the letter to the psychology department through the institutional mail.

### Disposition

- Inmate screening for risk of sexual victimization and abusiveness is required by the Prison Rape Elimination Act of 2003 (PREA), §115.41. The information collected is to be used to help make decisions regarding housing, bed, work, education and program assignments. **Follow your facility policy regarding inmates that are found to be at risk.**
- Responses to the questions asked on the screening instrument are to be kept confidential and disseminated only to those individuals with a need to know. **Follow your facility policy regarding dissemination.**

## Entrevista Inicial PREA

Nombre del Recluso: \_\_\_\_\_

DOC#: \_\_\_\_\_

Fecha: \_\_\_\_\_ Instalación: \_\_\_\_\_

SID#: \_\_\_\_\_

Riesgo de Victimización	Si	No
1. ¿Qué edad tiene? _____ (en caso de que el recluso tenga menos de 22 y más de 64 años marque el si)		
2. ¿Cuál es su peso y altura? Altura: _____ Peso: _____ En caso de que cualquiera de estas medidas se apliquen, marque el si (hombres que miden menos de 5'6" [1.67 m.] y 118 lbs. [54.4 kilos] de peso) (mujeres que miden menos de 5'0" [1.52 m.] y 120 lbs. [53.5 kilos] de peso)		
3. Tiene usted alguna discapacidad física, mental, o de desarrollo ¿que pueda afectar su desempeño en un centro penitenciario?		
4. ¿Esta es su primera encarcelación seria?		
5. Su historial criminal o antecedentes penales ¿excluye la violencia, incluyendo cargos pendientes y actuales?		
6. ¿Tiene usted alguna razón para temer ser ubicado entre la población general penitenciaria?		
7. Usted, alguna vez, ¿fue agredido o abusado sexualmente de niño o como adulto?		
8. A usted, alguna vez, ¿le han hecho propuestas sexuales / amenazado con agresiones sexuales mientras estuvo encarcelado?		
9. ¿Usted se considera <input type="checkbox"/> homosexual, <input type="checkbox"/> bisexual, <input type="checkbox"/> transgénero, <input type="checkbox"/> intersexual, o <input type="checkbox"/> Agénero / sin conformidad de género? *		
10. ¿Ha tenido usted sexo consensual o consentido mientras estaba encarcelado?		
11. ¿Tiene usted un historial criminal de ofensas sexuales con víctimas adultas / niños, incluyendo sus cargos pendientes y actuales?		
12. Alguna vez ¿ha recibido agresiones sexuales mientras estaba encarcelado? (una respuesta positiva (si) = 4 puntos y se procederá ofrecerle el poder referirlo a los servicios de salud mental)		

*Un puntaje de 4 o más en los ítems 1-12 = "en riesgo de victimización". Cada respuesta positiva (si) equivale 1 punto.*

\*Si responde si a esta pregunta marque todos los recuadros relevantes.

Puntaje de Riesgo de Victimización:

Riesgo de ser Abusador:	Si	No
13. ¿Tiene usted un historial de crímenes violentos, incluyendo sus cargos pendientes y actuales?		
14. ¿Tiene usted un historial de violencia domestica como actor de los hechos incluyendo sus cargos pendientes y actuales?		
15. ¿Tiene usted un historial de violaciones de tipo administrativo, o infracciones institucionales por ofensas violentas?		
16. ¿Tiene usted un historial de violaciones de tipo administrativo, o infracciones institucionales debido a mala conducta sexual?		
17. ¿Tiene usted un historial de ofensas sexuales contra adultos? (si responde positivamente (si) refiéralo a servicios de salud mental)		
18. Alguna vez ¿ha agredido sexualmente a otro recluso mientras estaba encarcelado? (respuesta positiva (si) = 3 puntos y se lo debe referir a los servicios de salud mental)		

*Por favor confirme estas respuestas vía revisión de expediente/observación del recluso. Un puntaje de 3 o más en los ítems 13-18 = "en riesgo"*

Puntaje de Riesgo de Abuso:

**Resultados:**

- Bajo riesgo (no se requieren medidas adicionales)
- En riesgo de victimización, 4 puntos o más (siga la política del penal)
- En riesgo de ser abusador, 3 puntos o más (siga la política del penal)

**Volante / Referencia Medica**

- Víctima en el pasado (reunión de seguimiento)
- Abusador en el pasado (reunión de seguimiento)
- Se solicita una reunión de seguimiento
- Se solicita una reunión de seguimiento

Firma y Título del Evaluador		Fecha
Reevaluación de Treinta Días (Si fuese necesario)	<input type="checkbox"/> Evaluación completada, sin cambios	<input type="checkbox"/> Evaluación completada, formulario actualizado presentado
Firma y Título de Perito / Examinador		Fecha



# STAFFING PLAN DEVELOPMENT CHECKLIST

PREA Standard §115.13

Facility: \_\_\_\_\_ Review Date: \_\_\_\_\_

The attached staffing plan was developed in accordance with PREA § 115.13 (a) (1-11). The following items were considered during this annual process.

CHECK ITEMS	COMMENTS (if needed)
<input type="checkbox"/> Generally accepted detention and correctional practices:	
<input type="checkbox"/> Any judicial findings of inadequacy:	
<input type="checkbox"/> Any findings of inadequacy from Federal investigative agencies:	
<input type="checkbox"/> Any findings of inadequacy from internal or external oversight bodies:	
<input type="checkbox"/> All components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated):	
<input type="checkbox"/> The composition of the inmate population:	
<input type="checkbox"/> The number and placement of supervisory staff:	
<input type="checkbox"/> Institution programs occurring on a particular shift:	
<input type="checkbox"/> Any applicable State or local laws, regulations, or standards:	
<input type="checkbox"/> The prevalence of substantiated and unsubstantiated incidents of sexual abuse:	
<input type="checkbox"/> Any other relevant factors:	

\_\_\_\_\_  
Facility Head (or Designee)

## Memorandum



TO: \_\_\_\_\_

FROM: \_\_\_\_\_

FACILITY: \_\_\_\_\_

SUBJECT: Annual Review of Facility Staffing Plan

Date Reviewed: \_\_\_\_\_

The following information is submitted in accordance with §§.05C(2) — (4) of Executive Directive OPS.115.0001 — Staffing Analysis and Overtime Management:

- A.** A review of the facilities Staffing Plan was performed and included an analysis of:
- (1) Each post to determine:
    - (a) The number of days each week the post is staffed;
    - (b) The rank of the correctional officer assigned to the post;
    - (c) The operational staffing level (OSL) for the post;
    - (d) Designation as an emergency response post;
    - (e) If a Special Assignment Post (SAP) should be an established post.
  - (2) The following factors:
    - (a) Best practices used by correction and detention facilities;
    - (b) Findings related to inadequate correctional and detention facility administrative and operational practices resulting from a court action, federal investigation, or from an internal or external unit with oversight responsibilities;
    - (c) The physical plant to determine the presence of “blind spots” or isolated areas;
    - (d) Characteristics of the inmate population at the facility;
    - (e) The number and placement of supervisors;
    - (f) Program activity taking place on each shift;
    - (g) Applicable federal, State, or local laws or standards;
    - (h) The prevalence of substantiated and unsubstantiated complaints of sexual abuse at the facility; and
    - (i) Use and deployment of video monitoring equipment and other surveillance technology.
- B.** This annual review of the Facility Staffing Plan included consultation with the Department PREA Coordinator to determine if adjustments are necessary to the facility’s:
- (a) Staffing plan based on topics identified under §A(2) of this memo;
  - (b) Use and deployment of video monitoring system and other surveillance technology; and
  - (c) Resources available to commit to ensure compliance with the established staffing plan.
- The FSP accurately reflects operational requirements and current practices in our facility and no changes are recommended.
- The FSP requires modification as described in the attached recommendations.

---

 Managing Official (Signature)

Date

# Md. CORRECTIONAL SERVICES Code Ann. § 10-701

Current through October 1, 2017, of the 2017 Regular Session of the Maryland General Assembly.

[Annotated Code of Maryland](#)   [CORRECTIONAL SERVICES](#)   [TITLE 10. STATE CORRECTIONAL FACILITIES](#)   [SUBTITLE 7. INTELLIGENCE AND INVESTIGATIVE DIVISION](#)

## § 10-701. Intelligence and Investigative Division.

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**(a) Established. --**

**(1)** There is an Intelligence and Investigative Division in the Department.

**(2)** The Secretary shall appoint the Director of the Intelligence and Investigative Division.

**(3)** Subject to the authority of the Secretary, the Intelligence and Investigative Division shall:

**(i)** investigate:

**1.** alleged criminal violations committed by employees of the Department while on duty;

**2.** alleged criminal violations committed by inmates, visitors, and other individuals that affect the safety or security of the Department's facilities or programs; and

**3.** alleged professional misconduct by employees of the Department;

**(ii)** adopt regulations for the conduct of its investigations; and

**(iii)** oversee and coordinate all intelligence efforts within the Department.

**(b) Powers of investigator -- Property owned, leased, operated by, or under the control of the**

**Department. --** An investigator in the Intelligence and Investigative Division may exercise the powers of a peace or police officer in the State on property that is owned, leased, operated by, or under the control of the Department.

**(c) Powers of investigator -- Other property. --**

**(1)** An investigator in the Intelligence and Investigative Division may exercise the powers of a peace or police officer in the State on property that is not owned, leased, operated by, or under the control of the Department when:

**(i)** engaged in fresh pursuit of a suspected offender;

**(ii)** requested or authorized to do so by the chief executive officer or chief police officer of a county;

**(iii)** necessary to facilitate the orderly flow of traffic to and from property owned, leased, operated by, or under the control of the Department;

**(iv)** necessary to investigate and protect property that is owned, leased, operated by, or under the control of the Department;

**(v)** engaged in an active and official investigation of the conduct of an employee of the Department when the employee's alleged conduct will compromise the safety or security of the Department's facilities or programs;

**(vi)** engaged in an active and official investigation of an inmate in the custody of the Commissioner of Correction or the Commissioner of Pretrial Detention and Services, an inmate subject to the jurisdiction of the Patuxent Institution, or an individual sentenced to probation or released on parole or mandatory supervision; or

**(vii)** ordered to do so by the Governor.

**(2)** When acting under the authority granted in this subsection in connection with an investigation or enforcement action, the Intelligence and Investigative Division shall notify the following persons:

**(i)** when in an incorporated municipality, the chief of police, if any, or the chief's designee;

**(ii)** when in a county that has a county police department, the chief of police or the chief's designee;

**(iii)** when in a county without a police department, the sheriff or the sheriff's designee;

**(iv)** when in Baltimore City, the Police Commissioner or the Police Commissioner's designee;

- (v)** when on any property owned, leased, operated by, or under the control of the Department of Natural Resources, the Secretary of Natural Resources or the Secretary's designee;
- (vi)** when on any property owned, leased, operated by, or under the control of the Maryland Transportation Authority, the Maryland Aviation Administration, or the Maryland Port Administration, the respective chief of police or the chief's designee; and
- (vii)** unless there is an agreement otherwise with the Department of State Police, the Department of State Police Barrack Commander or designee.
- (3)** The notification required under paragraph (2) of this subsection shall be made:
- (i)** in advance, if practicable; or
- (ii)** if advance notification is not practicable, as soon as possible after the exercise of the powers.
- (4)** When acting under the authority granted in this subsection, a member of the Intelligence and Investigative Division shall have all the immunities from liability and exemptions as that of a State Police officer in addition to any other immunities and exemptions to which the member may otherwise be entitled.
- (5)** A member of the Intelligence and Investigative Division who uses the authority granted in this subsection shall at all times and for all purposes remain an employee of the Intelligence and Investigative Division.
- (d) Investigator -- Minimum qualifications.** -- An individual who is employed as an investigator in the Intelligence and Investigative Division shall meet the minimum qualifications required and satisfactorily complete the training prescribed by the Maryland Police Training Commission.

## History

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1999, ch. 393; 2014, ch. 217.



## Md. General Provisions Code Ann. § 4-311

Current through October 1, 2017, of the 2017 Regular Session of the Maryland General Assembly.

[Annotated Code of Maryland](#) > [GENERAL PROVISIONS](#) > [TITLE 4. PUBLIC INFORMATION ACT](#) > [SUBTITLE 3. DENIALS OF INSPECTION](#) > [PART II. REQUIRED DENIALS FOR SPECIFIC RECORDS](#)

### § 4-311. Personnel records

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**(a) In general.** -- Subject to subsection (b) of this section, a custodian shall deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information.

**(b) Required inspections.** -- A custodian shall allow inspection by:

- (1)** the person in interest; or
- (2)** an elected or appointed official who supervises the work of the individual.

### History

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An. Code 1957, art. SG, § 10-616(i); 2014, ch. 94, § 2.

Annotated Code of Maryland

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## Md. STATE PERSONNEL AND PENSIONS Code Ann. § 3-302

Current through October 1, 2017, of the 2017 Regular Session of the Maryland General Assembly.

[Annotated Code of Maryland](#) > [STATE PERSONNEL AND PENSIONS](#) > [DIVISION I. STATE PERSONNEL](#) > [TITLE 3. COLLECTIVE BARGAINING](#) > [SUBTITLE 3. RIGHTS OF EMPLOYEES AND EMPLOYERS; STRIKES, LOCKOUTS, AND UNFAIR LABOR PRACTICES PROHIBITED.](#)

### § 3-302. Rights of the State

---

The State, through its appropriate officers and employees, has the right to:

**(1)**

**(i)** determine the mission, budget, organization, numbers, types and grades of employees assigned, the work projects, tours of duty, methods, means, and personnel by which its operations are to be conducted, technology needed, internal security practices, and relocation of its facilities; and

**(ii)** maintain and improve the efficiency and effectiveness of governmental operations;

**(2)** determine the:

**(i)** services to be rendered, operations to be performed, and technology to be utilized; and

**(ii)** overall methods, processes, means, and classes of work or personnel by which governmental operations are to be conducted;

**(3)** hire, direct, supervise, and assign employees;

**(4)**

**(i)** promote, demote, discipline, discharge, retain, and lay off employees; and

**(ii)** terminate employment because of lack of funds, lack of work, under conditions where the employer determines continued work would be inefficient or nonproductive, or for other legitimate reasons;

**(5)** set the qualifications of employees for appointment and promotion, and set standards of conduct;

**(6)** promulgate State or Department rules, regulations, or procedures;

**(7)** provide a system of merit employment according to the standard of business efficiency; and

**(8)** take actions, not otherwise specified in this section to carry out the mission of the employer.

### History

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**.01 Scope.**

These regulations outline the requirements for the collection of evidence in cases of alleged rape, sexual offense, and child sexual abuse and for reimbursement to hospitals, laboratories, and physicians for the physical examination of, the collection of evidence from, and the emergency treatment of individuals for physical injuries directly resulting from the alleged rape or sexual assault and for an initial assessment, and information and evidence collection, of a victim of alleged child sexual abuse.

## **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Child" means any individual younger than 18 years old.

(2) "Department" means the Maryland Department of Health.

(3) "Emergency hospital treatment" means the provision of those services which are medically necessary to treat the victim's physical health or alleviate the victim's severe pain or discomfort.

(4) "Examination" means a medical examination, including the necessary tests, for the purpose of establishing and gathering information and evidence as to the alleged rape or sexual offense only.

(4-1) "Forensic nurse examiner" means a registered nurse examiner certified by the Maryland Board of Nursing.

(5) Initial Assessment.

(a) "Initial assessment" means an appraisal for the purpose of establishing and gathering information and evidence as to alleged child sexual abuse.

(b) "Initial assessment" includes a:

(i) Psychological evaluation;

(ii) Parental interview; and

(iii) Medical evaluation.

(6) "Interdisciplinary team expert in the field of child abuse" means a licensed physician, psychologist, social worker, nurse practitioner, nurse, or mental health professional working in a setting that specializes in child abuse.

(7) "Mental health professional" means a board-eligible or board-certified psychiatrist, a licensed psychologist, or a person with a minimum of a master's degree and clinical training in an accepted mental health field, including the fields of counseling, nursing, occupational therapy, psychology, and social work.

(8) "Physician" means a person licensed to practice medicine in Maryland.

(9) "Provider" means a physician, hospital, or laboratory.

(10) "Qualified hospital health care personnel" means a licensed employee of a hospital licensed by the State.

(11) "Rape" means a criminal act of vaginal intercourse as defined under Criminal Law Article, §§3-303 and 304, Annotated Code of Maryland.

(12) Sexual Abuse.

(a) "Sexual abuse" means an act that involves sexual molestation or exploitation of a child whether or not the sexual molestation or exploitation of the child is by a parent or other person who has permanent or temporary care, or custody or responsibility for supervision of a child, or by a household or family member.

(b) "Sexual abuse" includes, but is not limited to:

(i) Incest, rape, or sexual offense in any degree;

(ii) Sodomy; and

(iii) Unnatural or perverted sexual practices.

(13) "Sexual offense" means a criminal sexual act or sexual contact as defined under Criminal Law Article, §§3-305—3-308, Annotated Code of Maryland.

(14) "Victim" means a person who is alleged to be the subject of rape, sexual offense, or child sexual abuse.

### **.03 Alleged Rape or Sexual Offense Victim Care.**

A. The victim shall be considered an emergency patient with special needs. The victim shall be taken immediately to a quiet private area where tests and examinations will be performed on the victim. The following measures are indicated under certain circumstances:

(1) Prophylactic medication shall be discussed and offered to the victim who is at risk for pregnancy as a result of the alleged rape or sexual assault;

(2) Prophylactic medication shall be discussed and offered to the victim who is at risk for sexually transmitted infections and recommended initial tests and follow-up tests shall be performed, if indicated;

(3) After the victim has been properly informed as to the significance of testing for the presence of the human immunodeficiency virus (HIV), the victim shall be referred to the appropriate anonymous or confidential, and free HIV counseling and test sites for potential baseline and follow-up testing and support services;

(4) Injuries suffered by the victim shall be treated with appropriate consultation, as necessary; and

(5) Tetanus prophylaxis may be administered, if indicated.

#### **B. Sexual Assault.**

(1) A sexual assault forensic examination shall be performed if:

(a) The victim is seen within 120 hours of the alleged sexual offense; and

(b) Either:

(i) A police report has been filed with the appropriate law enforcement jurisdiction; or

(ii) A property-held number is assigned to the case in the event that a victim does not wish to file a police report immediately but still seeks to have evidence collected and held.

(2) A sexual assault forensic examination shall be performed only by a:

(a) Physician; or

(b) Forensic nurse examiner.

(3) When performing a sexual assault forensic examination, a physician or a forensic nurse examiner shall use the Maryland State Police victim sexual assault evidence collection kit or a comparable evidence collection kit and shall follow the kit instructions including:

(a) Packaging the victim's clothing in paper bags; and

(b) Collecting the following specimens:

(i) Blood sample (lavender cap);

(ii) Vaginal swabs (a minimum of four);

(iii) Oral swabs (a minimum of two);

(iv) Pubic hair combings;

(v) Pulled pubic hair;

(vi) Pulled head hair; and

(vii) If indicated, anal swabs, bite mark swabs, and fingernail scrapings.

C. A physician or forensic nurse examiner shall follow the procedures as indicated to establish evidence of alleged rape or sexual offense, depending on the specifics of the crime as described by the victim:

(1) Obtain from each of the following areas, if indicated, a smear to be fixed and stained according to the Papanicolaou technique:

(a) Endocervical canal;

(b) Vaginal pool;

(c) Vulva;

(d) Mouth; and

(e) Anal area;

(2) Obtain culture for gonorrhea from cervix, rectum, and nasopharynx, if indicated, and plate it immediately;

(3) Obtain vaginal, oral, or rectal aspirate for acid phosphatase testing, if indicated;

(4) Obtain a blood sample for syphilis testing and refer patient to a healthcare provider of choice for repeat sample in 4—6 weeks;

(5) Obtain X-rays necessary to establish evidence of physical injuries sustained as a direct result of the alleged rape or sexual offense; and

(6) Obtain either a urine sample or a blood sample for beta subunit of human chorionic gonadotropin for a pregnancy test and recommend and refer the victim to a healthcare provider of choice for a second test in 4—6 weeks, if indicated.

D. A physician or forensic nurse examiner shall submit the evidence collected to the appropriate law enforcement jurisdiction.

## **.04 Alleged Child Sexual Abuse Victim Care.**

A. The professional involved in the care of the victim of alleged child sexual abuse shall make every effort to minimize additional physical or emotional trauma to the child.

B. The following protocol is recommended for the initial assessment:

(1) A history of the child shall be obtained from the parent, guardian, or custodian separately from the child, if possible, and shall:

- (a) Minimize repetitive questioning of the child;
- (b) Recognize that the child is often threatened and afraid to tell; and
- (c) Include a review of behavior relevant to sexual abuse;

(2) A physician or forensic nurse examiner shall perform a thorough pediatric physical examination on the child in the presence of a supportive adult not suspected of being party to the abuse and a physician or forensic nurse examiner shall:

- (a) Use gentleness, time, sedation, or general anesthesia if absolutely necessary;
- (b) Note evidence of physical abuse and injuries;
- (c) Avoid internal anogenital examinations except when internal injuries are suspected;
- (d) Perform a gender specific examination on the male child to include:
  - (i) Examining thighs, penis, scrotum, testes, and anus for evidence of injury and infection, and
  - (ii) Noting Tanner stage;
- (e) Perform a gender specific examination on the female child to include:
  - (i) Examining thighs, labia majora and minora, clitoris, urethra, hymen and vaginal wall (especially posteriorly) for evidence of injury and infection and noting horizontal hymenal opening diameter;
  - (ii) Maintaining a frog-leg position during the examination; and
  - (iii) Noting Tanner stage;
- (f) Perform a routine pelvic examination on the postpubertal female child only if the victim has had a previous pelvic examination;

(3) Depending on the specifics of the individual case and exercising best professional judgment, a physician or forensic nurse examiner may perform a rape examination if the child is seen within 120 hours of alleged sexual abuse, and the examination shall:

- (a) Include only applicable parts of the rape kit; and
- (b) Maintain the chain of custody of evidence;

(4) The physician or forensic nurse examiner shall obtain laboratory tests when the tests are indicated from information obtained through the child's history or physical examination;

(5) A psychological assessment shall include:

- (a) A review of what happened to the child from the child's perspective;
- (b) The use of play, dolls, or drawings as a way for the younger child to communicate what happened to the child;
- (c) An assessment of the effect of the alleged sexual abuse on the child; and
- (d) A developmentally age-appropriate description of the psychological findings and any indications for follow-up care;



(6) An interview with a parent, guardian, or custodian shall include a:

(a) Review from the parent's, guardian's, or custodian's understanding of the alleged child abuse;

(b) Description of any behavioral manifestations that may be observed in the child such as fears, clinging, sleep disturbances, bed-wetting, somatic complaints, or school problems; and

(c) Discussion of anticipated medical or investigative follow-up, or both, pursuant to Family Law Article, Title 5, Subtitle 7, Annotated Code of Maryland;

(7) Professionals qualified to gather information and evidence as part of the initial assessment include:

(a) A physician;

(b) Qualified hospital health care personnel;

(c) A mental health professional; and

(d) An interdisciplinary team expert in the field of child abuse.

## **.05 Reimbursements.**

### A. Restrictions. A provider:

(1) May not charge the victim or the victim's family of an alleged rape, sexual offense, or child sexual abuse for a physical examination or an initial assessment for the purpose of establishing and gathering information and evidence as to the alleged crime or for emergency hospital treatment and follow-up medical testing performed up to 90 days after the initial physical examination;

(2) May not bill a victim of an alleged rape, sexual offense, or child sexual abuse, or the victim's family or private insurance, for any difference between charges and Department reimbursement; and

(3) Shall accept the Department's reimbursement as payment in full.

### B. Physicians Providing Services to Victims of Alleged Rape or Sexual Offense.

(1) The Department shall pay a physician the physician's usual and customary fee not to exceed \$80 for examination and collection of evidence, if the following are submitted to the Maryland Department of Health, Center for Health Promotion, 300 West Preston Street, Suite # 410, Baltimore, MD 21201:

(a) The forms found in the Maryland State Police sexual assault kit, or comparable evidence collection kit, which are:

(i) Filled out completely;

(ii) Typed or legibly written;

(iii) Signed and dated by the examining physician; and

(iv) Bearing the police central complaint number or a similar police case identifier or a property-held number in accordance with Regulation .03B(1)(b) of this chapter; and

(b) A completed MDH form 2923, as developed by the Department, containing the signature of the victim or the victim's representative, indicating informed consent for medical examination, collection of evidence, and release of information.

(2) The Department shall pay the physician's usual and customary fee for consultation and for rendering emergency hospital treatment and necessary follow-up medical testing obtained within 90 days of the initial physical examination, for injuries sustained as a result of alleged rape or sexual assault.

(3) If there is a physician's fee component in the emergency room rate as established by the Health Services Cost Review Commission, there is no additional payment for the physician.

### C. Physicians Providing Services to Victims of Alleged Child Sexual Abuse.

(1) The Department shall pay a physician the physician's usual and customary fee or the customary fee of those individuals under the physician's supervision, qualified to participate in the gathering of information and evidence through an initial assessment as defined under Regulation .02B of this chapter, not to exceed \$80 per hour for up to 5 hours. The Department shall pay a physician only if a report:

(a) Is filled out completely as to the assessment done;

(b) Is typed or legibly written;

(c) Is signed and dated by the physician or cosigned by the physician and other qualified professionals providing services;

(d) Includes the police central complaint number, a property-held number, or other case identifier; and

(e) Includes either a completed MDH Form 2923 or 4456, as developed by the Department.

(2) If there is a physician's fee component in the emergency room or outpatient clinic rate as established by the Health Services Cost Review Commission, there is no additional payment for the physician.

D. Hospital. The Department shall pay the established rate as determined by the Health Services Cost Review Commission for the use of the emergency room or outpatient clinic and the daily in-hospital rate in case of hospitalization for physical injuries directly resulting from the alleged sexual assault or abuse.

E. Laboratory. The Department shall pay the established rate as defined by the Health Services Cost Review Commission for laboratory tests necessary to establish and gather information and evidence of the crime, and for screening of the victim for pregnancy and sexually transmitted infections.

F. Billing.

(1) Except as provided in §F(3) of this regulation, in order to get paid a provider shall submit itemized bills to the Department within 90 days of the rendering of care.

(2) If a provider submits a bill more than 90 days but less than 180 days after the initial physical examination, the provider shall submit a written request for payment stating the specific reasons why the itemized bills were not timely submitted in accordance with §F(1) of this regulation.

(3) The Department may pay bills received more than 90 days but less than 180 days after the initial physical examination if the Department determines that the provider has set forth a legitimate explanation for not submitting the bill within 90 days of rendering care.

(4) To identify the alleged sexual offense, a bill submitted by a provider under this chapter shall contain:

(a) A police central complaint number or other case identifier; or

(b) A property-held number assigned in accordance with Regulation .03B(1)(b)(ii) of this chapter when there is no police central complaint number or similar police case identifier because a criminal prosecution is not being pursued.

(5) The provider of services shall secure signed informed consent for examination and collection of evidence in cases of alleged rape or sexual offense with authorization for release of information on such forms as are developed by the Department. The providers shall supply the Department with any information requested concerning services rendered.

G. Payment under this chapter is contingent on the availability of funds according to State Finance and Procurement Article, §§7-234 and 7-235, Annotated Code of Maryland.

**Title 12**  
**DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES**

**Subtitle 02 DIVISION OF CORRECTION**

**Chapter 28 Administrative Remedy Procedures to Resolve Inmate Complaints**

Authority: Correctional Services Article, §§2-109, 3-205, 3-209, and 3-211, Annotated Code of Maryland

**.01 Purpose.**

A. Under the authority granted the Secretary of Public Safety and Correctional Services under Correctional Services Article, §2-103, Annotated Code of Maryland and concurrence of the Commissioner of Correction and Director of Patuxent Institution:

- (1) These regulations apply to an inmate in the custody of the Division of Correction and the Patuxent Institution; and
- (2) Responsibilities previously assigned under the Administrative Remedy Procedures to the Director of Patuxent Institution, such as reviewing, approving, and reporting are now the responsibility of the Commissioner of Correction.

B. These regulations establish procedures for an inmate to seek resolution of a complaint through:

- (1) Informal resolution with facility staff;
- (2) The Administrative Remedy Procedure, which is a formal process consisting of:
  - (a) Presentation of the complaint to the managing official for investigation and resolution; and
  - (b) An appeal to the Commissioner of Correction.

C. Except as permitted by the Inmate Grievance Office under COMAR 12.07.01, an inmate shall exhaust the remedies available under this chapter before submitting a complaint to the Inmate Grievance Office.

**.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Administrative Remedy Procedure (ARP)” means a formal process established by the Commissioner of Correction to address inmate complaints concerning conditions of confinement.

(2) “Administrative Remedy Coordinator (ARC)” means an employee designated by the Commissioner of Correction or Managing Official to receive, acknowledge, and direct the investigation of ARP complaints and to maintain all records relating to the complaints according to procedures set forth in this chapter.

(3) “Appeal” means the process by which an inmate seeks review by the Commissioner of Correction of a decision regarding a complaint submitted under the ARP at the correctional facility level.

(4) “Closely related issues” means matters that are the result of single incident or condition.

(5) “Commissioner” means the Commissioner of Correction.

(6) “Conditions of confinement” means any circumstances, situations, or events that involve an inmate’s custody, transportation, incarceration, or supervision.

(7) “Correctional facility” means a facility within the Division of Correction or Patuxent Institution that is operated for the purpose of confining an individual who is committed to the custody of the Commissioner.

(8) “Department” means the Department of Public Safety and Correctional Services.

(9) “Formal resolution” means a written decision and, if appropriate, relief from the managing official or Commissioner regarding an inmate complaint filed under the ARP.

(10) “Frivolous” means a complaint that:

- (a) Is not serious or practical; or
- (b) Shows on its face a complete lack of substance or merit.

(11) “Informal resolution” means the process by which an inmate seeks relief for a complaint from facility staff under this chapter other than through the ARP.

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(12) “Inmate” means an individual committed to the custody of the Commissioner and housed in a Division of Correction or Patuxent Institution correctional facility.

(13) “Malicious” means an act that is spiteful, shows ill will, or demonstrates intent to cause harm.

(14) “Managing official” means the warden or other individual responsible for the management of a correctional facility.

(15) “May not” means an absolute prohibition and does not imply discretion.

(16) “Procedural dismissal on preliminary review” means the administrative refusal to accept, investigate, or process an inmate complaint under the ARP, because the inmate’s complaint:

(a) Exceeds time limits for filing the complaint;

(b) Does not provide required or sufficient information;

(c) Is incomplete; or

(d) Is determined to be frivolous or malicious.

(17) “Remedy” means an action to resolve conditions or circumstances that resulted in an inmate complaint under this chapter.

(18) “Working day” means a day of the week excluding weekend days, State holidays, or days on which State offices are closed.

**.03 Organization and Responsibilities.**

A. The Commissioner, or a designee, is responsible for:

(1) Oversight of the ARP;

(2) Ensuring that a managing official properly applies ARP policy and procedures authorized under this chapter;

(3) Designating a Headquarters ARC;

(4) Designating Headquarters staff to investigate or delegate ARP investigative responsibilities authorized under this chapter;

(5) Responding to appeals within the established time frame; and

(6) Reviewing ARP decisions on appeal from the correctional facility level.

B. The Headquarters ARC is responsible for:

(1) Managing ARP duties at the Headquarters level;

(2) Ensuring that Headquarters staff perform and complete ARP assignments according to requirements under this chapter;

(3) Reporting to the Commissioner, or a designee, compliance issues related to the ARP;

(4) Processing ARP appeals within the established time frame;

(5) Receiving, acknowledging, and directing investigations related to an ARP appeal;

(6) Maintaining documents and records related to the ARP;

(7) Developing and implementing training programs for investigators and ARCs structured to facilitate the ARP; and

(8) Ensuring facility compliance with requirements of this chapter by auditing correctional facility activities related to inmate complaints.

C. A managing official, or a designee, is responsible for:

(1) Oversight of and compliance with procedures to resolve inmate complaints at the managing official’s correctional facility;

(2) Designating a facility ARC and an alternate facility ARC from the following positions:

(a) Case management specialist; or

(b) Correctional officer;

- (3) Ensuring that facility staff are aware of the ARP by:
  - (a) Providing each new employee with an Administrative Remedy Procedure Fact Sheet for new employees;
  - (b) Having the new employee sign a receipt for the Administrative Remedy Procedure Fact Sheet for New Employees; and
  - (c) Having the signed receipt placed in the employee's facility personnel file;
- (4) Ensuring that staff attempt to resolve inmate complaints at the lowest possible level;
- (5) Responding to inmate complaints within the established time frame; and
- (6) Ensuring that the Introduction to the Administrative Remedy Procedure form is read to the inmate as part of inmate orientation and included in the inmate handbook.

D. A facility ARC is responsible for:

- (1) Processing ARP complaints at the ARC's facility in accordance with established procedures and within the required time frame;
- (2) Ensuring that facility staff complete ARP related duties in accordance with established procedures;
- (3) Maintaining documents and records related to resolving inmate complaints under this chapter;
- (4) Reporting ARP non-compliance issues to the managing official;
- (5) Ensuring that ARP forms are available from case management, housing unit officers, and the inmate library; and
- (6) Ensuring that appropriate accommodations are made for an inmate with limited English proficiency or a disability that affects the inmate's ability to file a complaint under the ARP in accordance with Department procedures.

E. A unit liaison:

- (1) Is an employee assigned by the managing official, or a designee, to be the ARC's point of contact in the unit investigating an ARP complaint; and
- (2) When assigned an ARP investigation, shall conduct or reassign the investigation to an employee in the same unit.

F. An individual designated to investigate an ARP complaint under this chapter shall:

- (1) Thoroughly investigate the complaint using the Administrative Remedy Procedure Case Summary form; and
- (2) Complete the assigned investigation and forward documentation to the ARC assigning the investigation within the time limit established for the investigation.

G. The managing official, or a designee, shall ensure that:

- (1) Forms required by an inmate to request resolution of a complaint under this chapter are available to the inmate; and
- (2) If requested, the inmate is provided appropriate assistance with reading and completing the form.

**.04 Conditions of Confinement Subject to the ARP.**

A. An inmate may use the ARP to resolve a complaint related to:

- (1) Correctional facility policy and procedures;
- (2) Medical and mental health services;
- (3) Access to a court;
- (4) Religious liberties;
- (5) Inmate property that is:
  - (a) Lost;
  - (b) Damaged;
  - (c) Stolen;
  - (d) Destroyed; or
  - (e) Confiscated;

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- (6) Complaints against staff;
- (7) Use of force;
- (8) Sentence computation and diminution of confinement;
- (9) Correctional facility conditions affecting inmate:
  - (a) Health;
  - (b) Safety; or
  - (c) Welfare;
- (10) Retaliation for seeking to resolve a complaint through the ARP;
- (11) Management and application of the procedures under this chapter for resolving an inmate complaint;
- (12) Commissary; and
- (13) Inmate telephone system.

B. An inmate may not use the ARP to resolve a complaint concerning:

- (1) Case management recommendations and decisions;
- (2) Parole Commission procedures and decisions;
- (3) Inmate disciplinary hearing procedures and decisions;
- (4) Appeals of a decision to withhold inmate mail; or

(5) The following acts by staff or another inmate, which shall be addressed according to Department procedures for addressing complaints under the Prison Rape Elimination Act:

- (a) Rape;
- (b) Sexual assault, sexual harassment, sexual abuse; and
- (c) Other sexual misconduct.

**.05 Inmate Complaint Resolution — Overview.**

A. An employee who is assigned to investigate and respond to an inmate complaint under this chapter shall work with the inmate to attempt to resolve the inmate’s complaint at the lowest level of inmate supervision.

B. The process for resolving an inmate complaint consists of two components:

- (1) Informal resolution; and
- (2) Formal resolution through the ARP.

C. Informal Resolution.

(1) An inmate may attempt to resolve a complaint informally by working with appropriate staff to reach a remedy to the conditions resulting in the inmate complaint.

(2) An inmate may initiate a formal request to resolve the complaint if:

- (a) The inmate and staff are unable to remedy the inmate complaint; or
- (b) Staff does not respond to the inmate’s informal complaint.

(3) An inmate is not required to exhaust the informal resolution procedure in order to file a request for formal resolution through the ARP.

D. Formal resolution of an inmate complaint consists of utilizing the ARP to file:

- (1) A request for administrative remedy with the managing official; and
- (2) An appeal to the Commissioner, if the inmate is not satisfied with the managing official’s response to the request for an administrative remedy.

E. If the inmate's complaint is not resolved after an appeal under the ARP, the inmate may file a grievance with the Inmate Grievance Office according to procedures under COMAR 12.07.01.

F. An inmate may not file a request to resolve a complaint under this chapter:

- (1) On behalf of another inmate, staff, or other third person, such as a visitor; or
- (2) Brought as a class action.

G. The transfer of an inmate to another facility in the Department does not terminate the ARP, although the transfer of an inmate may be relevant to a determination whether the request is moot or whether relief is available.

H. Filing a complaint with the Department's Intelligence and Investigative Division does not:

- (1) Constitute an administrative remedy; and
- (2) Excuse the inmate from the requirement of pursuing an administrative remedy under this chapter.

I. An inmate is responsible for:

- (1) Using the ARP for the intended purpose; and
- (2) Being honest and straightforward throughout the process.

J. An inmate may not be subject to retaliation because the inmate used the procedures established under this chapter to resolve an issue and:

(1) An inmate may use the ARP or an informal resolution to resolve a complaint of retaliation for using the procedures established under this chapter.

(2) If the inmate's complaint of retaliation is confirmed, the managing official shall ensure that the appropriate action is taken in accordance with the Department's Standards of Conduct.

**.06 Limiting Requests for Formal Resolution of Inmate Complaints under ARP.**

A. The Commissioner, based on a recommendation from a managing official, may limit the number of inmate complaints for which an inmate may request formal resolution under the ARP.

B. The Commissioner shall base a decision to limit an inmate's requests for formal resolution under the ARP on the inmate's history of complaints under the ARP considering, at a minimum:

(1) The number of formal resolution requests filed by the inmate during the 6 months immediately preceding the date of the most recent request for formal resolution;

(2) Of the number of requests under §B(1) of this regulation, the number that were:

(a) Substantiated; and

(b) Procedurally dismissed on preliminary review based on a finding that the inmate's complaint was frivolous or malicious; and

(3) Information provided by the managing official supporting a recommendation to limit the inmate's requests for formal resolution under the ARP.

C. A managing official seeking to limit the number of requests for formal resolution under the ARP that an inmate may submit shall:

(1) Submit the request to the Commissioner in writing in a format and on forms approved by the Commissioner;

(2) Include in the written request the information required under §§B(1)—(3) of this regulation; and

(3) Recommend to the Commissioner:

(a) The number of requests an inmate may submit for formal resolution under ARP; and

(b) The period for which the proposed limit remains in effect.



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D. The Commissioner shall:

- (1) Review a request to limit an inmate's use of the formal resolution process under the ARP; and
- (2) Respond to the managing official in writing:
  - (a) Approving or denying the request; or
  - (b) Indicating a different:
    - (i) Number of requests an inmate may submit for formal resolution under the ARP; or
    - (ii) Period for which the limit remains in effect.

E. If the Commissioner denies the request, the Commissioner shall include in the written response to the managing official the reason for the denial.

**.07 Withdrawing an ARP Request or ARP Appeal.**

A. An inmate filing an ARP request or appeal may withdraw the request or appeal at any time prior to the issuance of a decision on the request or appeal.

B. An inmate withdrawing a request or appeal shall submit the request to withdraw the request or appeal:

- (1) In writing using an Administrative Remedy Procedure Withdrawal form (Withdrawal form); and
- (2) To the facility ARC receiving the original ARP request or the Headquarters ARC receiving the appeal.

C. An ARC receiving a properly completed Withdrawal form shall:

- (1) Take steps to stop any action taking place related to the inmate complaint;
- (2) Appropriately record action taken in response to the withdrawal request;
- (3) File the original Withdrawal form in the appropriate ARP file; and
- (4) Provide the inmate with a copy of the finalized Withdrawal form.

**.08 Informal Resolution of an Inmate Complaint.**

A. As soon as possible after the incident resulting in the complaint occurred or the date the inmate first had knowledge of the incident, an inmate seeking informal resolution of a complaint under this chapter shall:

- (1) Document the request in writing on an Informal Inmate Complaint form; and
- (2) Forward the completed form to the appropriate unit head or shift commander.

B. An inmate may file as many forms as necessary to address the incident; however, only one complaint may be on a single form.

C. When completing the Informal Inmate Complaint form, the inmate shall:

- (1) Provide:
  - (a) The subject of the complaint;
  - (b) The date the incident occurred or the inmate first had knowledge of the incident;
  - (c) The names of other individuals involved;
  - (d) A brief description of the incident or complaint; and
- (2) Date and sign the completed form.

D. Filing a request for informal resolution of an inmate complaint does not extend the period for filing a request for formal resolution under Regulation .09 of this chapter.

E. A unit head or shift commander receiving an Informal Inmate Complaint form shall:

- (1) Record on the form the date received and the initials of the individual receiving the form;
- (2) Provide a copy of the receipted form to the inmate;

(3) Assign an individual, if possible familiar with the subject matter area involved in the complaint, to, within 15 calendar days of the date recorded on the request indicating receipt by the unit head or shift commander:

- (a) Review the form to establish the basis of the complaint;
- (b) Research and review appropriate reports, records, policies, procedures and other documents;
- (c) Assess merit of the complaint in light of items under §E(3)(b) of this regulation;
- (d) If applicable, recommend a remedy to resolve the complaint; and
- (e) Draft and submit a response, with or without consultation with the unit head or shift commander, on the form to the individual assigning the case for review.

F. A unit head or shift commander receiving a report under §E(3)(e) of this regulation shall:

- (1) Review and, if the report is properly completed in accordance with provisions established under this chapter, sign and date the form;
- (2) Ensure that a copy of the form is provided to the inmate filing the request; and
- (3) If appropriate, ensure that the approved steps are taken to grant the approved remedy.

**.09 Formal Resolution of an Inmate Complaint — Requests.**

A. A request for formal resolution of a complaint under this chapter may be filed only by an inmate.

B. An inmate seeking formal resolution of a complaint under this chapter, as soon as possible, but no later than 30 days after the date of the incident resulting in the complaint or the date the inmate first had knowledge of the incident, whichever is later, shall:

- (1) Document the request in writing using an Administrative Remedy Procedure Request for Administrative Remedy form (Request form); and
- (2) Submit the completed Request form in accordance with the managing official's written instructions.

C. A staff member receiving a Request form under §B(2) of this regulation shall:

- (1) Date and sign the Request form;
- (2) Provide the inmate with a copy of the dated and signed Request form; and
- (3) Forward the Request form for processing in accordance with written procedures established by the managing official.

D. When completing the Request form, the inmate shall:

- (1) Use a typewriter or a black or blue ink pen;
- (2) Provide:
  - (a) The subject of the complaint;
  - (b) The date the incident occurred or the inmate first had knowledge of the incident;
  - (c) The names of other individuals involved;
  - (d) A brief description of the incident or complaint;
  - (e) Steps, if any, taken toward an informal resolution of the complaint; and
  - (f) Relief requested to resolve the complaint; and
- (3) Date and sign the completed Request form.

**.10 Formal Resolution of an Inmate Complaint — Preliminary Review.**

A. Facility Preliminary Review of a Request Form.

- (1) Within 5 working days of the date of receipt of a Request form by the managing official, the facility ARC shall:
  - (a) Assign a case number to the request according to requirements established in Regulation .19 of this chapter;
  - (b) Index the request according to requirements established in Regulation .19 of this chapter; and

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- (c) Review the request to determine if the request:
  - (i) Is frivolous or malicious;
  - (ii) Is complete and submitted according to requirements under this chapter;
  - (iii) Is eligible for resolution under this chapter; and
  - (iv) Has been submitted within established time requirements; and
- (d) Take action required under §A(2) or (3) of this regulation.
- (2) If the request is determined to be frivolous or malicious, the managing official, or a facility ARC, shall:
  - (a) Properly complete the appropriate part of the Request form; and
  - (b) Record that the request is procedurally dismissed as being frivolous or malicious, or both.
- (3) If the Request form is determined to be incomplete and the missing information is necessary to review the inmate's complaint, the managing official or facility ARC shall:
  - (a) Properly complete the appropriate part of the Request form;
  - (b) Record that the request is procedurally dismissed as being incomplete;
  - (c) Provide specific direction to resolve the noted issue;
  - (d) Establish a due date for the resubmission that is the later of:
    - (i) 15 calendar days from the date of the procedural dismissal; or
    - (ii) 30 calendar days of the date of the original submission of the Request form;
  - (e) Return the completed Request form and a blank Request form to the inmate; and
  - (f) File a copy of the completed Request form in the appropriate ARP file.
- (4) A Request form may not be determined incomplete and therefore procedurally dismissed pending resubmission under §A(3) of this regulation solely because the inmate did not include information concerning actions taken to informally resolve the complaint.
- (5) After the managing official or a facility ARC reviews a Request form, the facility ARC shall:
  - (a) Appropriately process the request based on the action resulting from the preliminary review;
  - (b) Ensure that the affected individuals are notified of the result of the preliminary review;
  - (c) If the Request form is not subject to procedural dismissal on preliminary review on the date the case is indexed:
    - (i) Review the request to determine the nature of the case and assign the case for investigation by an individual familiar with the nature of the case; and
    - (ii) Return the receipt portion of the Request form to the inmate filing the request; and
  - (d) Appropriately file the ARP documents.

B. Headquarters Preliminary Review of a Request Form. If a Request form is submitted directly to the Commissioner without being submitted first to the inmate's managing official, the Commissioner, or a designee, shall:

- (1) Refer the Request form to the appropriate managing official including the date that the request was received by the Commissioner;
- (2) Record the Request form in the Headquarters index without a case number; and
- (3) Notify the inmate submitting the Request form, in writing, of the request being referred to the managing official.

C. A managing official who receives a Request form from the Commissioner shall process the Request form in accordance with provisions under §A of this regulation.

**.11 Procedural Dismissal on Preliminary Review — Resubmission.****A. Incomplete Request — Eligible for Resubmission.**

(1) A dismissal on preliminary review of a Request form may be resubmitted if the procedural dismissal on preliminary review is based on:

- (a) An incomplete request form; or
- (b) A requirement for more information than that provided on the Request form.

(2) Upon receipt of a Request form from a managing official indicating the request is to be procedurally dismissed on preliminary review because of reasons under §A(1) of this regulation, the facility ARC, within 5 working days of the date of receipt of the request by the managing official, shall:

(a) Sign, date, and return the Request form to the inmate submitting the request including written notification of the procedural dismissal on preliminary review;

(b) Provide instructions for resubmitting the request that include:

- (i) Completing a new Request form;
- (ii) Complying with instructions provided; and
- (iii) Submitting the request to the facility ARC by the date specified in the notice;

(c) Provide notice that:

(i) If the resubmission does not correct issues noted by the facility ARC, the procedural dismissal on preliminary review is final; and

(ii) If the resubmission is not received by the date established by the facility ARC indicated in the notice provided under §A(2) of this regulation, the procedural dismissal on preliminary review is final.

(3) An inmate may appeal a dismissal in accordance with the procedures set forth in Regulation .14 of this chapter.

**B. Procedural Dismissal on Preliminary Review — Ineligible for Resubmission.**

(1) A procedural dismissal on preliminary review of a Request form may not be resubmitted if the procedural dismissal on preliminary review is based on a finding by the facility ARC that the:

- (a) Inmate complaint is frivolous or malicious;
- (b) Inmate complaint is not eligible for resolution under Regulation .04 of this chapter;
- (c) Except for provisions under §B(3) of this regulation, request was not submitted within established time requirements;
- (d) Inmate complaint has previously been resolved outside the formal resolution process;
- (e) Inmate complaint has previously been resolved through the formal resolution process;
- (f) Inmate complaint is repetitive of a request previously filed by the inmate through the formal resolution process, and a response was issued as a result of the previous request;
- (g) Request is in excess of an authorized limit on the number of requests the inmate may submit; or
- (h) Incident in the Request is determined by the facility ARC to be the basis of an investigation being conducted by the Department's Intelligence and Investigative Division.

(2) Upon receipt of a Request form from a managing official, indicating the request is to be procedurally dismissed on preliminary review for reasons under §B(1) of this regulation, the facility ARC, within 5 working days of the date of receipt of the request by the managing official, shall:

(a) Sign, date, and return the Request form to the inmate submitting the request including written notification of the procedural dismissal on preliminary review;

(b) Include information as to the reason for the procedural dismissal on preliminary review;

(c) Include a statement that the procedural dismissal on preliminary review is final; and

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(d) Notify the inmate that the decision may be appealed to the Commissioner if the procedural dismissal is based on §B(1)(h) of this regulation and include in the notification the following statement:

“The request is procedurally dismissed at this level. It has been determined that the subject matter of your Request is under investigation by the Department’s Intelligence and Investigative Division under case number [insert case number here] and no further action will be taken under the Administrative Remedy Procedures at this level. You may appeal this decision to the Commissioner of Correction.”

(3) If the managing official or the facility ARC receives a Request form after the permitted time frame for submitting a Request form, the managing official or facility ARC may:

(a) Accept and process the Request form if the managing official or the facility ARC determines that the inmate has demonstrated that extraordinary circumstances prevented the inmate from submitting the Request form within the required time frame; or

(b) Procedurally dismiss the untimely Request form on preliminary review, with or without referring the untimely Request form to the appropriate facility for follow up independent of the ARP and notify the inmate that the decision may be appealed to the Commissioner.

C. When a Request form is procedurally dismissed on preliminary review, the facility ARC, on the date the request is indexed, shall:

- (1) Return the original and one copy of the request form to the inmate filing the request; and
- (2) Place a copy in the ARP file maintained by the facility ARC.

D. A procedural dismissal on preliminary review by a managing official, or a designee, may be appealed to the Commissioner according to Regulation .14 of this chapter.

#### **.12 Formal Resolution of an Inmate Complaint — Investigation.**

A. If a Request form is not procedurally dismissed under this chapter, a facility ARC:

(1) On the date the Request form is indexed, shall:

(a) Complete and send the receipt portion of the Request form to the inmate; and

(b) Review the request to determine the nature of the Request form in order to assign the investigation to the unit liaison familiar with the area or subject matter that is the basis of the Request form.

(2) May not assign the request for investigation to an employee if that assignment is to an employee who is the subject of the complaint.

B. If a Request form is received at the inmate’s current facility, but the complaint is based on an incident occurring at the inmate’s previous facility, the managing official, or facility ARC at the inmate’s:

(1) Current facility shall:

- (a) Index the Request form at the current facility;
- (b) Forward the Request form to the managing official of the facility where the incident occurred; and
- (c) Maintain a copy of the Request form at the inmate’s current facility.

(2) Previous facility shall:

- (a) Respond to the Request form as though the Request form was originally received at that facility;
- (b) Complete all requirements of the ARP as established under this chapter;
- (c) Forward a copy of the resulting ARP documentation to the current facility for:
  - (i) Notification to the inmate;
  - (ii) Updating the index; and
  - (iii) Filing in the current facility’s ARP file; and

(d) Maintain the original documentation in the current facility’s ARP files.

C. A unit liaison assigned to conduct an investigation of a Request form under this chapter is responsible for ensuring that the investigation is completed and may:

- (1) Personally conduct the assigned investigation; or
- (2) Reassign the investigation to another employee in the unit.

D. An investigation of a Request form shall, absent good cause for not conducting an interview include an interview with:

- (1) The inmate filing the Request form;
- (2) A relevant witness named by the inmate; and
- (3) A relevant employee, including a health care provider, involved in or able to provide relevant information related to the complaint and who, unless good cause exists, shall submit a written report of the information provided to the assigned investigator.

E. If interviewing an inmate or multiple inmates involved in the complaint would pose a threat to safety or security at the facility, the interviews may not be required and the justification for not conducting the interview shall be included in the Administrative Remedy Procedure Case Summary form.

F. At the North Branch Correctional Institution, interviews of relevant inmates may be conducted using the facility intercom system to accommodate security requirements; however, personal interviews shall be conducted, absent good cause, if the intercom system is inoperable at the time of the interviews or if privacy concerns prevent use of the system.

G. An investigation of a Request form shall:

- (1) In addition to interviews under §D of this regulation, include a:
  - (a) Review of records, reports, policy and procedures, and other documents relevant to the inmate complaint;
  - (b) Finding of facts that chronologically identifies the events related to the inmate complaint; and
  - (c) Recommendation and written justification determining the inmate complaint is considered:
    - (i) Meritorious;
    - (ii) Meritorious in part; or
    - (iii) Dismissed;
- (2) Be completed within the period determined by the facility ARC;
- (3) Documented using an Administrative Remedy Procedure Case Summary form that:
  - (a) Includes:
    - (i) Information obtained from interviews and, if applicable, justification for not conducting a required interview;
    - (ii) Information obtained by reviewing documents;
    - (iii) Findings of fact; and
    - (iv) A recommendation and justification for the recommendation as to the disposition of the case; and

(b) Is submitted to the managing official or facility ARC assigning the case for investigation within the time frame established by the managing official or facility ARC.

H. A managing official or facility ARC receiving a report and related documents under §G of this regulation shall review the report and related documents to ensure that the investigative actions and related documentation meet requirements of this chapter, and:

(1) If the managing official's or facility ARC's review determines that the Administrative Remedy Procedure Case Summary is deficient or incomplete shall:

- (a) Return the documents to the investigator responsible for the investigation;
- (b) Provide instruction as to correcting the identified deficiencies; and
- (c) Establish a date for the investigator to return the documents with deficiencies resolved; or

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(2) If the managing official's or facility ARC's review determines the report and related documents are sufficient, shall prepare a response using the Administrative Remedy Request form, for the managing official's signature or the Commissioner's signature to the inmate submitting the Request form that is based on:

- (a) The case summary;
- (b) Attached documentation and reports; and
- (c) The investigator's recommendation;

(3) The response required under §H(2) of this regulation shall:

(a) Be provided to the inmate within 30 calendar days of the date the inmate filed a formal complaint using the ARP, unless an extension is authorized under §K of this regulation;

(b) In the first sentence of the response appropriately state that the complaint is:

- (i) Meritorious;
- (ii) Meritorious in part; or
- (iii) Dismissed;

(c) Address each element and allegation of the complaint;

(d) Be easy to understand;

(e) Clearly state the facts upon which the decision is based;

(f) Provide an explanation of any remedy resulting from the findings;

(g) Notify the inmate that the decision may be appealed to the Commissioner; and

(h) Be forwarded to the managing official for review.

I. A managing official receiving documents under §H(3)(g) of this regulation shall review the information and if the action related to resolving the inmate complaint is determined:

(1) Unsatisfactory, return the documents to the ARC with instructions directing additional action or information and resubmittal for review; or

(2) Satisfactory, sign and date the appropriate documents and return all documents to the ARC.

J. An ARC receiving:

(1) An unsatisfactory finding under §I(1) of this regulation shall ensure steps are taken to address any deficiencies and return the document so that notification to the inmate filing the request is made within the established time frame; or

(2) A satisfactory finding under §I(2) of this regulation shall, within the established time frame, distribute:

(a) The original and one copy of the completed Request form to the inmate filing the Request form; and

(b) A copy of the Request form signed by the inmate and originals of related documents to the ARP file.

K. Extension of 30 Calendar Day Processing Requirement.

(1) If apparent that conditions beyond the correctional facility's control exist, making 30 calendar days insufficient to complete processing a Request form, the managing official is permitted one extension of 15 days.

(2) If the managing official, or a designee, extends the time for responding to a Request form, the ARC, before expiration of the original 30 calendar day period, shall:

(a) Complete an Administrative Remedy Process Extension form;

(b) Forward the completed Administrative Remedy Process Extension form to the inmate filing the Request form whose approval of the extension is not required.

(3) The ARC shall include the Administrative Remedy Process Extension form in the documents related to the Request form.

L. An inmate may appeal a decision made under this regulation in accordance with provisions under Regulation .14 of this chapter.

**.13 Request for Formal Resolution of an Inmate Complaint — Remedy.**

- A. If an inmate complaint is meritorious or meritorious in part, the response by the managing official shall include a remedy.
- B. A remedy to resolve an inmate complaint may include:
- (1) If the nature of the inmate complaint relates to substance of policy, rule, or procedure:
    - (a) Appropriate amendments that are communicated effectively and promptly to appropriate individuals; and
    - (b) Instructions for implementing change;
  - (2) If the nature of the inmate complaint relates to interpreting policy, rule, or procedure:
    - (a) Written explanation of the questioned policy, rule, or procedure that is communicated effectively and promptly to appropriate individuals; and
    - (b) Instructions for implementing change;
  - (3) If the nature of the inmate complaint relates to application of policy, rule, or procedure:
    - (a) Written direction to the appropriate employee to properly apply the policy, rule, or procedure correctly; and
    - (b) Instructions for implementing change;
  - (4) If the nature of the inmate complaint relates to individual inmate actions:
    - (a) Protection of the inmate who filed the Request form that may include reassignment of one or more of the inmates involved;
    - (b) Safeguards to prevent retaliation against the inmate; or
    - (c) Remedy to make the inmate “whole” again, such as returning property;
  - (5) If the nature of the inmate complaint relates to the computation of the term of confinement or diminution of confinement credits:
    - (a) Prompt re-computing; and
    - (b) If appropriate, expedited processing of any privileges or change in status based on the new computation;
  - (6) If the nature of the inmate complaint relates to loss of inmate property within the custody and control of the unit:
    - (a) Return or replacement of property of equal value at time of loss in accordance with standard practices for determining the value of depreciated property; or
    - (b) Monetary reimbursement equal to value of property at time of loss; or
  - (7) If the nature of the inmate complaint relates to living conditions and facilities, prompt improvement.
- C. If the remedy includes monetary reimbursement for property:
- (1) An Inmate Property Reimbursement form shall be used to calculate the amount of reimbursement at the time of the loss.
  - (2) Except under provisions of §C(3) of this regulation, the ARC shall ensure that the inmate is presented with a completed Request for Inmate Personal Property Reimbursement form indicating the reimbursement value and if the inmate:
    - (a) Accepts the value:
      - (i) The inmate shall indicate acceptance on the form;
      - (ii) The inmate shall sign the form;
      - (iii) The managing official shall ensure that the agreed to monetary reimbursement is deposited in the inmate’s facility account;
      - (iv) The ARC shall ensure that Request form documents are appropriately filed; and
      - (v) The matter is considered closed and finally resolved.
    - (b) Refuses to accept the value:
      - (i) The inmate’s refusal shall be indicated on the form;



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- (ii) The inmate shall sign the form indicating refusal to accept the reimbursement;
- (iii) The form shall be filed in the appropriate ARP file;
- (iv) No monetary reimbursement is to be deposited in the inmate's facility account; and
- (v) The matter is considered to be closed at the applicable level of the ARP.

(3) If an inmate refuses settlement under §C(1)(b) of this regulation, before the managing official's response to the inmate's complaint, the managing official's response shall:

- (a) State that the Request form is meritorious in part;
- (b) List the property that was lost or damaged;
- (c) State the amount of reimbursement offered to the inmate;
- (d) State that the inmate refused the reimbursement offered and that no monetary reimbursement is to be deposited in the inmate's facility account; and
- (e) Ensure that Request form documentation is filed in the appropriate ARP file.

D. If appropriate, a managing official may include, as a remedy, a recommendation to change policy or procedures that relate to the nature of the inmate complaint.

E. Facility staff shall fully comply with a remedy in the managing official's response to an inmate complaint under this chapter as soon as possible, but no later than 30 calendar days after the date of the response.

- (1) An ARC receiving a response from the managing official containing a remedy shall:
  - (a) Notify appropriate staff of the remedy;
  - (b) Monitor action taken to implement the remedy to ensure the remedy is fully implemented no later than 30 calendar days after the date of the response by:
    - (i) Maintaining a separate chronological file of incomplete remedies;
    - (ii) Reviewing the file at least weekly to ensure implementation; and
    - (iii) Notifying the managing official issuing the response to an inmate complaint when the remedy is not fully implemented within the required period.
- (2) After full implementation of a remedy, the ARC shall file the response according to procedures under this chapter.

#### **.14 Appeal — Requesting.**

A. An inmate filing a request for formal resolution of an inmate complaint may appeal to the Commissioner:

- (1) A procedural dismissal on preliminary review of the Request form;
- (2) The managing official's failure to provide a response within established time requirements; and
- (3) A decision by the managing official contained in the response to the Request form.

B. An inmate filing an appeal under this regulation shall:

- (1) Submit the request in writing in a format and on a form approved by the Commissioner;
- (2) Include all of the following in the appeal:
  - (a) The name of the inmate filing the appeal;
  - (b) The name of the correctional facility housing the inmate filing the appeal;
  - (c) A statement describing the reason for the appeal;
  - (d) The original case number;
  - (e) The date the appeal is submitted;
  - (f) The signature of the inmate submitting the appeal;
  - (g) A copy of the original complaint with all supporting documentation; and

- (h) A copy of the procedural dismissal on preliminary review or managing official's decision;
- (3) Include one of the following in the statement required under §B(2)(c) of this regulation as the grounds for the appeal:
  - (a) The basis for disagreement with the Facility ARC's decision or reason for procedural dismissal on preliminary review;
  - (b) The basis for disagreement with the Managing Official's decision, remedy, or response; or
  - (c) A failure by Managing Official to respond within the established time frame;
- (4) Limit the basis of the appeal to the areas identified under §B(2)(c) of this regulation without introducing a new inmate complaint; and
- (5) Except for provisions under §C of this regulation, file the appeal with the Commissioner as indicated in the notice provided in accordance with Regulation .11 of this chapter so that the Headquarters ARC receives the appeal within 30 calendar days of:
  - (a) For an appeal of a procedural dismissal on preliminary review, the date the inmate received notice of the procedural dismissal on preliminary review;
  - (b) For an appeal of a managing official's decision or remedy in a response to a Request form, the date the inmate received the response; or
  - (c) For an appeal of a Managing Official's failure to respond within the established time frame, the date the managing official's response was due to the inmate.
- C. If the inmate demonstrates that extraordinary circumstances exist that prevented submitting an appeal within the established time frame, the Commissioner may accept a late filing of an appeal.
- D. When submitting an appeal under this section, the inmate:
  - (1) Is encouraged to submit the Request form to the Commissioner using the U.S. Postal Service.
  - (2) May submit the Request form using the Department courier system knowing that the Department is not responsible if the appeal is not received within the time frame established for submitting an appeal under this chapter.
- E. Within 5 working days of the date the appeal is received by the Commissioner, the Headquarters ARC shall:
  - (1) Index the appeal according to the originally assigned case number; and
  - (2) Conduct a preliminary review of the appeal and determine to:
    - (a) Accept and process the appeal within the established time frame; or
    - (b) Procedurally dismiss the appeal on preliminary review.

#### **.15 Appeals — Preliminary Review.**

- A. The Headquarters ARC shall conduct a preliminary review of an appeal submitted in accordance with this chapter following the applicable procedures established under Regulation .10 of this chapter for a preliminary review of a Request form received by a managing official.
- B. If the Headquarters ARC procedurally dismisses on preliminary review an appeal under §A of this regulation, the Headquarters ARC shall comply with applicable requirements established under Regulations .10 and .11 of this chapter for procedurally dismissing on preliminary review a Request form received by a managing official.
- C. The Headquarters ARC shall procedurally dismiss on preliminary review, without the opportunity for re-submission, a properly submitted appeal challenging a managing official's procedural dismissal on preliminary review of a Request form if, after reviewing the managing official's rationale, the Headquarters ARC agrees with the managing official's decision.

#### **.16 Appeals — Investigation.**

- A. An appeal accepted by the Headquarters ARC shall be investigated.
  - (1) Except for a Request form dismissed in accordance with Regulation .11 of this chapter, an investigation of an appeal under this chapter shall be limited to the issues identified in the initial Request form.

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(2) On the date the Headquarters ARC indexes the appeal, the Headquarters ARC shall process the appeal for investigation using appeal related forms and documents according to applicable requirements under Regulation .12 of this chapter for investigating a Request form received by a managing official.

B. The results of an investigation of an appeal shall be recorded and communicated using appeal related forms and documents according to applicable requirements under Regulation .12 of this chapter for recording, reporting and communicating results of an investigation of a Request form received by a managing official.

**.17 Appeals — Remedy.**

A. The Commissioner, or a designee, shall respond in writing to an appeal within 30 calendar days of the date the inmate files the appeal.

B. If an appeal is found to be meritorious or meritorious in part, the response by the Commissioner shall include a remedy.

C. A remedy for an appeal may include:

- (1) Actions identified under Regulation .13 of this chapter for a Request form received by a managing official; or
- (2) Other action consistent with the purpose of the ARP.

D. Monitoring implementation of a remedy, required notification, and filing resulting from an appeal under this chapter are performed using appeal-related forms and documents according to applicable requirements under Regulation .13 of this chapter for remedies for a Request form received by a managing official.

**.18 Appeals — Inmate Grievance Office.**

An inmate may seek review by the Inmate Grievance Office according to procedures under COMAR 12.07.01 of a decision by the Commissioner or the failure of the Commissioner to file a response to an appeal within the time frame established under §A of Regulation .17 of this chapter.

**.19 Documentation — Filing — Reports.**

A. Case Indexing.

- (1) The Headquarters ARC and each facility ARC shall maintain an index of Request forms and, at Headquarters, appeals.
- (2) The Commissioner shall determine the format and content of the index.
- (3) The Headquarters ARC and each facility ARC shall establish a new index for each calendar month to record information concerning Request forms received at either level and appeals received by Headquarters.
- (4) The Headquarters ARC and a facility ARC shall index each Request form received at either level and an appeal received by Headquarters within 5 working days of the date recorded on the Request form or appeal.
- (5) The index shall record for each case:
  - (a) The name of the inmate filing the request and the inmate's identification number;
  - (b) The case number that consists of:
    - (i) The correctional facility's acronym in upper case followed by a dash;
    - (ii) A four digit sequential number beginning with 0001 on January 1st of each calendar year followed by a dash; and
    - (iii) The last 2 digits representing the calendar year;
  - (c) The date that the case is indexed;
  - (d) If appropriate, information concerning procedural dismissal on preliminary review;
  - (e) If appropriate the date a re-submission or non-concurrence decision is indexed;
  - (f) The most appropriate subject codes indicating the nature of the complaint (only 2 codes may be used);
  - (g) If the case is accepted for processing, an abstract of the complaint;
  - (h) The date the managing official or Commissioner:
    - (i) Signed the response to the inmate complaint; or
    - (ii) Procedurally dismissed the complaint;

- (i) The date the inmate signed the response indicating receipt of the response from the managing official;
- (j) The final disposition of the inmate complaint; and
- (k) Other information related to the case, such as:
  - (i) A brief description of the complaint;
  - (ii) Justification for a procedural dismissal; and
  - (iii) The date a resubmittal is due.
- (6) The Headquarters ARC and a facility ARC shall update the index at the time new information is received concerning a case.
- (7) A facility ARC shall:
  - (a) By the tenth working day of each month, forward a copy of the index for the previous month to the Headquarters ARC; and
  - (b) When dispositions have been recorded for all cases on a monthly index, forward a copy of the completed index to the Headquarters ARC.

**B. Filing — Case Records.**

- (1) Each facility ARC and the Headquarters ARC shall establish and maintain a system for filing documents related to requests for formal resolution of an inmate complaint and related appeals.
- (2) A facility ARC and the Headquarters ARC shall maintain documents related to an ARP case and related appeals for a minimum of 5 years from the date of a final disposition of the case and then dispose of the documents in accordance with the applicable document retention schedule.

**C. Program Reports.**

- (1) An ARC shall complete reports in a format and on forms approved by the Commissioner containing data that may be used to analyze the ARP.
- (2) Quarterly, during each calendar year, each facility ARC shall forward to the Headquarters ARC a copy of reports required by the Commissioner related to the ARP.

**.20 Audits.**

**A. The Commissioner, or a designee, shall establish:**

- (1) A system to audit the ARP at each correctional facility; and
- (2) A schedule for audits authorized under this chapter.

**B. An audit team consists of:**

- (1) The Headquarters ARC, or a designee; and
- (2) At least one facility ARC selected by the Headquarters ARC from a correctional facility other than the correctional facility subject to the current audit.

**C. An audit, at a minimum, consists of:**

- (1) An entrance interview with the managing official of the correctional facility being audited to:
  - (a) Explain the purpose of the audit; and
  - (b) Provide an overview of the audit process;
- (2) Examining:
  - (a) Required files and documents related to the correctional facility's use of the ARP;
  - (b) Documents related to investigations of inmate complaints under this chapter; and
  - (c) Actions taken related to implementing remedies resulting from meritorious or meritorious-in-part inmate complaints;
- (3) Conducting interviews with inmates and staff to assess the effectiveness of the ARP;

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- (4) Interviews with correctional facility staff to determine necessary amendments to the ARP; and
- (5) An exit interview with the managing official to provide an overview of findings.

D. Audit Report.

(1) Within 30 calendar days of the date an audit is completed, the Headquarters ARC shall prepare and submit to the Commissioner, or a designee, and to the respective managing official a written report summarizing:

- (a) The results of the audit; and
- (b) If appropriate, compliance issues that need to be addressed.

(2) Within 30 calendar days of the date a managing official receives an audit report from the Headquarters ARC, the managing official shall:

- (a) Acknowledge receipt of the report; and
- (b) If appropriate, provide a plan of action to correct compliance issues identified by the audit.

(3) If appropriate, the Headquarters ARC shall monitor a managing official's progress to correct noted compliance issues.

(4) A correctional facility may be subject to a non-scheduled audit or follow-up audit to determine progress on corrective action specified in a managing official's plan of action to correct compliance issues identified in an audit report.

**Administrative History**

Effective date: March 12, 2018 (45:5 Md. R. 286)

# **Title 12 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES**

## **Subtitle 03 OPERATIONS**

### **Chapter 01 Inmate Disciplinary Process**

Authority: Correctional Services Article, §§2-109(c), 3-205, 4-208, and 5-201, Annotated Code of Maryland

## **.01 Purpose.**

A. The Secretary of Public Safety and Correctional Services (Secretary), the Commissioner of Correction, the Director of Patuxent Institution, and the Commissioner of Pretrial Detention and Services have adopted the following inmate disciplinary regulations that:

(1) Establish:

(a) The process under which an inmate may be disciplined for non-compliance with a rule, policy, procedure, regulation, or statute or as otherwise provided by law;

(b) The duties and responsibilities of Department of Public Safety and Correctional Services (Department) staff under the inmate disciplinary process; and

(c) The authority for Department staff to exercise and carry out duties and responsibilities of the inmate disciplinary process; and

(2) Provide for the:

(a) Uniform administration, management, and orderly operation of the facility and Department;

(b) Orderly, safe, and secure operation and management by Department staff of Department correctional facilities, detention facilities, home detention program, and the community;

(c) Uniform administration of inmate discipline;

(d) Management and control of the Department's inmate population;

(e) Enforcement of statutes or rules as otherwise provided by law;

(f) Security of the facility, Department, and community; and

(g) Safety of an inmate, staff, an individual, and the community.

B. These regulations do not convey or create enforceable rights, interests or benefits for an inmate.

## **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Assault" means an unlawful or impermissible threat or attempt to do bodily harm to another.

(2) "Assigned area" means a location where an inmate is authorized or permitted.

(3) "Battery" means the unlawful, unauthorized, or impermissible touching or striking of an individual by another with or without consent.

(4) Business Day.

(a) "Business day" means an official working day of the week, typically, the days between and including Monday to Friday.

(b) "Business day" does not include:

(i) State holidays;

(ii) Weekends (Saturday and Sunday);

(iii) A day on which facility operations or activities are limited or reduced to only necessary or essential services due to security or safety reasons; or

(iv) A day on which Department administrative offices are closed.

(5) "Calendar day" means a day of a week.

(6) "Category of Inmate Rule Violation" means the grouping of inmate rule violations according to the severity of the offense.

(7) "CMHC-J" means the Correctional Mental Health Center-Jessup.

(8) "Competent" means the defendant is able to:

(a) Appreciate and understand the alleged inmate rule violation charged; and

(b) Participate in the inmate disciplinary process to resolve the inmate rule violation charged.

(9) "Constructive possession" means the defendant has dominion or control over an article, object, asset, substance or property based upon consideration of the following factors:

(a) The proximity of the defendant to the article, object, asset, substance, or property;

(b) The ability and means of the defendant to possess the article, object, asset, substance, or property;

(c) Whether the article, object, asset, substance, or property was within the plain view or within the knowledge of the defendant;

(d) The proprietary interest in the place where the article, object, asset, substance, or property was found or rests; or

(e) The defendant's participation with others in a common design involving mutual use and enjoyment of the article, object, asset, substance, or property.

(10) "Contraband" includes property, a device, an instrument, an article, a liquid, a substance, or a material that is:

(a) Defined as non-allowable, or is not authorized by statute, regulation, directive, or policy for an inmate to possess, transfer to another individual, or receive from another individual;

(b) Defined as allowable by statute, regulation, directive, and policy for an inmate to possess, transfer to another individual, or receive from another individual, but that is:



(i) Passed or transferred to another individual without authorization by staff, or the transfer is not permitted by the rules of the facility or Department;

(ii) Possessed in an area or location where an inmate is not permitted by the rules of the facility or Department or by order of staff to possess or use;

(iii) Altered or modified from the original purpose, form, design, use, or content;

(iv) Used for a purpose other than that which is permitted; or

(v) Required to be registered with the facility or Department and is found in the inmate's possession without the required registration under the rules of the facility or Department.

(11) "Controlled dangerous substance (CDS)" means a substance listed in schedules I through V as defined in Criminal Law Article, §§5-101(g) and 5-401—5-406, Annotated Code of Maryland.

(12) "Cumulative witness" means an individual who can only testify to facts already in evidence or whose proffered testimony would be repetitive to the proffered testimony of another witness already approved by the hearing officer to testify.

(13) "Disrespect" means a physical act, verbal statement, or gesture:

(a) Of insolence that is arrogant, presumptuous, impudent, or insulting in manner; or

(b) That demonstrates a lack of respect, directly or indirectly, toward an individual.

(14) Disruptive Act.

(a) "Disruptive act" means an action that may:

(i) Disturb the peace of the community;

(ii) Interfere with or prevent the orderly operation of a facility or community detail; or

(iii) Interfere with or threaten the security of a facility or the community.

(b) "Disruptive act" includes, but is not limited to:

(i) An unauthorized gathering;

(ii) A demonstration or mass disturbance;

(iii) A group work stoppage;

(iv) Misusing, altering, tampering with, or damaging property during an act that interferes with or threatens the security of a facility or the community;

(v) Setting a fire; or

(vi) Possessing, using, or manufacturing an explosive or flammable device, excluding an unaltered cigarette lighter, match, or pack of matches.

(15) "Escape" means the defendant's:

(a) Unlawful or unauthorized absence or departure from a facility or grounds of a facility to which the inmate is assigned or located;

(b) Unlawful or unauthorized absence or departure from a locked cell or dormitory to which the inmate is assigned or located;

(c) Unlawful or unauthorized absence or departure from a designated area or location while out of the facility and in the community;

(d) Unlawful or unauthorized failure to follow an approved itinerary for travel or movement while in the community or departure from an order, rule, policy, or procedure of the Department or facility for travel or movement while in the community; or

(e) Failure while in the community to return at a specified time to a place of assignment, custody, or confinement.

(16) “Facility representative” means staff designated by the managing official, or a designee, to represent the interests of the facility under the inmate disciplinary process.

(17) “Fraud or misrepresentation” means a false, misleading, or deceptive:

- (a) Act;
- (b) Statement;
- (c) Expression; or
- (d) Omission.

(18) “Hearing officer” means an impartial, non-advocate, fact-finder who presides over the defendant’s disciplinary proceeding and determines the disposition of an inmate rule violation charged and, if applicable, imposes sanctions.

(19) Horseplay.

(a) “Horseplay” means rough, rowdy, or boisterous play that is consensual and done for amusement or entertainment of all involved parties.

(b) “Horseplay” may not be used by a defendant as a defense to a battery charge where there is evidence of physical contact between the defendant and one or more individuals.

(20) “Hostage” means an individual whose freedom of movement is restricted without authority or justification.

(21) “Immediate family” as used in this chapter means an inmate’s legal spouse, natural grandparents, parents, legal guardian, siblings, children, grandchildren, and persons who have these relationships through adoption.

(22) “Indecent exposure” means the willful display of the genitals, buttocks, or female breast to another individual as an act of abuse, disrespect, vulgarity, harassment, humiliation, or sexual gratification.

(23) “Incident report” means a disposition of an inmate rule violation charged where the defendant and the facility or the defendant and the hearing officer agree that the defendant:

- (a) Waives a hearing and hearing rights for the inmate rule violation charged;
- (b) Receives no sanction for the inmate rule violation charged; and

(c) Agrees that the Notice of Inmate Rule Violation and the Notice of Inmate Disciplinary Hearing forms documenting the incident report shall be maintained in the defendant’s case record file.

(24) Informal Disposition or Resolution.

(a) “Informal disposition or resolution” means a process, other than a formal disciplinary proceeding under the inmate disciplinary process, that permits, based on a mutual agreement between the defendant and facility staff, or the defendant and the hearing officer, resolving an inmate rule violation charged through an incident report or informal disposition.

(b) “Informal disposition or resolution” includes a disposition of an inmate rule violation charged where the defendant and the facility or the defendant and the hearing officer agree that the defendant:

- (i) Waives a hearing and hearing rights for the inmate rule violation charged;
- (ii) Receives a sanction in accordance with this chapter; and

(iii) Agrees that the Notice of Inmate Rule Violation and the Notice of Inmate Disciplinary Hearing forms documenting the informal disposition shall be maintained in the defendant’s case record file.

(25) Inmate.

(a) “Inmate” means an individual who is actually or constructively detained or confined in a correctional facility.

(b) “Inmate”, unless specifically stated otherwise in this chapter, includes an individual referred to as a:

(i) Non-sentenced resident or detainee in the custody of the Department and confined to a correctional, detention, or transitional facility or home detention program;

(ii) Sentenced inmate or detainee in the custody of the Department and confined to a correctional, detention, or home detention facility;

(iii) An Eligible Person or Patuxent youth, or any other individual in the custody of the Department and housed in the Patuxent Institution;

(iv) A juvenile housed in the custody of the Department and confined to a correctional, detention, or home detention facility;  
and

(v) An individual committed to the custody of the Department, but housed in or confined in another jurisdiction.

(26) “Inmate representative” means a staff member or an inmate assigned to the defendant’s housing facility and permitted to represent and assist the defendant during the defendant’s disciplinary proceeding under this chapter.

(27) Intimidating, Coercive, or Threatening Language.

(a) “Intimidating, coercive, or threatening language” includes language that is directed toward an individual or property named or un-named that intends to induce fear, or implies or intends to imply harm, the threat of harm, or the use of force.

(b) “Intimidating, coercive, or threatening language.” A defendant may not claim the inability to carry out the implied or perceived harm, threat of harm, or use of force as a defense to a charge of using intimidating, coercive, or threatening language under this regulation.

(c) “Intimidating, coercive, or threatening language” includes, but is not limited to, language that:

(i) Seeks compliance with a demand; or

(ii) Intends to deter or prevent an individual from performing or carrying out an act, task, or action.

(d) “Intimidating, coercive, or threatening language” may be expressed or conveyed:

(i) Verbally;

(ii) In writing;

(iii) By gesture;

(iv) By drawing; or

(v) By display or projection of an image.

(28) “Intoxicant” means an unauthorized medication, drug, or substance that has psychotropic or hallucinogenic properties, excluding alcohol, that may or may not also be identified in the Annotated Code of Maryland as a controlled dangerous substance.

(29) “Masturbation” as used in this chapter means intentional touching of the individual’s or another inmate’s genital, anal, breast, or other intimate area for:

(a) Sexual arousal or gratification; and

(b) The abuse, intimidation, humiliation, or harassment of staff.

(30) “May not” means an absolute prohibition.

(31) “Order” means a command, direction, or instruction given by staff to an inmate.

(32) Plea Agreement.

(a) “Plea agreement” means the defendant and facility representative agree to a mutually satisfactory disposition for each defendant inmate rule violation charged that is subject to approval by the hearing officer.

(b) “Plea agreement” is not binding on a hearing officer and does not require that the hearing officer honor the sanctions recommended as part of a plea agreement reached by the defendant and the facility representative.

(33) “Possess” or “possession” means actual or constructive dominion or control over:

- (a) An article;
- (b) An object;
- (c) An asset;
- (d) A substance; or
- (e) Property.

(34) “Preliminary review” means an initial appearance by a defendant during a defendant’s disciplinary proceeding before a hearing officer to:

- (a) Review the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form;
- (b) Review an attachment or other evidence submitted by facility staff or a defendant regarding the inmate rule violation charged;
- (c) Determine if the defendant requested representation, a witness, or evidence to present to the hearing officer; and
- (d) Determine whether the defendant and the facility are prepared to proceed to the evidentiary phase of the disciplinary proceeding.

(35) “Restitution” means payment by a defendant for the documented expense or cost to the State, an individual, or entity associated with:

- (a) An inmate rule violation charged resulting in a finding of guilt or informal disposition;
- (b) An illegal, unauthorized, or unreasonable expense incurred due to the act or actions of the defendant; or
- (c) The repair or replacement of altered, damaged, destroyed, stolen, or missing property, tools, or equipment incurred due to the act or actions of the defendant.

(36) “Sanitation assignment” means a sanction pursuant to a guilty finding or informal disposition of an inmate rule violation charged where the defendant is assigned to a cleaning task determined by staff for which diminution credits and pay are not authorized.

(37) Security Equipment or Property.

(a) “Security equipment or property” includes, but is not limited to:

(i) Facility, dormitory, or cell housing fixture, device, or item that is for the purpose of inmate control, confinement, observation, or restraint or the security of the facility, Department, or community;

(ii) Bed or bunk bed;

(iii) Desk or chair;

(iv) Staff uniform;

(v) Light fixture;

(vi) Restraint or confinement fixture, device, or item;

(vii) Computer or communication fixture, device, or item;

(viii) State telecommunication device not intended for inmate use;

(ix) Animal used for the operation, security, safety, or control of a location;

(x) Vehicle or mode of transportation used for the operation, security, safety, or control of a location or the transport of an inmate;

(xi) Fixture, component, device, document or form, or item used for the confinement or restraint of an inmate or security and control of an inmate or the operation, security, safety, or control of a location; or

(xii) Tool, component system, item, or furniture used for the operation, security, safety, control, or maintenance of a location.

(b) “Security equipment or property” excludes the following:

(i) Mattresses, pillows, and bed linen;

(ii) Clothing articles;

(iii) Toilet or sink;

(iv) Mirror;

(v) Towel or wash cloth;

(vi) Locker, drawer, or box;

(vii) Clothes hanger;

(viii) Rug or homemade rug.

(38) “Sexual Act” means the actions of two or more individuals engaged in acts involving physical contact for purposes of sexual arousal or gratification and includes, but is not limited to:

(a) Contact between the penis and the vulva or the penis and the anus;

(b) Contact between the mouth and the penis, vulva, or anus;

(c) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument;

(d) Any other intentional touching, either directly on 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;

(e) A sexual crime identified under Criminal Law Article, §§3-301—312, Annotated Code of Maryland; and

(f) Kissing, hugging, or other physical contact for sexual arousal or gratification or the abuse of either party.

(39) “Sexual conduct” means a non-physical behavior or act of a sexual nature by an inmate directed toward another individual and includes but is not limited to:

(a) Sexual advances;

(b) Requests for sexual favors; or

(c) Verbal comments, gestures, or actions of a derogatory and offensive sexual nature.

(40) “Special needs inmate” means a defendant whose ability to participate in the inmate disciplinary process is compromised by impaired hearing, speech, cognition, mental health, or proficiency in the spoken or written English language.

(41) Staff.

(a) “Staff” means a permanent, contractual, or temporary employee or other individual under contract or agreement to provide goods or services to the Department or a unit, facility, or inmate.

(b) “Staff” does not include:

(i) A volunteer; or

(ii) An intern.

(42) State Property.

(a) “State property” means tangible property owned by the Department or another State agency.

(b) State property includes, but is not limited to, items intended for inmate use such as:

- (i) Inmate uniforms;
- (ii) A desk or chair;
- (iii) A sink or toilet;
- (iv) A locker, drawer, or box;
- (v) Inmate telephone, teletypewriter (TTY) device, or other telecommunication device;
- (vi) Food from dietary other than what is issued as part of a State provided meal; or

(vii) Food from dietary that is removed from or attempted to be removed from dietary without authorization even if issued as part of a State provided meal.

(43) “Telecommunication device” means:

(a) A device that may be:

- (i) 3G, 4G, or greater or less enabled;
- (ii) Wifi, internet, or email ready; or

(iii) Enabled to transmit telephonic, electrical, digital, cellular, radio communications, or photographs regardless of whether functional or non-functional;

(b) An accessory or part of a device that may be:

- (i) 3G, 4G, or greater or less enabled;
- (ii) Wifi, internet, or email ready; or

(iii) Able to transmit telephonic, electrical, digital, cellular, or radio communications or photograph regardless of whether functional or non-functional; or

(c) An item including, but not limited to the following:

- (i) Tablet;
- (ii) Cellular or digital telephone;
- (iii) Video, audio, or photographic device; or
- (iv) Modem equipped device; or

(d) A component of or an accessory for the items such as but not limited to:

- (i) SIM card;
- (ii) Bluetooth equipment;
- (iii) Charger;
- (iv) Earpiece; or
- (v) Carrying case.

(44) Unauthorized Financial Account.

(a) “Unauthorized financial account” means a financial account that is not permitted by the Department for an inmate to open, access, or otherwise use.

(b) “Unauthorized Financial Account” includes, but is not limited to, the following:

- (i) Check or checking account;
- (ii) Check card or check card account;
- (iii) Credit card or credit card account;
- (iv) Green Dot card or Green Dot account numbers;
- (v) Western Union card or Western Union account numbers;
- (vi) Pay Pal card or Pay Pal account numbers;
- (vii) Debit card or Debit card account;
- (viii) Money order;
- (ix) Gift card or gift card account numbers;
- (x) Other financial account not authorized or listed under this chapter; or
- (xi) Items and documentation related to an unauthorized financial account.

(c) "Unauthorized financial account" does not include an active or reserve account permitted and maintained under Correctional Services Article, §3-609, Annotated Code of Maryland.

(45) Weapon.

(a) "Weapon" means an instrument, item, article, substance, liquid, tool, or material that:

- (i) May be used for offensive or defensive combat;
- (ii) May be used to threaten, harm, or injure an individual; or

(iii) May be used for a purpose or reason other than as a weapon, but that could be used as a weapon regardless of whether or not the original character of the instrument, item, article, substance, liquid, tool, or material was altered.

(b) "Weapon" includes an instrument, item, article, substance, liquid, tool, or material that otherwise meets the definition of weapon that an inmate is permitted to possess in an explicitly designated area, but is possessed in an area other than where the instrument, item, article, substance, liquid, tool, or material is not explicitly authorized by staff.

## **.03 Inmate Compliance Requirements, and Time and Procedure Requirements — General.**

### A. Inmate Compliance Requirement.

(1) An inmate shall comply with a rule, policy, procedure, regulation, or statute or other provision of law that may have been enabled by or for:

(a) A government;

(b) The Department;

(c) The facility to which the inmate is assigned;

(d) An authority where the inmate may be located, in the custody of, assigned to, or housed when outside the facility, in the community, or a location other than in the Department; or

(e) The program to which the inmate may be assigned or is voluntarily participating.

(2) Inmate compliance under §A(1) of this regulation or non-compliance under §B of this regulation shall be applicable to the inmate at all times in:

(a) The community;

(b) The Department;

(c) A facility;

(d) A Program; or

(e) A location or custody and supervision of another entity, agency, or jurisdiction.

### B. Inmate Non-Compliance.

(1) An inmate found not to be in compliance, as required under §A(1) and (2) of this regulation, or suspected of, or alleged by staff as having committed an inmate rule violation under Regulation .04 of this chapter shall be subject to:

(a) The inmate disciplinary process; and

(b) A sanction in accordance with this chapter when found guilty of the inmate rule violation charged or as part of an informal disposition of an inmate rule violation charged.

(2) The act of soliciting, conspiring to commit or attempting to commit an inmate rule violation, or aiding, assisting, or facilitating the commission of an inmate rule violation, whether under Regulation .04 of this chapter or stated as a facility inmate rule violation, shall:

(a) Constitute the commission of that inmate rule violation by the inmate; and

(b) Subject the defendant to the prescribed sanctions for that inmate rule violation charged in accordance with the provisions of this chapter.

### C. Time and procedure requirements in this regulation:

(1) Establish a standard for staff that provides for the administration and management of inmate discipline in a correctional or detention facility, the home detention program, or in the community under the authority of the Department; and

(2) Neither create nor convey an enforceable inmate:

(a) Right;

(b) Entitlement;

(c) Benefit; or



(d) Interest.

(3) An inmate's disciplinary conviction under the inmate disciplinary process may not be affected or disturbed by the denial, non-compliance with, delay, or failure by staff to carry out, provide for, or meet a time or procedural requirement in this regulation and the inmate rule violation or violation charged may not be dismissed unless the defendant can demonstrate that the violation of the time or procedure requirement:

(a) Was not based on good cause; and

(b) Substantially harmed the defendant's ability to make a relevant case presentation regarding the inmate rule violation charged.

(4) Time or Procedure Violation.

(a) A defendant's allegation of harm due to a time or procedure violation not specifically related to the defendant's ability to make a case presentation may not be cause for a dismissal or a not guilty finding of the inmate rule violation charged.

(b) Examples of harm that may not affect a disciplinary conviction include, but are not limited to, issues relating to:

(i) Time spent on administrative segregation pending a disciplinary proceeding;

(ii) Removal from or missed time from a work or program assignment;

(iii) Reduced facility privileges;

(iv) Security level determinations, transfers, or other case management decisions; or

(v) Parole decisions or consideration.

D. Contraband may be charged as a single inmate rule violation or in conjunction with other inmate rule violations that may include, but are not limited to:

(1) A weapon;

(2) An unauthorized substance, drug, intoxicant, alcohol, or control dangerous substance;

(3) A telecommunication device;

(4) A security item;

(5) Tobacco; or

(6) Currency.

E. An inmate may be charged with and found guilty of multiple inmate rule violations for the same reported conduct.

F. Battery.

(1) A charge of "battery" under Regulation .04C(3) of this chapter may not be automatically excused by a claim of "self-defense".

(2) A hearing officer may permit a claim of "self-defense" to be considered in the disposition of a charge of battery or the administration of sanctions.

(3) An inmate is not entitled to a claim of "self-defense" and a hearing officer is not required to accept a claim of "self-defense".

(4) An inmate is required to retreat from a threat if at all possible or a claim of self-defense may not be raised.

G. A charge of "Refuse" to accept work or housing under Regulation .04 §G(2) may not be excused by the defendant's unsubstantiated claim of a perceived danger or threat of harm.

H. Consent — Sexual Act and Sexual Conduct.

(1) A defense of consent to a charge of a sexual act or sexual conduct may only be considered in an act between a defendant and a Department staff member.

(2) If the hearing officer finds that the involved staff member did consent to the sexual act or sexual conduct, the defendant may not be found guilty of an inmate rule violation charged.

(3) If the hearing officer finds that the defendant engaged in a sexual act or sexual conduct with the staff member without the staff member's consent, a finding of guilt may be entered.

(4) A defense of consent may not be considered when the sexual act or sexual conduct occurs between inmates or inmates and non-Departmental staff.

## **.04 Inmate Rule Violation Summary.**

A. Inmate Rule Violation. — The Department has adopted an inmate rule violation summary to ensure:

- (1) Staff and inmate knowledge of conduct prohibited by the Department; and
- (2) Inmate compliance as required by Regulation .03 of this chapter.

B. Category of Inmate Rule Violation.

(1) For the purpose of organizing inmate rule violations under this regulation and to facilitate understanding by staff and inmates, the Department has established categories of inmate rule violations based on the severity of the offense associated with an inmate rule violation.

(2) The categories of inmate rule violations are:

- (a) Category IA — most severe inmate rule violation;
- (b) Category IB;
- (c) Category II;
- (d) Category III;
- (e) Category IV; and
- (f) Category V — least severe inmate rule violation.

C. Category IA Inmate Rule Violations. An inmate may not:

- (1) 100 — Participate in a disruptive act;
- (2) 101 — Commit assault or battery on staff;
- (3) 102 — Commit assault or battery on an inmate;
- (4) 103 — Commit assault or battery on a person who is neither staff nor an inmate;
- (5) 104 — Make threats that include the use of physical harm to objects, property, or individuals;
- (6) 105 — Possess, use, or manufacture a weapon;
- (7) 106 — Escape when assigned maximum or medium security status;
- (8) 107 — Escape when assigned minimum security status;
- (9) 110 — Possess an implement or article that may be used in an escape;
- (10) 116 — Possess, misuse, tamper with, damage, or destroy security devices, equipment, property, detection or monitoring equipment, or fire suppression or alarm devices;
- (11) 117 — In any manner, arrange, commit, perform, or engage in a sex act or sexual conduct;
- (12) 119 — In any manner, commit, conspire to commit, or participate in an act of masturbation;
- (13) 122 — Possess a telecommunication device, SIM card, battery charger, carrying case, or other device or article identified with a telecommunication device; or willfully pose for the taking of an unauthorized photograph or video recording or make an unauthorized audio recording;
- (14) 124 — Be involved with or participate in willful or negligent homicide; and
- (15) 125 — Be involved with or participate in the taking of a hostage;

D. Category IB Inmate Rule Violations. An inmate may not:

- (1) 108 — Escape when assigned pre-release security status;
- (2) 109 — Escape while in the community;
- (3) 111 — Possess a drug, controlled dangerous substance, or medication requiring staff observation to ingest, or an intoxicant excluding alcohol;
- (4) 112 — Use a controlled dangerous substance, use a medication requiring staff observation to ingest when not prescribed, or use an intoxicant;
- (5) 113 — Vacant;
- (6) 114 — Possess a drug, controlled dangerous substance, or medication requiring staff observation to ingest, or an intoxicant, excluding alcohol, in a sufficient quantity, or possess packaging materials, suggesting distribution of or the intent to distribute;
- (7) 115:
  - (a) Refuse or fail to provide a required volume of urine necessary for urinalysis testing; or
  - (b) Provide a diluted or an adulterated urine specimen for urinalysis testing;
- (8) 118:
  - (a) Make application for, obtain, or possess articles or materials for an unauthorized financial account; or
  - (b) Use an unauthorized financial account;
- (9) 121 — Possess tobacco in sufficient quantity or the materials necessary for packaging tobacco, or other related products that suggests an intent to distribute, or distribution of tobacco;
- (10) 123 — Possess currency in:
  - (a) A facility where currency is not permitted; or
  - (b) An amount that is \$50 or greater in excess of the amount the inmate is permitted to possess;
- (11) 126 — Knowingly provide false reports, claims, accusations or information related to the Prison Rape Elimination Act (PREA) or use the PREA Hotline other than for the intended purpose.

E. Category II Inmate Rule Violations. An inmate may not:

- (1) 200:
  - (a) Refuse testing or assessment for the mandatory education program;
  - (b) Refuse assignment to or refuse to participate in the mandatory education program; or
  - (c) Engage in behavior that causes removal from the mandatory education program;
- (2) 201:
  - (a) Refuse testing or assessment for a program designated as a mandatory remediation program;
  - (b) Refuse assignment to or refuse to participate in a program designated as a mandatory remediation program; or
  - (c) Engage in behavior that causes removal from a program designated as a mandatory remediation program;
- (3) 202 — Refuse:
  - (a) To participate in or submit to deoxyribonucleic acid (DNA) sampling collection; or
  - (b) To be fingerprinted as required by statute, law, or the Department;
- (4) 203 — Disobey a specifically cited facility Category II rule not listed in this regulation as an inmate rule violation.

F. Category III Inmate Rule Violations. An inmate may not:

(1) 300:

- (a) Administer a tattoo;
- (b) Receive a tattoo; or
- (c) Possess tattoo equipment, materials, or paraphernalia;

(2) 301 — Possess or use alcohol without authorization;

(3) 302 — Possess equipment, materials, or paraphernalia that may be used in the manufacture of alcohol;

(4) 303 — Refuse to submit to alcohol detection testing;

(5) 304 — Possess, use, hoard, or accumulate medication without authorization;

(6) 305 — Participate in an act that is in violation of a law, statute, ordinance, or provision of law;

(7) 306:

- (a) Gamble; or
- (b) Possess gambling paraphernalia;

(8) 307 — Participate in an act of extortion, bribery, or coercion;

(9) 308:

- (a) Steal State property;
- (b) Possess stolen State property;
- (c) Possess State property without permission; or
- (d) Tamper with, damage, or destroy State property;

(10) 309:

- (a) Steal the property of an individual or entity;
- (b) Possess stolen property of an individual or entity;
- (c) Possess property of an individual or entity without permission; or
- (d) Alter, tamper with, damage, or destroy property of another individual or entity;

(11) 310 — Participate in an act not included as an inmate rule violation under this regulation that is in violation of a rule, policy, directive, or regulation of a:

- (a) Department program;
- (b) Facility program; or
- (c) Community program;

(12) 311 — Possess currency in an amount that is \$20 or more in excess of the amount the inmate is permitted, but less than \$50 in excess of the amount the inmate is permitted to possess;

(13) 312:

- (a) Interfere with or resist a search of a person, item, area, or location;
- (b) Cause the early return of a community detail due to a violation of the rules;

(c) Commit any inmate rule violation outside of the confinement of a secure facility;

(14) 313 — Disobey a specifically cited home detention or work release rule not listed in this regulation as an inmate rule violation;

(15) 314 — In any manner, commit, conspire to commit, or participate in an act of indecent exposure;

(16) 315 — Possess or pass contraband; or

(17) 316 — Disobey an order.

G. Category IV Inmate Rule Violations. An inmate may not:

(1) 400 — Vacant;

(2) 401 — Vacant;

(3) 402:

(a) Enter or be in a location without authorization;

(b) Leave an assigned location without authorization;

(c) Be absent from or late reporting to an assigned location without authorization;

(d) Loiter or linger in a location without authorization; or

(e) Refuse or fail to obey or follow an order, rule, policy, or procedure regarding inmate movement or travel within or outside of the facility;

(4) 403:

(a) Provide false information;

(b) Alter, misrepresent, or forge a document; or

(c) Possess an altered, misrepresented, or forged document;

(5) 404 — Possess currency in an amount that is less than \$20 in excess of the amount the inmate is permitted to possess;

(6) 405 — Vacant;

(7) 406 — Vacant;

(8) 407 — Participate in or operate an unauthorized business, personal service, or enterprise;

(9) 408 — Vacant;

(10) 409:

(a) Make an unauthorized telephone call;

(b) Make or participate in a three way telephone call;

(c) Use a telephone for an unauthorized or illegal purpose;

(11) 410 — Demonstrate:

(a) Disrespect;

(b) Insolence; or

(c) Use of vulgar language; or

(12) 411 — Possess tobacco in a limited quantity that may suggest personal use when there is no other evidence to suggest intent to distribute or distribution.

H. Category V Inmate Rule Violations. An inmate may not:

- (1) 500 — Fail to possess or properly display a required inmate identification badge or card when directed by staff or required by facility rule;
- (2) 501 — Participate in reckless behavior or horseplay;
- (3) 502 — Fail to maintain:
  - (a) Personal cleanliness;
  - (b) The cleanliness of the facility or assigned housing area; or
  - (c) The cleanliness of a location other than in the facility; or
- (4) 503 — Disobey a specifically cited facility Category V rule not listed in this regulation as an inmate rule violation.

## **.05 Pre-Disciplinary Proceeding Procedures — Pre-Disciplinary Proceeding Phase — Investigating and Reporting an Inmate Rule Violation.**

### A. Investigation.

(1) Staff shall initiate an investigation when there is cause to believe that an inmate is non-compliant and has committed an inmate rule violation.

(2) As part of the investigation, staff shall attempt to:

- (a) Determine the facts and circumstances of the event;
- (b) Identify the inmate's alleged conduct and inmate rule violation committed;
- (c) Identify a witness who may have factual knowledge of the reported event and alleged inmate rule violation; and
- (d) Identify, secure, and preserve evidence regarding the reported event and the alleged inmate rule violation.

(3) An investigation under this regulation may include, but not be limited to:

- (a) A verbal or written event report to the shift supervisor or commander; or
- (b) An investigation that requires a period of time to:
  - (i) Interview a witness;
  - (ii) Gather evidence;
  - (iii) Determine the facts of the event as to what occurred;
  - (iv) Identify individuals involved; and
  - (v) Select the possible inmate rule violation or violations under Regulation .04 of this chapter to be charged.

### B. Reporting an Inmate Rule Violation.

(1) Upon completion of the investigation under §A of this regulation, when staff determines that an inmate allegedly violated an inmate rule or rules under this chapter, staff shall use a Notice of Inmate Rule Violation form to report the inmate rule violation.

(2) If an inmate is alleged to commit an inmate rule violation, the reporting staff shall, within 1 calendar day of the completion of the required investigation:

- (a) Complete the reported facts section of the Notice of Inmate Rule Violation form; and
- (b) Forward the completed Notice of Inmate Rule Violation form to the shift supervisor.

### C. Shift Supervisor Review.

(1) Upon receipt of a Notice of Inmate Rule Violation form, the shift supervisor, shall review:

- (a) The defendant's Notice of Inmate Rule Violation form;
- (b) Administrative reports submitted in connection with the event; and
- (c) Attachments or other evidence that may have been submitted by staff regarding the inmate's alleged inmate rule violation.

(2) After conducting the review, the shift supervisor shall:

(a) Return the Notice of Inmate Rule Violation form to reporting staff if the Notice of Inmate Rule Violation form is defective or in error and requires correction, addition, or deletion requiring staff to provide the shift supervisor with the corrected Notice of Inmate Rule Violation form;



(b) Determine the inmate rule or rules with which the defendant is to be charged;

(c) Make a recommendation to the shift commander that the defendant be housed in administrative segregation pending the outcome of the defendant's disciplinary proceeding, if the shift supervisor believes that the conduct alleged in the reported event or the defendant's disciplinary history constitutes a threat to the:

(i) Security of the facility, Department, or community; or

(ii) Safety of an inmate, staff, or an individual;

(d) Record the inmate rule violation or violations charged in the Notice of Inmate Rule Violation form and:

(i) If the defendant is charged with a Category IA, IB, or II inmate rule violation, refer the case to a hearing officer for a formal disciplinary proceeding; or

(ii) If the defendant is charged with only a Category III, IV, or V violation, refer the case to a hearing officer for a disciplinary proceeding, or offer the defendant an informal resolution.

(3) If the shift supervisor recommends placing the defendant in administrative segregation under §C(2)(c) of this regulation, forward the completed Notice of Inmate Rule Violation form to the shift commander for review.

#### D. Shift Commander Review.

(1) Upon receipt of a recommendation in accordance with §C(3) of this regulation, the shift commander shall review the recommendation and determine if there is cause to believe the defendant is or is not a threat to the:

(a) Security of the facility, Department, or community; or

(b) Safety of an inmate, staff, or an individual.

(2) If the shift commander finds there is cause to believe there is a security or safety threat posed by the defendant's reported conduct, inmate rule violation charged, or the defendant's disciplinary history, the shift commander shall approve placing the defendant on administrative segregation housing status and indicate the approval on the Notice of Inmate Rule Violation form.

(3) Additionally, the shift commander may:

(a) Review the defendant's Notice of Inmate Rule Violation form; and

(b) Exercise the same options authorized for a shift supervisor under §C of this regulation.

E. Completion of Review. — The shift supervisor's review required under §C of this regulation and, if required, a shift commander's review under §D of this regulation shall be completed within 1 calendar day of the date that the last draft of the reported facts section was accepted.

#### F. Redrafting Notice of Inmate Rule Violation Form and Notice of Inmate Disciplinary Hearing Form.

(1) A shift supervisor, shift commander, or facility representative reviewing a Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form may direct the staff submitting the form to make corrections, additions, deletions, or other changes to the form or other documentation submitted with the form prior to or after service of the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form on the defendant.

(2) Except under §F(3) of this regulation, if staff determines that the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form is technically in error or evidentially insufficient after the defendant has been served a copy of the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form, staff shall:

(a) Prepare a new or revised Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form that supersedes the previously served Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form and:

(i) Correct an error; or

(ii) Provide omitted or additional information; and

(b) Ensure that the new or revised Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form is served on the defendant in accordance with the service process under this chapter.

(3) To correct a minor error or omission to a Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form (for example a name or date or the absence of a signature or date) or attach new or additional information, staff may complete a matter of record form, memorandum, or correspondence addressed to and received by the defendant explaining the correction or providing a copy of the new or additional information.

#### G. Referral for Informal Resolution.

(1) If a shift supervisor, shift commander, facility representative, or hearing officer determine that a defendant charged only with Category III, IV or V violations should be offered an informal resolution, the defendant may be offered either an:

- (a) Informal disposition with a sanction; or
- (b) Incident report without sanction.

(2) The shift supervisor, shift commander, facility representative, hearing officer, or any other staff is not required to offer a defendant charged with only a Category III, IV, or V inmate rule violation an informal resolution.

(3) An informal resolution may be offered any time before the completion of a formal disciplinary proceeding before a hearing officer including, but not limited to, before or during the preliminary hearing or case presentation portion of the disciplinary proceeding before the hearing officer.

(4) A defendant is not required to accept an informal resolution and may reject the offer and request a formal disciplinary proceeding before a hearing officer.

(5) A defendant's acceptance of an offer of an informal resolution shall mean the defendant accepts and agrees with the:

- (a) Waiver of the formal disciplinary proceeding under the inmate disciplinary process;
- (b) Offer of informal resolution;
- (c) Proposed sanction, if applicable;
- (d) Placement of the defendant's Notice of Inmate Rule Violation form and Notice of Informal Resolution form in the defendant's case record; and
- (e) Waiver of the right to appeal the informal resolution disposition for each inmate rule violation charged.

(6) The defendant's acceptance of a hearing officer's offer of an informal resolution on the audio record of the defendant's disciplinary proceeding shall constitute the defendant's acceptance of and agreement with the offer.

(7) A defendant's refusal to accept an offer of informal resolution shall be the defendant's:

- (a) Rejection of the offer of informal resolution; and
- (b) Request for the hearing officer to proceed with a formal disciplinary proceeding under the inmate disciplinary process to resolve the inmate rule violation charged.

(8) If the managing official, or a designee, believes the offer of informal resolution made to the defendant is in error, the managing official, or a designee, may remand the matter to the hearing officer assigned to the facility for a review.

(9) A hearing officer receiving a remanded informal resolution shall determine if the informal resolution is in compliance with requirements for informal resolution and if finding that the informal resolution is:

- (a) Not permitted, proceed with the defendant's disciplinary proceeding; or
- (b) Permitted, affirm the informal resolution and conclude the defendant's disciplinary proceeding.

## **.06 Pre-Disciplinary Proceeding Procedures — Service of Notice of Inmate Rule Violation Form and Notice of Inmate Disciplinary Hearing Form or Notice of Offer of Informal Resolution Form.**

A. Staff shall serve a defendant with a copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form before the defendant appears before a hearing officer.

B. Staff Service Responsibilities.

(1) Staff assigned to serve a defendant with a Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form shall:

(a) Serve the applicable forms on the defendant within 24 hours of the final review of the shift supervisor or, if applicable, the shift commander.

(b) Provide the defendant with a copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form.

(c) Retain possession of and not provide the defendant with an attachment or other evidence submitted with the Notice of Inmate Rule Violation form, which may include, but may not be limited to, a:

(i) Report;

(ii) Document;

(iii) Record;

(iv) Form;

(v) Documented verbal or written statement;

(vi) Photograph;

(vii) Video;

(viii) Telephone conversation; or

(ix) Evidence related to the reported event, the inmate rule violation charged, or reported conduct of the defendant.

(d) Forward an attachment and other evidence submitted with the Notice of Inmate Rule Violation form to, if designated, the facility representative or staff designated by the managing official, or a designee, who shall:

(i) Maintain the attachment and other evidence in a secure location designated by the shift supervisor or, if applicable, the shift commander; and

(ii) Present the attachment and other evidence at the time the defendant appears before the hearing officer for a preliminary review.

(2) When serving a defendant with a Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form staff, unless prevented by a security or safety issue or a time constraint, shall:

(a) Provide the defendant with a copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form and provide the defendant the opportunity to:

(i) Read the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form;

(ii) Request representation or witnesses on the facility's copy of the Notice of Inmate Disciplinary Hearing form;

(iii) Request evidence on the facility's copy of the Notice of Inmate Disciplinary Hearing form; and

(iv) Sign for receipt of the defendant's copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form on the facility's copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form;

(b) If applicable, make a record of any cause that may prevent service of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form;

(c) Sign the name of the staff member performing the service and date as a record of service in the designated section on the facility's copy of the Notice of Inmate Disciplinary Hearing form and Notice of Inmate Disciplinary Hearing form;

(d) Provide the defendant with a copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form; and

(e) Return the facility's copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form to the shift supervisor or, if applicable, the shift commander.

(3) If the defendant is being served with a Notice of an Offer of Informal Resolution form, staff serving the defendant shall permit the defendant to accept or reject the offer of information resolution and sign Notice of an Offer of Informal Resolution form accordingly as a record of the defendant's decision to accept or reject the offer.

(4) If the defendant rejects an offer of informal resolution, staff shall permit the defendant the opportunity to request representation, witnesses, and or evidence on the Notice of Inmate Disciplinary Hearing form.

C. The Defendant Responsibilities at the Time of Service of a Notice of Inmate Rule Violation Form and Notice of Inmate Disciplinary Hearing Form or Notice of Offer of Informal Resolution Form.

(1) The defendant shall notify staff serving Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form if the defendant is unable to read or understand the document.

(2) The defendant, at the time of service, shall:

(a) Sign for receipt of the defendant's copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form;

(b) Provide notice at service of the defendant's request for representation, a witness, or evidence for the purpose of the defendant's possible case presentation during the formal disciplinary proceeding on the Notice of Inmate Disciplinary Hearing form;

(c) Sign and date the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form in the designated section of the facility's copy; and

(d) Return the facility's copy of Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form to the staff serving the document.

(3) Request for Representation, Witness, Evidence.

(a) If the defendant does not request a representative specifically by name, a witness or witnesses specifically by name, and evidence with a specific description of that evidence at the time of service, or does not sign for receipt of Notice of Inmate Disciplinary Hearing form, the defendant is considered to have waived the defendant's right to make the request for a representative, witness or evidence; and

(b) If the defendant does not request as specified under §C(2)(b) or C(3)(a) of this regulation and subsequently makes a request for a representative, a witness, or evidence at the preliminary hearing or formal disciplinary proceeding before a hearing officer, that request may be denied.

D. After service of a Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form or Notice of Offer of Informal Resolution form staff shall return the appropriately endorsed documents to the shift supervisor or, if applicable, shift commander, who shall review the facility's copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form and:

(1) Ensure that the service process been properly completed;

(2) Ensure that the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form were not altered by the defendant;

(3) Take the appropriate steps to secure and preserve evidence properly requested by the defendant at service if that evidence is available and under control of the Department; and

(4) Forward the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form to staff designated for scheduling the defendant for an appearance before a hearing officer.

E. Delay and Waiver of Service.

(1) Good cause shall permit the delay of the service of the defendant with a Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form.

(2) Examples of good cause are, but may not be limited to, when the defendant is:

(a) An escapee;

(b) A patient in a community hospital or medical center;

(c) A patient in a facility medical infirmary or unit;

(d) Assigned to a mental health housing unit in the community or in the facility; or

(e) Placed on staff alert status due to being deemed an immediate risk to the safety or security of staff.

(3) A defendant may be served with a Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form while the defendant is a medical or mental health patient, if medical or mental health staff in charge of care for the defendant determine the defendant may be served.

(4) When there is good cause that delays service designated staff shall:

(a) Serve the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form on the defendant within 3 business days after the cause for delay of service no longer exists;

(b) Make a record of the cause that delayed service; and

(c) Inform the hearing officer of the cause for delay if the delay is raised at the defendant's appearance before the hearing officer.

(5) The defendant's refusal to sign for receipt of service shall be considered a waiver of the Department's obligation for timely service of the defendant with a copy of Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form.

(6) If the defendant does not return at service the facility's copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form to the staff serving the documents, that action is concluded to be a waiver of the service requirements under this regulation.

(7) If the defendant becomes disruptive with or poses a security or safety threat to staff serving the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form, staff shall conclude under this regulation that the defendant has waived the service process and terminate the service by leaving a copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form with the defendant.

(8) If service of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form is waived by the defendant under provisions of §§E(5) — (7) of this regulation, the defendant is considered to have waived the right to request representation, witnesses, or evidence at any point in the inmate disciplinary process.

## **.07 Pre-Disciplinary Proceeding Procedure — Hearing Docket.**

A. The facility managing official, or a designee, shall ensure that:

(1) Staff is designated to establish a hearing docket to schedule the appearance of a defendant before the hearing officer for a preliminary hearing; and

(2) The preliminary hearing is scheduled to occur within 7 business days of service of Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form on the defendant.

B. Staff may not schedule a defendant's preliminary hearing to occur within 24 hours of service of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form on the defendant, except if the defendant:

(1) Elects to waive the right to at least 24 hours of notice in order to prepare; or

(2) Is scheduled to be released from the custody of the Department before the expiration of the required 24 hour notice, in which case the appearance of the defendant shall be scheduled prior to the defendant's release, with as much time as practicable prior to the scheduled appearance to permit the defendant to prepare a defense regarding the inmate rule violation charged.

## **.08 Pre-Disciplinary Proceeding Procedure — Mental Health Hearing Docket.**

A. If the defendant is assigned to a mental health unit in the facility or in the community, staff designated to schedule a hearing shall hold the defendant's appearance before the hearing officer in abeyance until the defendant is released from the mental health treatment facility, except when mental health staff provide documentation that the defendant is competent to participate in a disciplinary proceeding.

B. If the defendant is housed in a facility mental health unit for more than 30 calendar days, staff designated to schedule a hearing shall contact the facility's mental health staff and request a determination whether the defendant is competent to participate in a disciplinary proceeding and if mental health staff document that the defendant:

(1) Is competent to participate in a disciplinary proceeding, the defendant shall be scheduled for appearance before the hearing officer.

(2) Was not competent at the time of the alleged inmate rule violation or is not currently competent to participate in a disciplinary proceeding, or is housed in a community mental health unit for more than 30 calendar days:

(a) The disciplinary proceeding shall be scheduled in absentia; and

(b) The hearing officer shall enter a disposition of "Not Competent" and the disciplinary proceeding shall be concluded.

C. The hearing officer shall find that there is good cause for staff non-compliance with time or procedure requirements when the defendant is housed in a community or facility mental health unit.

D. Whether or not the defendant is currently under the care of mental health staff, if there is cause to believe that the defendant may not be mentally competent and is unable to participate in the inmate disciplinary process, the hearing officer shall postpone the disciplinary proceeding and the facility representative or other facility staff shall refer the defendant to the Department's mental health staff to:

(1) Assess the defendant's mental health status; and

(2) Determine whether the defendant is competent to participate in the disciplinary process.

E. If mental health staff determines that the defendant is not competent to participate in the inmate disciplinary process, the:

(1) Disciplinary proceeding shall be held in absentia; and

(2) Hearing officer shall enter a disposition of "Not Competent" and conclude the disciplinary proceeding.

F. If mental health staff determines that the defendant is competent to participate in the inmate disciplinary process, the hearing officer shall proceed with the disciplinary proceeding.

G. If mental health staff determines that the defendant is competent, and after carefully considering the determination made by mental health staff, the hearing officer disagrees, the hearing officer may still make a finding that the defendant is not competent and, upon making such a finding, enter a disposition of "Not Competent" and conclude the disciplinary proceeding.

## **.09 Disciplinary Proceeding Procedures Phase — Special Needs Inmate.**

### **A. Interpreters.**

- (1) If raised as an issue by the defendant, the hearing officer shall make a finding as to whether or not the defendant has the need for an interpreter before moving forward with the disciplinary proceeding.
- (2) The hearing officer may consult with medical and case management, without the defendant present, in order to determine if an interpreter is necessary.
- (3) If an interpreter is required:
  - (a) An inmate may not serve as an interpreter under this chapter.
  - (b) An interpreter may be:
    - (i) Staff fluent in the preferred language of the defendant; or
    - (ii) Provided through a State contracted vendor.
- (4) After making arrangements for an interpreter, facility staff shall reschedule the defendant's appearance before the hearing officer.
- (5) The hearing officer shall administer an affirmation to the interpreter prior to permitting the individual to assume the role as the defendant's interpreter.
  - (a) The affirmation given shall be stated by the hearing officer to the proposed interpreter as: "Do you solemnly swear or affirm that you will provide an accurate, complete, and impartial interpretation of all statements made during this proceeding to the best of your knowledge and ability."

- (b) After administering the affirmation to the proposed interpreter, the individual shall be required to acknowledge the affirmation in the affirmative prior to the hearing officer permitting that individual to act as the inmate's interpreter.

### **B. Illiteracy.**

- (1) If raised as an issue by the defendant, the hearing officer shall make a finding as to whether the defendant is illiterate before moving forward with the disciplinary proceeding.
- (2) The hearing officer may consult with the education department and case management, without the defendant present, in order to determine if the defendant is illiterate.
- (3) If the hearing officer determines the defendant is illiterate, the defendant shall be provided with a representative to assist during the disciplinary proceeding.

C. The hearing officer may grant a defendant identified as a special needs inmate under this regulation additional time to prepare or greater procedural latitude in the inmate disciplinary process.

D. A delay in the scheduling of the defendant's disciplinary proceeding due to special accommodations required for a special needs inmate shall be considered to be based on good cause.



## **.10 Disciplinary Proceeding Procedures — Facility Representative.**

A. A managing official, or a designee, may elect to designate staff to act as the facility representative to represent the facility's interests during a defendant's disciplinary proceeding.

B. The facility representative, with or without consultation with the shift supervisor or commander, may:

(1) Add additional inmate rule violation charges to the Notice of Inmate Rule Violation form and re-serve the Notice of Inmate Rule Violation form on the defendant either before the disciplinary proceeding or in the preliminary phase of the disciplinary proceeding;

(2) Delete or choose not to pursue charges approved by the shift supervisor or commander;

(3) Correct a technical, procedural, evidentiary, or formatting error found in the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form;

(4) Return the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form to the shift supervisor or shift commander for correction or revision;

(5) Offer an informal resolution to the defendant for any Category III, IV, or V inmate rule violation charged;

(6) Enter into a plea agreement with the defendant for presentation to the hearing officer to resolve the inmate rule violation charged;

(7) Make determinations regarding the release or withholding of the identity of a confidential informant or other security sensitive evidence;

(8) Present argument and evidence to the hearing officer in support of the facility's case presentation as to the defendant's inmate rule violation charged;

(9) Require staff to submit additional reports or present staff to testify concerning information relevant to the defendant's inmate rule violation charged as a witness during the facility's case presentation; and

(10) Appeal to the managing official, or a designee, the hearing officer's decision rendered or sanction imposed if there is cause to believe the hearing officer under this chapter acted erroneously.

C. For the purposes of the security and control of a defendant's disciplinary proceeding and safety of staff and inmates participating in a disciplinary proceeding, the facility representative or escort officer shall determine the manner and form in which an inmate participant shall be restrained consistent with Department policy and procedure and the policy and procedures established by the facility in which the inmate participant is housed.

(1) The facility representative or escort officer may employ more restrictive handcuffing or other restraint procedures than are required by the rules of the facility.

(2) The hearing officer may request additional handcuffing or other restraints be used.

## **.11 Disciplinary Proceeding Procedures — Hearing Officer.**

A. Hearing Officer. The hearing officer, as the fact finder, shall be fair and impartial and may:

- (1) Interpret Department policy and procedures or the time or procedure requirements under this chapter;
- (2) Make applicable rulings at any stage of the disciplinary process based on the hearing officer's interpretation of Department policy and procedures;
- (3) Weigh the evidence presented during the evidentiary phase and make findings of fact based upon evidence found credible and reliable by a preponderance of the evidence;
- (4) Determine the disposition of each inmate rule violation charged;
- (5) Determine the number, period, and effective date of sanctions to be imposed when applicable;
- (6) Provide assistance with an investigation or other legal matters that may involve:
  - (a) The Department;
  - (b) A law enforcement agency;
  - (c) The Office of the Attorney General; or
  - (d) An office of a State or local government agency;
- (7) Order the removal of any hearing participant from the location of the disciplinary proceeding if the hearing participant becomes disruptive or becomes a threat to the safety and security of the facility or any other hearing participant; and
- (8) Perform other duties as assigned by the hearing officer supervisor or the Secretary, or a designee.

B. Facility Hearing Officer. A managing official, or a designee, may designate a facility hearing officer to act as a hearing officer without regard to whether a hearing officer is available to preside over disciplinary proceedings at the facility.

C. Ex Parte Communication — Permitted. Unless otherwise stated under this regulation, the hearing officer may:

- (1) Elect to discuss a pending case and its evidentiary merits in the absence of the defendant, or, if designated, the facility representative with:
  - (a) Staff of the Office of the Attorney General;
  - (b) A law enforcement official;
  - (c) Staff assigned to the Department's Intelligence and Investigative Division;
  - (d) The hearing officer supervisor, or a designee; or
  - (e) The Secretary, or a designee;
- (2) Elect to discuss a non-evidentiary matter in the absence of the defendant, or, if designated, the facility representative regarding one or more of the following matters:
  - (a) Security or safety;
  - (b) A plea agreement;
  - (c) An informal resolution;
  - (d) A postponement request;
  - (e) A time requirement or procedure of a regulation under this chapter or Department policy or procedure; or

(f) Representation or witness request; or

(3) Elect to, without the defendant present:

(a) Question or take testimony from a witness or confidential informant witness whose identity may not be revealed to a defendant;

(b) Review or examine security sensitive evidence that may include a document, video record, or other security sensitive evidence in the presence of staff necessary for security and safety of the hearing officer, witness, confidential informant, or security sensitive evidence.

## **.12 Disciplinary Proceeding Procedures — Preliminary and Evidentiary Phases — Written Record and Audio Recording.**

A. The hearing officer shall be responsible for a record of the defendant's disciplinary proceeding when the defendant is before the hearing officer.

B. The hearing officer shall ensure that both a written record and audio recording are used to document and record a defendant's appearance before the hearing officer.

C. The written and audio record shall only be considered a record of the Department exclusively for the:

(1) Use of staff in the conduct of the Department's daily business;

(2) Record retention requirements of the Department; and

(3) Statutory requirements of the Annotated Code of Maryland regarding documenting the defendant's case record as to the defendant's disciplinary history.

D. The audio record of the defendant's disciplinary proceeding may not be considered to be an entitlement, a right, or for the benefit of a defendant.

E. Audio Recording.

(1) The inability to record a defendant's disciplinary proceeding shall preclude the hearing officer from conducting the defendant's disciplinary proceeding.

(2) When the defendant's disciplinary proceeding cannot be audio recorded and the defendant's disciplinary proceeding may not proceed, the hearing officer shall:

(a) Advise the defendant that the disciplinary proceeding cannot be audio recorded and the inmate's disciplinary proceeding may not proceed;

(b) Postpone the defendant's disciplinary proceeding; and

(c) Advise the facility staff to reschedule the defendant's disciplinary proceeding when circumstances permit.

(3) The postponement of the defendant's disciplinary proceeding due to an inability to audio record the defendant's disciplinary hearing:

(a) Shall be considered good cause for the delay of the defendant's disciplinary proceeding; and

(b) May not support the dismissal of an inmate rule violation charged.

F. Written Record.

(1) The written record is a summary of the defendant's disciplinary proceeding and may not be considered a full transcript.

(2) A hearing officer's failure to completely document the written record may not be the basis for a reversal of the hearing officer's findings of fact or disposition of an inmate rule violation charged.

### **.13 Disciplinary Proceeding Procedures — Inmate Waiver of Appearance.**

A. If a defendant elects not to appear before the hearing officer or to participate in the disciplinary proceeding, the defendant is considered to waive:

(1) The defendant's preliminary review;

(2) The opportunity to claim a denial of a due process right or claim a violation of a time or procedure requirement applicable to this chapter pursuant to statute, law, or policy;

(3) The ability to attend and participate in all stages of the disciplinary proceeding under the inmate disciplinary process;

(4) The opportunity to make a case presentation and present evidence;

(5) The opportunity to make a presentation regarding appropriate sanctions, if applicable;

(6) The post-disciplinary procedures under this chapter; and

(7) Any and all rights, claims, or procedures normally available to the defendant under the authority of a statute, law, policy, or procedure applicable to the inmate disciplinary process.

B. The hearing officer may determine that the defendant waived an appearance before the hearing officer and participation in the disciplinary proceeding if the defendant:

(1) Submits a Waiver of Appearance form or written statement informing the hearing officer of the defendant's decision not to appear or participate;

(2) Poses a threat to the security of the facility or the safety of an inmate, staff, or an individual;

(3) Delays appearance before the hearing officer or willfully delays reporting to the location of the defendant's disciplinary proceeding;

(4) Refuses to obey instructions or resists or interferes with the duties of staff prior to an appearance before the hearing officer or after reporting to the location of the defendant's disciplinary proceeding;

(5) Violates security procedures for the escort of the defendant to or at the location of the defendant's disciplinary proceeding;

(6) Elects to depart voluntarily from the location of the defendant's disciplinary proceeding prior to the conclusion of the disciplinary proceeding;

(7) Becomes disruptive prior to the appearance before the hearing officer or after arriving at the location of the defendant's disciplinary proceeding;

(8) Exhibits conduct that poses a threat to the security of the facility or location of the defendant's disciplinary proceeding; or the safety of an inmate, staff, or an individual; or

(9) Requires removal from the location of the defendant's disciplinary proceeding at the direction of the hearing officer or staff.

C. If a defendant elects not to appear before the hearing officer, elects not to participate in the defendant's disciplinary proceeding, or is removed or not permitted to participate in the defendant's disciplinary proceeding, the hearing officer shall:

(1) Continue with the defendant's disciplinary proceeding in the absence of the defendant; and

(2) Render a disposition for each inmate rule violation charged.

D. When determining that the defendant's right to participate in the defendant's disciplinary proceeding is voluntarily or involuntarily waived by the defendant, the hearing officer may accept:

(1) A Waiver of Appearance form or a written statement signed by:

(a) The defendant or staff having direct knowledge of the defendant's decision not to appear before the hearing officer or to participate in the defendant's disciplinary proceeding; or

(b) Staff having direct knowledge of the defendant's conduct that supports a determination that the defendant has involuntarily waived the defendant's right to appear before the hearing officer or to participate in the defendant's disciplinary proceeding; or

(2) Sworn testimony from staff having direct knowledge of the defendant's:

(a) Decision not to appear before the hearing officer or to participate in the defendant's disciplinary proceeding; or

(b) Conduct that supports a determination that the defendant has involuntarily waived the defendant's right to appear before the hearing officer or to participate in the defendant's disciplinary proceeding; or

(3) Statements made by the defendant in the hearing officer's presence or observations of the defendant's conduct made by the hearing officer.

## **.14 Disciplinary Proceeding Procedures — Preliminary Review.**

A. Preliminary Review. The matters that may be addressed by the hearing officer, facility representative, if designated, or the defendant at the preliminary review may include, but may not be limited to, one or more of the following:

- (1) The inmate rule violation or violations charged;
- (2) A representation request;
- (3) A witness request;
- (4) An evidence request;
- (5) A postponement request;
- (6) A time or procedure requirement;
- (7) The form of the Notice of Inmate Rule Violation or Notice of Inmate Disciplinary Hearing;
- (8) Any issues with or arising from the manner of service of process of the documents under §A(1)(g) of this regulation;
- (9) An attachment or other evidence review;
- (10) Determinations regarding security sensitive evidence or confidential witnesses;
- (11) A plea agreement;
- (12) An informal resolution; and
- (13) A plea by the defendant to the inmate rule violation or violations charged.

B. If during or at the conclusion of the preliminary phase of the inmate disciplinary proceeding, a defendant elects not to or fails to raise any matter listed under §A of this regulation, the defendant is concluded to have waived the opportunity to make a motion regarding the matter.

C. During the preliminary review, the hearing officer shall ensure that a description of an attachment or other evidence submitted by staff as to the inmate rule violation charged is reviewed and summarized for the record of the defendant's disciplinary proceeding except that security sensitive evidence may not be read into the record or released to a defendant or other inmate.

D. If the hearing officer determines that the factual content of the Notice of Inmate Rule Violation form, or any attachment, report, or evidence attached to or referred to in the Notice of Inmate Rule Violation form, if found to be credible and reliable, would constitute an inmate rule violation not charged by staff, the hearing officer:

- (1) May notify the participants in the preliminary review that the additional inmate rule violation may be charged;
- (2) May inquire if the facility representative, if designated, or other facility staff intends to add the applicable inmate rule violation, and, if added, ensure that the record of the disciplinary proceeding reflects the additional inmate rule violation charged; and
- (3) Shall, if raised by a participant in the preliminary review, permit the request for a postponement of the disciplinary proceeding for a reasonable time so the party to the preliminary review making the request may further prepare the case in regard to the additional inmate rule violation charged.

E. At the conclusion of the preliminary review, the hearing officer shall inquire if the defendant and facility representative, if designated, or facility staff is prepared to proceed with an evidentiary portion of the disciplinary proceeding.

- (1) If the defendant or the facility representative, if designated, or facility staff is not prepared to proceed, the hearing officer shall provide the defendant or the facility representative, if designated, or facility staff an opportunity to address the issue.
- (2) The hearing officer may, without the request of any other hearing participant, postpone a disciplinary proceeding.
- (3) The hearing officer shall determine the merits of the moving participant's request for a postponement.

(4) When the hearing officer does not find that a postponement of the disciplinary proceeding is warranted, the hearing officer shall proceed with the disciplinary proceeding.

(5) If a defendant's disciplinary proceeding is postponed, staff shall reschedule the defendant's disciplinary proceeding as soon as circumstances permit.

(6) The postponement of the defendant's disciplinary proceeding shall be considered good cause for the delay and may not be considered cause for dismissal of an inmate rule violation charged.

(7) Failure to request a postponement shall be deemed a waiver of the right to request and be granted a postponement.

(8) When a previously postponed case is resumed, the hearing officer shall determine whether to continue the defendant's previous disciplinary proceeding or whether circumstances require a de novo or new preliminary or evidentiary proceeding.



## **.15 Disciplinary Proceeding Procedures — Preliminary Phase — Dismissing an Inmate Rule Violation Charged.**

A. A hearing officer may only elect to dismiss an inmate rule violation charged based on cause established under this regulation.

B. Time or Procedural. A hearing officer may dismiss an inmate rule violation charged if the defendant established that a time or procedural violation requiring dismissal of an inmate rule violation charged under this chapter has occurred and meets the requirements for a dismissal under §C of Regulation .03 of this chapter.

C. Lack of Evidence or Failure to Make a Prima Facie Case. After reviewing a report, an attachment, or other evidence submitted by the facility representative, if designated, or facility staff, the hearing officer may dismiss an inmate rule violation charged for lack of evidence if the hearing officer determines that the facts as stated in a report, an attachment, or other evidence considered in the light most favorable to the facility and inferences resulting from those facts do not support a finding that the defendant committed the inmate rule violation charged.

D. Technical Defect or Error.

(1) A non-evidentiary defect or error in drafting of either a defendant's copy of the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form may not be considered a cause under this regulation to support dismissal of an inmate rule violation charged.

(2) A possible non-evidentiary defect or error may include, but not be limited to, one or more of the following:

- (a) An incorrect inmate rule violation charged;
- (b) An incorrectly cited date or time reference;
- (c) An incorrect inmate control or state identification number or name;
- (d) A missing signature on any form;
- (e) The absence of a shift supervisor or shift commander review; or
- (f) A failure of service on the defendant.

(3) To correct the defect or error, the hearing officer shall inform the facility representative, if designated, or facility staff of the defect or error identified and the need for correction.

(4) After correction, the facility representative, if designated, or facility staff shall:

- (a) Provide the defendant with notice consistent with §F of Regulation .05 of this chapter; and
- (b) Schedule the defendant for an appearance before the hearing officer.

(5) The identification of a defect or error shall be considered good cause to suspend the inmate disciplinary process until the defect or error is corrected.

E. Failure to Serve the Notice of Inmate Rule Violation Form or Notice of Inmate Disciplinary Hearing Form.

(1) If raised during the preliminary review that the defendant did not receive service of the defendant's copy of the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form, the hearing officer shall determine whether the defendant received service.

(2) A hearing officer may rely on one or more of the following in order to determine whether staff complied with service requirements of this chapter:

(a) The defendant's presentation regarding the claim of not being served a copy of the defendant's Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form;

(b) The record of service as stated on the facility's copy of the defendant's Notice of Inmate Disciplinary Hearing form or Notice of Inmate Disciplinary Hearing form or Department data records;

(c) Testimony of staff serving the defendant with the defendant's copy of the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form; or

(d) Rebuttal presentation, if presented by the facility representative, if designated, or facility staff, to the defendant's presentation under this regulation.

(3) The failure of the defendant to be served with the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form prior to the defendant's appearance before the hearing officer may not, under this regulation, be considered a cause to support the dismissal of an inmate rule violation charged.

(a) If the hearing officer determines that staff failed to meet service requirements, the hearing officer shall notify the facility representative, if designated, or facility staff of the non-compliance with service requirements and direct staff to comply service requirements.

(b) If the hearing officer determines that staff did comply with service requirements, the hearing officer shall proceed with the disciplinary proceeding.

(c) If the defendant waives the service process, the hearing officer shall proceed with the disciplinary proceeding.

(4) The failure of staff to serve the defendant with the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form shall be considered good cause for the delay of a time or procedure requirement under the inmate disciplinary process.

## **.16 Disciplinary Proceeding Procedures — Preliminary Review — Defendant Request for Representation.**

A. A defendant referred to the hearing officer for a disciplinary proceeding may elect to request representation to assist the defendant during the disciplinary proceeding.

(1) If a defendant requests representation for the inmate disciplinary process and the request is subsequently approved:

(a) All responsibilities established under this chapter for the defendant during the preliminary hearing, case presentation, and sanctioning phase of the disciplinary proceeding become the defendant's representative's responsibilities;

(b) The defendant agrees that the defendant's representative is the agent of the defendant;

(c) The defendant, on review, is bound by the decisions, actions, and presentation of the defendant's representative.

B. Defendant Representation Request.

(1) When a defendant is served with the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form, the defendant is required to list the name of the defendant's requested representative in the section of the facility's copy of the Notice of Inmate Disciplinary Hearing form designated for the name of the representative.

(2) The defendant's failure to list the name of the requested representative at the time of service shall be a waiver of defendant's opportunity for representation.

C. Upon the appearance of the defendant before the hearing officer for a preliminary review of the defendant's Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form, the hearing officer shall determine if the:

(1) Inmate did list the name of a requested representative at service; and

(2) Individual listed is permitted to represent the defendant according to requirements of this regulation.

D. The facility representative, if designated, or facility staff may make an objection to the defendant's requested representative.

(1) If an objection is raised, the hearing officer shall:

(a) Permit the facility representative, if designated, or facility staff to state the reason or cause the defendant's requested representative is not eligible to represent the defendant;

(b) Permit the defendant an opportunity to address the facility representative's, if designated, or facility staff's objection to the defendant's requested representative; and

(c) After reviewing the facility representative's, if designated, or facility staff's objection and the defendant's response, determine if the objection is sustained or overruled and advise the facility representative, if designated, or facility staff and defendant of the decision.

(2) If the facility representative's, if designated, or facility staff's objection is sustained, the defendant may request that the hearing officer postpone the disciplinary proceeding to permit the defendant an opportunity to obtain another representative or to permit the defendant more time to prepare to proceed without representation.

(3) If the disciplinary proceeding is postponed due to an issue with a defendant's representative and a subsequent request for a defendant representative is denied or the defendant's approved representative is unprepared, the hearing officer shall find that the defendant has waived the right to request representation and the hearing officer shall proceed with the defendant's disciplinary proceeding.

(4) The hearing officer is not obligated to grant a postponement requested by the defendant in accordance with provisions of this regulation.

E. The appearance of a defendant's requested representative at a disciplinary proceeding is voluntary on the part of the requested representative.

F. If a requested representative declines to appear at the defendant's disciplinary proceeding or represent the defendant at the disciplinary proceeding, the hearing officer may not compel a requested representative to appear at the defendant's disciplinary proceeding or act as the defendant's representative.

G. The hearing officer shall only permit a willing individual to appear as the defendant's representative who is:

(1) An inmate:

- (a) Assigned to the general population of the facility where the defendant's disciplinary proceeding is to take place; and
- (b) Permitted under this regulation and by the managing official, or a designee, to represent the defendant;

(2) A staff member:

- (a) Employed at the facility where the defendant's disciplinary proceeding is to take place; and
- (b) Permitted under this regulation and by the managing official, or a designee, to represent the defendant; or

(3) A protective custody inmate:

- (a) Approved by the managing official, or a designee, to represent another protective custody defendant; and
- (b) Assigned to the facility where the defendant's disciplinary proceeding is to take place.

H. A hearing officer may not permit an individual requested to be a defendant's representative if the requested individual is:

- (1) Banned as a defendant representative by the Secretary, Deputy Secretary, Executive Director, Field Support Services, managing official, or a respective designee;
- (2) Identified as a threat to the security of the facility, Department, or community or safety of an inmate, staff, or an individual;
- (3) Assigned to disciplinary or administrative segregation, cell restriction, or medical or mental health housing or status;
- (4) A protective custody inmate requested to represent a defendant who is not assigned to protective custody;
- (5) An attorney or paralegal;
- (6) A visitor to the facility; or
- (7) In a location where staff escort or vehicular transportation to the defendant's disciplinary proceeding is required.

I. If the defendant does not request representation at service and subsequently requests representation at the defendant's appearance before a hearing officer, the hearing officer may elect to permit the request for representation only if:

- (1) The requested individual is permitted under this regulation to represent a defendant;
- (2) The requested individual is present at the time and location where the defendant's disciplinary proceeding is to take place;
- (3) There is no request for postponement by the requested representative; and
- (4) The defendant's representative and the defendant are prepared to proceed with and participate in the defendant's disciplinary proceeding.

J. If the defendant requested representation at service and is subsequently informed that the requested representative declined to represent the defendant or is unavailable and the defendant requests the opportunity to obtain another representative and a postponement to obtain representation, the hearing officer may:

- (1) Permit the request and postpone the defendant's disciplinary proceeding for one calendar day; or
- (2) Deny the defendant's request and proceed with the defendant's disciplinary proceeding.

K. The hearing officer when permitting a postponement under §J(1) of this regulation may not grant a subsequent postponement request if the defendant does not obtain representation.

L. If an approved defendant's representative makes an appearance at the defendant's disciplinary proceeding, the defendant's representative is obligated to remain at the defendant's disciplinary hearing until released by the hearing officer.

M. If the defendant's representative, during the defendant's disciplinary proceeding, voluntarily elects not to continue as the defendant's representative or is removed from the disciplinary proceeding due to the representative's conduct or threat to the security of the facility, Department, or community or safety of an inmate, staff, or an individual, the hearing officer shall:

- (1) Conclude that the defendant has waived representation; and
- (2) Continue the defendant's disciplinary proceeding with no consideration for a postponement.

N. Defendant Preparation.

(1) The facility is not required to:

- (a) Permit the defendant access to the defendant's representative in preparation for the defendant's disciplinary proceeding; and
- (b) Make special arrangements for the defendant or the defendant's representative to have access to materials to prepare for the defendant's case presentation.

(2) The hearing officer may not grant a postponement solely to allow the defendant and the defendant's representative time to confer concerning the inmate disciplinary process.

## **.17 Disciplinary Proceeding Procedures — Preliminary Review — Witness Request.**

A. The defendant charged with an inmate rule violation or, if designated, the facility representative or facility staff may make a request that an individual appear as a witness to testify during the case presentation phase of the defendant's disciplinary proceeding.

B. Defendant Request for a Witness.

(1) When served with a Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form, the defendant is required to list the name of the defendant's requested witness in the section of the facility's copy of the Notice of Inmate Disciplinary Hearing form designated for the name of a witness.

(2) The defendant's failure to list a requested witness by name shall be a waiver of the opportunity to request a witness.

C. A facility representative, if designated, or facility staff shall be responsible for informing the hearing officer of the facility's witness request during the preliminary review.

D. A hearing officer may request the testimony of a witness at any point in the disciplinary proceeding.

E. During the preliminary review of the defendant's Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form, the hearing officer shall consider a defendant's request for a witness.

(1) The hearing officer shall solicit a proffer from the defendant to determine the relevancy of the testimony in relation to the inmate rule violation charged.

(2) Based on the given proffer, a hearing officer shall permit a witness to testify if the witness' testimony is:

(a) Relevant;

(b) Not repetitive or cumulative to evidence already in the record of the disciplinary proceeding or to the proffered testimony of another witness; and

(c) Not a threat to the security of the facility, Department, or community or safety of an inmate, staff, or an individual.

(3) A witness otherwise allowed under this regulation may be denied if there is reasonable belief that the witness's testimony would constitute a threat to security of the facility, Department, or community, or safety of an inmate, staff, or other individual.

F. The testimony of a witness may be taken in person, via video conferencing, or via conference call.

## **.18 Disciplinary Proceeding Procedures — Preliminary and Evidentiary Phases — Confidential Informant Information.**

A. An individual providing information regarding the defendant's inmate rule violation charged may be identified as a confidential informant witness when there is cause to believe that identifying the individual to the defendant is a threat to the security of the facility, Department, or community or safety of an inmate, staff, or an individual.

B. A hearing officer may not reveal the identity of a confidential informant witness.

C. If a hearing officer is provided with testimony, a written statement, or a report referring to information received from a confidential informant witness, the hearing officer:

(1) May not share the testimony or documented statement of the confidential informant witness with a defendant or the defendant's representative;

(2) May not reveal the identity of the confidential informant witness to the defendant or the defendant's representative;

(3) May not permit the confidential informant witness to be called as a requested witness at the defendant's disciplinary proceeding by a defendant, defendant's representative, if designated, the facility representative, or facility staff; and

(4) May provide to the defendant or defendant's representative an oral summary of the confidential informant witness's testimony or documented statement that is not specific in detail so as to identify the confidential informant witness.

D. The facility representative, if applicable, or staff may provide the defendant with a written summary of the confidential informant witness's testimony or documented statement that is not specific in detail so as to identify the confidential informant witness.

E. The hearing officer shall consider the information provided by the confidential informant witness to determine the credibility and reliability of the information provided.

F. Information provided by a confidential informant witness shall be concluded to be sensitive and maintained in a sealed record for only staff with a need to know to access the information or the identity of the confidential informant witness.

G. The identity of a confidential informant witness or any information that may identify a confidential informant witness, may not be released to any agency that maintains records that are a matter of public record without a court order or authorization from the Office of the Attorney General, Secretary, or a designee.

H. When the hearing officer concludes that an individual identified by staff as a confidential informant witness does not meet the requirements to be classified as a confidential informant witness, the following shall apply:

(1) The hearing officer shall postpone the disciplinary proceeding.

(2) The hearing officer shall inform the facility representative, if designated, or facility staff of the hearing officer's conclusion.

(3) The facility representative, if designated, or facility staff shall inform the managing official, or a designee, of the hearing officer's conclusion.

(4) If the managing official, or designee, agrees with the hearing officer, facility staff shall schedule the defendant for an appearance before a hearing officer and reveal the identity of the witness.

(5) If the managing official, or a designee, disagrees with a hearing officer's conclusion, the managing official, or designee, may appeal the hearing officer's decision to the Secretary, or a designee.

(6) Upon receipt of the Secretary's, or a designee's, decision regarding the appeal under §H(5) of this regulation, the facility representative, if designated, or facility staff shall schedule the defendant for an appearance before a hearing officer and all hearing participants, including the hearing officer, shall abide by the decision of the Secretary, or a designee.

## **.19 Disciplinary Proceeding Procedures — Preliminary Review — Review of Attachment or Other Evidence Requests.**

A. An attachment or other evidence submitted by staff with or independently of the Notice of Inmate Rule Violation form shall be concluded to be evidence regarding the defendant's inmate rule violation charged.

B. In the interest of security of the facility, Department, or community or safety of an inmate, staff, or an individual, a defendant may be limited in or restricted from examining or possessing an attachment or other evidence.

C. To prevent and avoid accidental, unauthorized, or erroneous release to a defendant, defendant's representative, or loss or misplacement of evidence, staff shall retain custody of the attachment or other evidence until the defendant's appearance before the hearing officer.

D. Staff may not provide the defendant with a copy of an attachment or other evidence when the defendant is served with the defendant's copy of the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form.

E. When the defendant appears before the hearing officer for the preliminary review, the hearing officer, while conducting the preliminary review, shall advise the defendant or defendant's representative, of an attachment or other evidence that was submitted by the staff in regard to the inmate rule violation charged.

F. If requested by the defendant, or defendant's representative, the hearing officer shall conduct a review of the attachment or other evidence during the preliminary review to determine if there is cause to believe that the attachment or other evidence is security sensitive and may not be examined or possessed by a defendant or defendant's representative.

G. If the hearing officer determines an attachment or other evidence is not security sensitive the defendant or defendant's representative:

(1) May request to review the attachment or other evidence;

(2) Shall comply with the facility's existing rules or procedures for requesting a copy of an attachment or other evidence; and

(3) May not use a request for a copy of an attachment or other evidence as the basis to request a postponement or a delay in the defendant's disciplinary proceeding.

H. If the hearing officer determines that an attachment or other evidence submitted is security sensitive or may pose a threat to the security of the facility, Department, or community or safety of an inmate, staff, or an individual if revealed to a defendant or defendant's representative, the hearing officer:

(1) Shall conclude the attachment or other evidence is a sealed record and not subject to the examination or possession by a defendant or defendant's representative;

(2) Shall inform the defendant or defendant's representative that the attachment or other evidence is security sensitive and may not be revealed to the defendant or the defendant representative;

(3) May not disclose to the defendant or defendant's representative the content of the attachment or other evidence deemed to be security sensitive; and

(4) May verbally provide the defendant or defendant's representative with a brief summary of the content of an attachment or other evidence as long as the summary does not compromise the content of the evidence identified as security sensitive.

I. If, after reviewing an attachment or other evidence, any hearing participant is not prepared to proceed, the hearing officer may grant a postponement.

J. If the disciplinary proceeding is postponed:

(1) The delay of the defendant's disciplinary proceeding may not be considered a cause to dismiss the inmate rule violation charged; and

(2) Staff shall reschedule the defendant's disciplinary proceeding as soon as circumstances permit.



K. Defendant Request for an attachment or other evidence.

(1) When served with a Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form, the defendant is required to list a detailed description of a request for an attachment or other evidence in the appropriate section of the facility's copy of the Notice of Inmate Disciplinary Hearing form designated for evidence requests.

(2) The defendant's failure to give a detailed description of the attachment or other evidence requested shall be deemed a waiver of the defendant's opportunity to make the request.

L. The hearing officer may approve an attachment or other evidence requested by the defendant or defendant's representative only if the hearing officer finds that the request was made at service and deemed appropriate under this regulation.

(1) The hearing officer may not compel the production of an attachment or other evidence when denied by an entity, staff, or an individual in control of the requested attachment or other evidence that is identified as security sensitive.

(2) The hearing officer shall deny a request for an attachment or other evidence made by the defendant or defendant's representative that is deemed:

(a) Irrelevant to the merits of the defendant's disciplinary proceeding;

(b) Cumulative to a factual matter or evidence to be presented or already in the record of the defendant's disciplinary proceeding; or

(c) A threat to the security of the facility, Department, or community or safety of an inmate, staff, or an individual.

(3) The hearing officer may not permit a request for or inspection of an attachment or other evidence that includes, but may not be limited to, a security:

(a) Document not classified for examination by an inmate;

(b) Record not classified for examination by an inmate;

(c) Post order not classified for examination by an inmate;

(d) Emergency plan;

(e) Photograph not classified for examination by an inmate;

(f) Video monitoring record;

(g) Property, equipment, item, or device;

(h) Directive not classified for examination by an inmate;

(i) Testing equipment or the testing equipment supplies; or

(j) Confidential statement or notation regarding security sensitive information.

(4) The hearing officer shall deny a request to inspect evidence deemed to be contraband that includes, but may not be limited to:

(a) A tool;

(b) A drug or medication;

(c) Alcohol;

(d) A weapon;

(e) A controlled dangerous substance;

(f) A cellular telephone;

(g) Tobacco, or currency; or

(h) Escape or drug paraphernalia.

(5) If the hearing officer determines that an examination of security sensitive or contraband evidence is required, the hearing officer shall conduct the examination outside the presence of the defendant, defendant representative, or any other inmate.

(6) When the hearing officer determines that an examination of a security or video record is required, the hearing officer shall conduct the review outside the presence of the defendant, defendant representative, or any other inmate.

#### M. Security Sensitive Information Presentation.

(1) When investigating a defendant's conduct in an event, staff shall determine if a record, report, document, an attachment, or other evidence related to the defendant's conduct is security sensitive.

(a) To determine if information is security sensitive, staff shall consider if divulging the information establishes a potential threat to the security operations, intelligence gathering, investigation methods and techniques of the facility, Department, or public safety or an individual providing security sensitive information.

(b) If making a determination that information is security sensitive, staff may consider that the information:

(i) Was provided by an inmate, confidential informant witness, or individual whose identity, if revealed, may pose a threat to the safety of that inmate, confidential informant witness, or individual or security of the facility, Department, or community;

(ii) Would reveal the method, technique, or factual details of a security or intelligence investigation;

(iii) Would reveal the method, quality, design, and field of view or coverage by the facility security monitoring equipment or systems;

(iv) Could reveal facility security staffing plans, emergency plans, or operations; or

(v) Was obtained by a law enforcement agency, a State or federal intelligence office or unit, or the Department's Intelligence and Investigative Division.

(c) In cases where staff have cause to believe that releasing information arising from an investigation of the defendant's conduct in an event would compromise security operations or intelligence gathering, or investigation methods and techniques of the facility or Department, or the safety of the public or an individual providing information regarding the investigation, staff shall inform the hearing officer that the information is security sensitive and not release the security sensitive information or evidence to the defendant, defendant's representative, or other inmate.

(2) When the hearing officer concludes that an attachment or evidence is not security sensitive, but facility staff disagrees, the following shall apply:

(a) The hearing officer shall postpone the defendant's disciplinary proceeding.

(b) The hearing officer shall inform the facility representative, if designated, or facility staff of the hearing officer's conclusion.

(c) The facility representative, if designated, or facility staff shall inform the managing official, or a designee, of the hearing officer's conclusion.

(d) If the managing official, or a designee, agrees with the hearing officer that the attachment or evidence is not security sensitive and may be released to the defendant or defendant's representative, facility staff shall schedule the defendant for a disciplinary proceeding and reveal the attachment or other evidence deemed to be not security sensitive.

(e) If the managing official, or a designee, disagrees with a hearing officer, the managing official, or a designee, may appeal the hearing officer's decision to the Secretary, or a designee.

(f) Upon receipt of the Secretary's, or a designee's, decision regarding the appeal, the facility representative, if designated, or facility staff shall schedule the defendant for a disciplinary proceeding and all hearing participants, including the hearing officer, shall abide by the decision of the Secretary, or a designee.

(3) Presentation of Security Sensitive Information at a Disciplinary Proceeding.

(a) The hearing officer:

(i) May not provide detail regarding investigation methods or techniques used to obtain the security sensitive information, the specific content of security sensitive information, or the source providing the security sensitive information; and

(ii) May summarize the content of the security sensitive information that specifically relates to the inmate rule violation charged as long as that summary does not compromise the security sensitive nature of the factual details of the information being reviewed.

(b) The content and details of information obtained through the facility security video monitoring system may be summarized for the defendant or defendant's representative; however, the hearing officer may not reveal the specific capabilities or limitations of the facility's security monitoring system.

(c) The hearing officer may provide the defendant or defendant's representative with specific content information from a document the defendant authored.

(d) The hearing officer may not provide the defendant or defendant's representative with information for review that is identified as being a:

(i) Directive not classified for examination by an inmate;

(ii) Policy not classified for examination by an inmate;

(iii) Procedure not classified for examination by an inmate;

(iv) Photographic record not classified for examination by an inmate; or

(v) Material, file, record, or document not classified for inmate examination or by this regulation.

(e) The hearing officer may summarize for the defendant or defendant's representative security sensitive information deemed relevant to the outcome of the defendant's disciplinary proceeding as long as that summary does not reveal the specific content of the information under review.

(f) If the hearing officer is presented with security sensitive information obtained from a confidential informant witness during the defendant's disciplinary proceeding, the hearing officer may not reveal any information that may disclose the identity of the confidential informant witness.

(4) When issuing a written decision that includes security sensitive information, the hearing officer shall summarize for the record the security sensitive information considered in rendering the decision as to the inmate rule violation charged and ensure that the summary does not reveal the specific details of the security sensitive information.

#### (5) Post Hearing Procedures.

(a) The managing official, or a designee, may review security sensitive information when conducting a review of the hearing officer's decision as to the inmate rule violation charged.

(b) Staff shall preserve the security sensitive information, by ensuring that the security sensitive information is not included in the defendant's case record file.

(c) Security sensitive information may not be released to another State agency without a court order or authorization from the Office of the Attorney General, Secretary, or a designee.

#### N. Security Monitoring Video Record.

(1) If the reported event that is the subject of the inmate rule violation charged was recorded by the facility's security monitoring system:

(a) The defendant or defendant's representative is required to request at the time of service that the video record be preserved and made available for the hearing officer to review as part of the defendant's case presentation and the request made at service is required to be renewed during the preliminary phase of the defendant's disciplinary proceeding; or

(b) The facility representative, if designated, or facility staff may request during the preliminary phase of the defendant's disciplinary proceeding that the hearing officer view the video record as part of the facility's case presentation.

(2) If the video has been preserved and is available for inspection, the hearing officer shall conduct a review, without examination by any inmate, of the requested video recording.

## **.20 Disciplinary Proceeding Procedures — Preliminary Phase — Defendant Plea.**

A. Before concluding the preliminary phase of the defendant's disciplinary proceeding, the hearing officer shall request a plea from the defendant as to each inmate rule violation charged.

B. The Plea.

(1) When entering a plea for each inmate rule violation charged, the defendant may enter only one of the following for each inmate rule violation charged:

- (a) Guilty;
- (b) Not Guilty;
- (c) Not Competent; or
- (d) No plea.

(2) Guilty Plea. If the defendant enters a guilty plea to the inmate rule violation charged, the hearing officer, before accepting the guilty plea, shall determine the defendant understands that the guilty plea is:

- (a) A waiver by the defendant of the inmate disciplinary process and appeal rights;
- (b) An admission by the defendant that the defendant committed the inmate rule violation charged; and
- (c) An affirmation that the defendant's guilty plea is voluntary.

(3) If the hearing officer accepts the plea of guilty, the hearing officer shall proceed to the sanction phase of the defendant's disciplinary proceeding.

(4) Once the hearing officer accepts the guilty plea, the defendant is considered to:

- (a) Waive a claim that there was a delay, an error, or a denial of a time or procedural requirement applicable to the inmate disciplinary process;
- (b) Admit to committing the inmate rule violation charged;
- (c) Waive a claim that there was a due process or statutory requirement violation applicable to the inmate disciplinary process;
- (d) Waive a claim of an evidentiary error; and
- (e) Waive a claim that the conviction is not supported by substantial evidence.

(5) The hearing officer upon accepting the defendant's guilty plea to an inmate rule violation charged shall determine the sanction, period of the sanction, and effective date of the sanction to impose.

(6) If the hearing officer does not accept the guilty plea, the hearing officer shall proceed with the case presentation phase of the defendant's disciplinary proceeding.

(7) Not Guilty Plea. If the defendant enters a not guilty plea for an inmate rule violation charged, the hearing officer shall:

- (a) Conclude the defendant denies committing the inmate rule violation charged;
- (b) Enter the not guilty plea in the written and audio records of the defendant's disciplinary proceeding; and
- (c) Proceed with the case presentation phase of the defendant's disciplinary proceeding.

(8) Not Competent. If the defendant enters a plea of Not Competent, the hearing officer or facility representative, if designated, or facility staff shall postpone the case, if necessary, and contact the facility's mental health staff and request that staff determine whether the defendant is competent to participate in the disciplinary proceeding and whether the defendant was competent to understand and control the alleged behavior at the time of the offense.

(9) No Plea. If the defendant does not enter a plea to an inmate rule violation charged, the hearing officer shall enter a Not Guilty plea on behalf of the defendant and proceed in accordance with §B(7) of this regulation.

#### C. Plea Agreement.

(1) The hearing officer or facility representative, if designated, or facility staff and the defendant, or defendant's representative may enter into a plea agreement to resolve the inmate rule violation charged.

(2) The use of a plea agreement is discretionary and voluntary, and the plea agreement is not required to be offered or accepted by the hearing officer, staff, or defendant.

(3) The use of a plea agreement permits the facility representative, if designated, facility staff, shift supervisor or shift commander, hearing officer, or the defendant or defendant's representative to propose a plea agreement to resolve the inmate rule violation charged that shall include:

(a) A guilty plea or acceptance of an informal resolution by the defendant to one or more of the inmate rule violations charged; and

(b) The sanction, period of the sanction, and effective date of the sanction applicable to the inmate rule violation found guilty or disposed of informally.

(4) The facility representative, if designated, facility staff, shift supervisor or shift commander, or hearing officer is not obligated to offer a plea agreement to or consider a proposed plea agreement by the defendant or defendant's representative.

(5) The hearing officer is not obligated to accept all or part of the proposed plea agreement including the defendant's guilty plea, sanction, or period of sanction to be imposed for the inmate rule violation charged.

(a) The hearing officer is not obligated to accept the sanction recommended; and

(b) The hearing officer may accept the guilty plea, but increase the period of the sanction recommended and add additional sanctions.

(6) A plea agreement may be offered at any time before or during the preliminary hearing or before or during the case presentation portion of the disciplinary proceeding.

## **.21 Pre-Disciplinary Proceeding Procedures — Case Presentation.**

A. The defendant or the defendant's representative or the facility representative, if designated, or facility staff may present evidence and argument as part of the presenting party's case presentation during the evidentiary phase of the defendant's disciplinary proceeding.

(1) The defendant's refusal or failure to appear before the hearing officer or the defendant's removal from the defendant's disciplinary proceeding shall be considered a waiver of the defendant's opportunity to make a case presentation during the evidentiary phase of the defendant's disciplinary proceeding.

(2) The defendant or the defendant's representative or the facility representative and not the hearing officer, are responsible for presenting evidence requested by the defendant or the defendant's representative or the facility representative or call approved witnesses as part of the presenting party's case presentation during the evidentiary phase of the defendant's disciplinary proceeding.

(3) If the defendant or the defendant's representative or the facility representative, if designated, or facility staff do not present the requested evidence or call an approved witness during the presenting party's case presentation prior to the hearing officer closing the evidentiary record of the defendant's disciplinary proceeding, the opportunity to present evidence or call the witness is considered to be waived.

B. The facility representative may make an evidentiary case presentation on behalf of the facility as part of a defendant's disciplinary proceeding for an inmate rule violation charged for consideration by the hearing officer.

C. If a facility representative was not designated, the hearing officer shall consider the report found in the defendant's Notice of Inmate Rule Violation form, an attachment, or other evidence that may have been submitted by staff as to the inmate rule violation charged as the facility's evidentiary case presentation.

D. The defendant's representative or, in the absence of a representative, the defendant, may elect to make an evidentiary case presentation in response to the inmate rule violation charged for consideration by the hearing officer.

E. Testimony.

(1) Testimony of a witness permitted by the hearing officer shall be under an oath administered by the hearing officer.

(2) Before a permitted witness testifies, the hearing officer shall use the following oath to swear in the witness at the defendant's disciplinary proceeding: "Do you solemnly swear or affirm under the penalties of perjury that the testimony you are about to give at this disciplinary proceeding shall be the truth, the whole truth, and nothing but the truth?"

(3) The witness is required to provide an affirmative response to the oath before the witness begins to testify.

(4) The hearing officer may limit the scope of testimony presented by or questioning of a requested witness:

(a) If it is determined that the testimony may pose a risk to the security of the facility, Department, or community or safety of an inmate, staff, or an individual; or

(b) If the testimony by or questioning of the requested witness is:

(i) Irrelevant to the merits of the defendant's disciplinary proceeding; or

(ii) Cumulative to a factual matter or evidence already in the record of the defendant's disciplinary proceeding.

(5) A hearing officer may elect to call a witness or view evidence not requested by either hearing participant in order to clarify:

(a) Evidence presented;

(b) A fact in evidence; or

(c) A policy, procedure, or practice.

(6) A witness may not be compelled by the hearing officer to make an appearance, testify, or answer a question asked.

(7) If the witness refuses to appear, testify, or answer a question asked, the hearing officer may not dismiss the rule violation charged due to the failure of the witness to appear, testify, or answer a question asked.

(8) If the witness who has refused or failed to testify is a staff member, the hearing officer may, but is not required to, draw a negative inference from the refusal to testify.

(9) The facility representative, the defendant and the hearing officer may question a witness giving testimony except that if the defendant has a representative, only the representative, and not the defendant, may question a witness giving testimony.

#### F. Inmate Medical Information Presentation.

(1) A defendant's request for the defendant's own medical records as evidence shall be concluded to be the defendant's authorization for staff to obtain and disseminate the medical record requested by the defendant and to include that medical record in the case record.

(2) The failure of the defendant to list the requested defendant medical record as an evidence request at service of the Notice of Inmate Rule Violation form and Notice of Disciplinary Hearing form shall be concluded to be a waiver of the opportunity to request the medical record.

(3) A defendant may not review another inmate's medical record.

(4) Upon the making of a proffer by the defendant that another inmate's medical record would contain relevant and non-cumulative evidence, the hearing officer may view the evidence in camera without releasing the information to the defendant.

(5) Upon approval of the managing official, a staff member shall have access to an inmate's medical record if the record contains evidence that is relevant to the case, and disclosure of the medical record to the staff member is necessary for an investigation or a disciplinary proceeding.

(6) The hearing officer may:

(a) By email or conference call, request facility medical unit staff to provide inmate medical information deemed relevant and necessary by the hearing officer for the purposes of the defendant's disciplinary proceeding; and

(b) Review an inmate medical record if the hearing officer determines that review of a medical record is necessary for the disposition of the inmate rule violation charged regardless of whether the inmate who is the subject of the medical record has signed a written release of the inmate's medical information.

#### G. The hearing officer may:

(1) Prior to rendering a decision as to the inmate rule violation charged, consider if the defendant has a disciplinary conviction history for each inmate rule violation charged; and

(2) Consider the disciplinary conviction history in determining whether the defendant committed the inmate rule violation charged; but

(3) May not render a decision as to the defendant's inmate rule violation charged based solely on the defendant's disciplinary conviction history or the lack thereof.

H. Prior to closing the record, the hearing officer may consider any information available to the hearing officer in an official database maintained or used by the Department such as, but may not be limited to:

(1) The Offender Based State Correctional Information System (OBSCIS);

(2) Offender Case Management System (OCMS);

(3) Criminal Justice Information System (CJIS);

(4) Any telecommunication provider to the Department;

(5) The SafetyNet including the Department's policies and procedures;

(6) Any inmate's electronic case file or hard copy base file; or

(7) Department memoranda, regulations, directives, notices, or bulletins.

I. The hearing officer is permitted to take official or administrative notice of facts without the benefit of adversarial presentation of evidence.

(1) The hearing officer shall advise the parties of the findings of fact of which the hearing officer has taken official or administrative notice.

(2) The hearing participants shall be given an opportunity to rebut, through argument, any relevant facts that the hearing officer would otherwise presume to exist under the doctrine of official or administrative notice.

J. The defendant's representative or, in the absence of a representative, the defendant and the facility representative may raise objections.

(1) When considering an objection, the hearing officer may:

- (a) Allow the opposing party the opportunity to comment on the merits of the objection raised; and
- (b) Consider the merits of the objection.

(2) The hearing officer shall inform all parties of the hearing officer's decision to sustain or overrule the objection raised.

K. Facility Case Presentation.

(1) The facility bears the burden to prove that it is more likely than not that the defendant committed the inmate rule violation charged.

(2) The facility's case presentation as to the inmate rule violation charged may include, but may not be limited to:

(a) Argument on the merits of evidence that may be or was presented at the defendant's disciplinary proceeding for the inmate rule violation charged;

(b) Presentation of evidence;

(c) Testimony by the facility representative; or

(d) Calling or questioning a witness.

(3) If designated, the facility representative shall:

(a) Make the case presentation for the facility; and

(b) Include in the facility's case presentation:

(i) The event report found in the Notice of Inmate Rule Violation form; and

(ii) If applicable, an attachment or other evidence submitted by staff regarding the inmate rule violation charged.

(4) In the absence of the facility representative, the hearing officer shall accept as the facility's case presentation:

(a) The report found in the defendant's Notice of Inmate Rule Violation form; and

(b) If applicable, an attachment or other evidence submitted by staff regarding the inmate rule violation charged.

(5) The facility, and not the hearing officer, has the burden of presenting evidence or calling a permitted witness as part of the facility's case presentation prior to the hearing officer closing the evidentiary record.

(6) The failure of the facility to present requested evidence or call a permitted witness prior to the hearing officer closing the evidentiary record shall be concluded to be a waiver of the opportunity to present the requested evidence or call a witness.

(7) The failure of the facility representative to question a witness at the time the witness is called or after giving testimony, prior to the witness being excused, shall be concluded to be a waiver of the opportunity to question that witness.

L. Defendant Case Presentation.

(1) The defendant may make an evidentiary case presentation in accordance with this regulation.



(2) The defendant is not obligated to make an evidentiary case presentation; and

(3) The failure of the defendant to make an evidentiary case presentation may not be considered as an adverse inference toward the defendant or concluded to be an admission of guilt.

(4) If the defendant has designated a representative, only the representative may question witnesses and make arguments.

(5) The defendant's evidentiary case presentation may include:

(a) Argument on the evidentiary merits of evidence that was presented by the facility or on the inmate rule violation charged;

(b) Presentation of evidence;

(c) Testimony, if volunteered, by the defendant; and

(d) Presenting witness testimony.

(6) The defendant is not obligated to testify as part of the defendant's evidentiary case presentation.

(7) If the defendant testifies as part of the defendant's evidentiary case presentation and is questioned by the hearing officer or the facility representative, the defendant is obligated to and shall respond to the question asked.

(8) The hearing officer may draw an adverse inference to the defendant's evidentiary case presentation if the defendant, after giving testimony:

(a) Refuses or fails to answer a question asked; or

(b) Evades answering a question asked.

(9) The defendant, and not the hearing officer, has the burden of presenting requested evidence or calling a requested and permitted witness as part of the defendant's case presentation prior to the hearing officer closing the evidentiary record.

(10) The failure of the defendant to present requested evidence or call a requested witness during the defendant's case presentation prior to the hearing officer closing the evidentiary record shall be concluded to be a waiver of the opportunity to present the requested evidence or call a requested witness.

(11) The failure of the defendant to question a witness at the time the witness is called or after giving testimony prior to the witness being excused shall be concluded to be a waiver of the defendant's opportunity to question the witness.

#### M. Non-Staff Witness Request.

(1) The appearance of an individual as the requested witness, who is not identified as staff, is voluntary and that individual may not be compelled to:

(a) Appear;

(b) Give testimony; or

(c) Answer a question asked.

(2) A requested non-staff witness may not be permitted if the individual requires a staff escort or transportation by vehicle to the location of the defendant's disciplinary proceeding.

(3) A requested non-staff witness may be permitted to testify, at the discretion of the hearing officer, by telephone conference call.

#### N. Staff Witness Request.

(1) When approved by the hearing officer, staff is required to appear, testify, and respond directly to questions asked by the defendant or defendant's representative, the facility representative, or the hearing officer.

(2) The hearing officer may direct staff not to answer a question and may direct a hearing participant to ask a different question if the hearing officer determines the question asked is:

(a) Irrelevant;

(b) Cumulative or repetitive; or

(c) Argumentative or abusive.

(3) If the staff witness requests the opportunity to review a report or other evidence prior to or after being asked a question, the hearing officer shall permit staff the opportunity to review the Notice of Inmate Rule Violation form or Notice of Inmate Disciplinary Hearing form, a report, an attachment, or other evidence prior to answering a question.

(4) If staff refuse or fail to make an appearance, testify, or answer a question asked, the hearing officer may:

(a) Conclude that the witness willfully elected not to appear, testify, or answer the question asked; and

(b) Draw an adverse inference to the facility's case presentation as to the inmate rule violation charged.

O. Security Sensitive Testimony. If testimony of a requested witness is determined to be security sensitive, the hearing officer, in order to preserve the security and safety of the witness:

(1) May take testimony from the witness in-person or by telephone conference call without the defendant, defendant's representative, or facility representative present;

(2) May, if safety and security permit, provide the defendant, the defendant's representative, or the facility representative with a general summary of the security sensitive testimony taken from the witness, but may not provide factually detailed content of the testimony deemed security sensitive; and

(3) May, if safety and security require, only advise the defendant, the defendant's representative, or the facility representative that, for the purposes of the record of the defendant's disciplinary proceeding, the testimony is security sensitive and may not be revealed.

P. Telephone Conference Call — Witness Testimony.

(1) The hearing officer may elect, for convenience of the witness or hearing participants, or to ensure that the hearing is held in a timely manner, to use a telephone conference call to take testimony from a requested witness.

(2) The hearing officer shall, prior to the giving of testimony, advise the individual testifying that the testimony is audio recorded.

Q. Rebuttal Presentation and Closing Argument.

(1) The hearing officer, at the conclusion of the defendant's case presentation, shall provide the facility representative the opportunity to rebut the evidentiary case presentation of the defendant by presenting additional evidence and calling a witness.

(2) The hearing officer may provide the defendant and the facility representative the opportunity to make a closing argument.

R. If the defendant waived the defendant's disciplinary proceeding, the hearing officer shall conclude that the defendant waived the opportunity to make an evidentiary case presentation.

S. Prior to closing the evidentiary record, the hearing officer shall inquire of both the defendant or defendant's representative and the facility representative whether the case presentation of both parties has concluded.

T. At the conclusion of the case presentation by both the defendant or defendant's representative and the facility representative, the hearing officer shall advise the hearing participants that the evidentiary record of the defendant's disciplinary proceeding is closed.

U. If the hearing officer determines there is no other matter to be considered, that has not already been presented or addressed, the hearing officer may close the evidentiary record and proceed to the fact finding and decision phase of the defendant's disciplinary proceeding without the consent of the parties.

## **.22 Disciplinary Proceeding Procedures — Fact Finding and Decision Phase — Rendering the Decision.**

A. After closing the case presentation portion of the defendant's disciplinary proceeding, the hearing officer shall weigh and consider the evidence presented during the defendant's disciplinary proceeding and:

- (1) Determine from the evidence presented, which evidence is credible and reliable;
- (2) Determine from the credible and reliable evidence the findings of fact as to the inmate rule violation charged; and
- (3) Render a decision as to whether the defendant did or did not commit the inmate rule violation charged based on the findings of fact.

B. When rendering the decision as to the inmate rule violation charged, the hearing officer shall decide if the evidence determined to be credible and reliable:

- (1) Proves more likely than not that the defendant did commit the inmate rule violation charged, in which case the hearing officer shall enter a guilty decision for the inmate rule violation charged; or
- (2) Does not prove more likely than not that the defendant committed the inmate rule violation charged, in which case the hearing officer shall enter a not guilty decision for the inmate rule violation charged.

C. When entering the decision, the hearing officer shall:

- (1) Enter the applicable decision for each inmate rule violation charged; and
- (2) Inform the defendant or defendant's representative and the facility representative of the decision for each inmate rule violation charged.

D. When the hearing officer finds that a report submitted as evidence during the disciplinary proceeding is factually credible and reliable, the report may be the sole basis for the hearing officer to render the disposition of an inmate rule violation charged.

## **.23 Disciplinary Proceeding Procedures — Sanction Phase — Imposing a Sanction.**

A. If the hearing officer renders a decision that the defendant is guilty of the inmate rule violation charged, the hearing officer shall permit the defendant or defendant's representative and the facility representative the opportunity to present arguments on the possible sanction or sanctions for the inmate rule violation for which the defendant was found guilty (If the defendant is represented, the representative, and not the defendant, shall present the argument for or against sanctions).

B. The hearing officer shall inform the defendant or defendant's representative and the facility representative of the:

- (1) Sanction imposed; and
- (2) Period and effective date of the sanction imposed.

C. A sanction imposed becomes effective on the date determined by the hearing officer.

D. A sanction may include:

- (1) Disciplinary segregation housing;
- (2) Cell or bunk restriction;
- (3) Revocation of earned good conduct or special project credits, or both, that may:
  - (a) Be applied to a sentenced inmate; and

(b) Except as provided in Regulation .25 of this chapter, be applied to a non-sentenced defendant later sentenced regardless of when the conduct underlying the inmate rule violation charged occurred or when the sanction was imposed.

- (4) Suspension of an inmate privilege established by the Department or facility;
- (5) Restitution;
- (6) Reprimand; or
- (7) Sanitation assignment.

E. The hearing officer when imposing a sanction or the period of the sanction may consider either aggravating or mitigating factors associated with the inmate rule violation resulting in a guilty finding or informal disposition to either enhance or reduce the severity of the sanction and or period of the sanction.

F. The hearing officer prior to imposing a sanction and period of the sanction shall weigh and consider the defendant's inmate rule violation history as documented by the defendant's case record covering the current term of confinement.

G. A sanction being served by a defendant shall be suspended and subsequently resumed at the time when the defendant:

(1) Was temporarily out of custody due to an escape, erroneous release, or medical or mental health admission and is later returned to the custody of a Department correctional facility; or

(2) Is under the custody and supervision of another jurisdiction or agency due to security reasons, on a detainer, or writ, and is later returned to the custody of the Department.

## **.24 Determination of Defendant's Adjustment History — Credits and Segregation.**

A. When imposing the sanction of revocation of credits and disciplinary segregation, the hearing officer shall determine the appropriate sanction by using the defendant's adjustment history.

B. If a defendant is found guilty of the inmate rule violation charged, the hearing officer shall:

(1) Review the Adjustment History Sentencing Matrix, established under Regulation .27 of this chapter;

(2) Identify the category of the inmate rule violation of which the defendant was found guilty;

(3) Determine by a database maintained by the Department or the defendant's case record the defendant's adjustment history;

(4) Plot the credits that may be revoked or the days of segregation that may be imposed based on the intersection of the category of the inmate rule violation of which the defendant was found guilty and the defendant's adjustment history; and

(5) Determine if the sanction for revoking credits and the number of days of disciplinary segregation is recommended or mandatory.

C. Plotted Sanction Cell.

(1) The plotted sanction may be stated as either a:

(a) Specific number of credits or days; or

(b) Range with the minimum to maximum number of credits or days that may be imposed.

(2) Except for provisions under §E of this regulation, only sanctions stated in the Adjust History Sentencing Matrix for revoking credits or assigning segregation are to be imposed.

D. Adjustment History. The Adjustment History Sentencing Matrices categorize an inmate's adjustment history and identify the approved range of imposable discipline based on previous inmate rule violations as follows:

(1) If the current inmate rule violation is the first guilty finding on record in any category of inmate rule violation under any incarceration then the imposed discipline shall be for a "First Offense";

(2) If the current inmate rule violation is the second guilty finding on record in the instant offense category of inmate rule violation, and occurs within 9 months or less from the guilty finding for a "First Offense" in the same instant category of inmate rule violation, then the imposed discipline shall be for a "Second Offense";

(3) If the current inmate rule violation is the third or greater guilty finding on record in the instant category of inmate rule violation, and occurs less than 2 years from the guilty finding for a "Second Offense" or subsequent offense in the same instant category of inmate rule violation, then the imposed discipline shall be for a "Third Offense+"; and

(4) Any guilty finding occurring 2 or more years after a guilty finding in the same instant category of inmate rule violation may not be considered when imposing discipline or sanctions.

E. Overriding an Adjustment History Matrices Sanction.

(1) If the hearing officer disagrees with the sanction plotted using the Adjustment History Sentencing Matrix, the hearing officer may override the adjustment history level of the defendant to another level (First, Second or Third Offense).

(2) An override under this regulation may be for the purpose of reducing the severity of the sanction determined by the Adjustment History Sentencing Matrices due to a mitigating factor, whereby the hearing officer may:

(a) Waive the adjustment history level as determined by the Adjustment History Sentencing Matrix; and

(b) Select an alternative adjustment history level from the Adjustment History Sentencing Matrix.

(3) An override to reduce the severity of a sanction may be based on one or more of the following mitigating factors:

- (a) No prior guilty finding for the current inmate rule violation;
- (b) The period of time since the last conviction on record;
- (c) The lesser severity of the current guilty finding;
- (d) The defendant's mental health status at the time the inmate rule violation occurred;
- (e) The need for progressive discipline; or
- (f) The defendant's acceptance of responsibility for the current inmate rule violation for which the defendant was found guilty.

(4) The hearing officer may not override an Adjustment History Sentencing Matrices sanction stated in a sanction cell by suspending the sanction and imposing a period of probation.

(5) If employing an override under this regulation, the hearing officer shall identify in the written and audio record of the defendant's disciplinary proceeding the mitigating factor used to reduce the sanction.

F. A sanction once imposed may not be affected by a later modification of the defendant's disciplinary adjustment history record.

## **.25 Adjustment History Sentencing Matrix — Revocation of Credits.**

A. Earned credits may only be revoked as a sanction imposed for an inmate rule violation of which the defendant was found guilty.

B. If sanctioning authorized under this regulation permits revoking diminution credits and the inmate rule violation occurred while the defendant was confined in a Department correctional facility in pre-sentence status, the hearing officer may:

(1) Revoke diminution credits awarded for good conduct during the month that the inmate rule violation occurred;

(2) Revoke diminution credits awarded for good conduct in addition to the credits awarded during the month that the inmate rule violation occurred, if the hearing officer determines that an aggravating factor warrants the revocation of additional credits; and

(3) Not revoke diminution credits earned for participation in special projects or work assignments.

C. The hearing officer, in accordance with §B of this regulation, shall revoke earned credits as a sanction in accordance with the Adjustment History Sentencing Matrix, as established under Regulation .27 of this chapter for all Category IA, IB, and II inmate rule violations.

D. The hearing officer, in accordance with §B of this regulation, may

(1) Revoke earned credits as a sanction in accordance with the Adjustment History Sentencing Matrix, established under Regulation .27 of this chapter for Category III, IV, or V violations;

(2) Impose an alternative sanction established under Regulation .28 of this chapter; or

(3) Impose as a sanction a combination of revoking credits and alternative sanctions.

E. If a defendant is found guilty of multiple inmate rule violation charges involving more than one category of inmate rule violations that occurred during a single reported event, the hearing officer shall, if the inmate rule violations charged result in guilty findings:

(1) Include a Category II Inmate Rule Violation, revoke all available earned credits; or

(2) Do not include a Category II Inmate Rule Violation, only revoke the number of earned credits based on the one inmate rule violation resulting in a guilty finding that is from the most severe category of the inmate rule violations.

F. Except for provisions under §B of this regulation, if a defendant's good conduct credit balance is insufficient to cover the number of earned credits revoked imposed as the sanction, the deduction for the negative balance of earned credits due shall be applied by staff, in whole or in part, against the balance of the defendant's special project credits on record.

G. Revocation of earned credits may be imposed independently of or in conjunction with:

(1) Disciplinary segregation; or

(2) Alternative disciplinary sanctions.

## **.26 Adjustment History Sentencing Matrices — Imposing Disciplinary Segregation.**

### A. Disciplinary Segregation Sanction.

(1) The hearing officer shall indicate the effective date for the disciplinary segregation sanction imposed.

(2) If the defendant is on administrative segregation pending the outcome of the defendant's disciplinary proceeding or was on administrative segregation pending investigation of the event that is the basis of the inmate rule violation charged for which the defendant was found guilty, the defendant shall be credited for the period served on administrative segregation from the date of placement only toward:

(a) Cell restriction; or

(b) Disciplinary segregation if imposed as a sanction.

(3) If the defendant was not on segregation prior to the defendant's disciplinary proceeding, the effective date for the disciplinary segregation sanction imposed shall be the same date of the defendant's disciplinary proceeding and begin immediately.

(4) Disciplinary segregation sanctions may not be imposed consecutively.

### B. Disciplinary segregation may be imposed independently of or in conjunction with:

(1) Revocation of earned credits; or

(2) Alternative disciplinary sanctions.

C. The discipline of inmates housed in a Department correctional facility pursuant to an agreement with an agency of the federal government shall be governed by this Chapter, consistent with the Federal Performance-Based Detention Standards issued by the United States Department of Justice.



## **.29 Disciplinary Proceeding Procedures — Post Disciplinary Proceeding Phase — The Hearing Officer’s Decision and Case Record.**

### A. Hearing Officer’s Decision.

(1) The hearing officer, at the conclusion of a defendant’s disciplinary proceeding shall prepare a written decision documenting the decision rendered.

(2) The hearing officer’s written decision regarding the defendant’s disciplinary proceeding shall include:

- (a) Preliminary matters raised by hearing participants during the preliminary hearing;
- (b) A summary of the evidence and testimony presented during the case presentation by the defendant, if applicable the defendant’s representative, if applicable facility representative, or facility staff;
- (c) A summary of the evidence found credible and reliable;
- (d) The findings of fact made by the hearing officer;
- (e) The disposition of each inmate rule violation charged;
- (f) The sanction and period of the sanction imposed for each inmate rule violation resulting in a guilty finding; and
- (g) If applicable, documentation for the informal resolution accepted by the defendant.

B. Service of the Decision. Upon receipt of the hearing officer’s written decision, facility staff shall serve the defendant with a copy of the hearing officer’s decision within 3 business days following the date of the hearing officer’s decision.

C. The facility representative, if designated, or designated facility staff shall follow the process established by the managing official, or a designee, for the defendant’s housing facility for distribution of the hearing officer’s decision that includes:

(1) Advising appropriate staff of the hearing officer’s decision and sanctions, if applicable; and

(2) Returning documents, records, and physical evidence regarding the defendant’s concluded disciplinary proceeding to the designated file or storage location.

### D. Inmate Case Record.

(1) Staff shall be responsible for maintaining and documenting a case record of the defendant’s disciplinary history.

(2) The defendant’s case record shall include the following information:

- (a) A guilty decision;
- (b) A not guilty decision;
- (c) A Not Competent decision;
- (d) An informal resolution;
- (e) A dismissal of the inmate rule violation charged;
- (f) The facility’s copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form;
- (g) The written record of the disciplinary proceeding; and
- (h) An attachment or other evidence that was considered at the disciplinary proceeding, except if the items are determined to be security sensitive or confidential as provided in this chapter.

(3) Except for security sensitive information, and subject to Correctional Services Article, §3-602, Annotated Code of Maryland, a defendant’s case record may be reviewed by:

- (a) Facility staff or Department staff;
- (b) The Department Intelligence and Investigative Division;
- (c) A law enforcement agency;
- (d) An attorney or an individual authorized in writing by the defendant;
- (e) Staff of the Parole Commission or the Division of Parole and Probation;
- (f) An individual or agency authorized by the Secretary, or a designee, or statute or as otherwise provided by law;
- (g) Staff of the Office of the Attorney General;
- (h) Staff of the Inmate Grievance Office;
- (i) Staff of the Office of Administrative Hearings; and
- (j) Staff of a State's Attorney's Office.

(4) Security sensitive information may only be released with authorization from the Secretary, or a designee, to:

- (a) Department staff on a need to know basis;
- (b) The Department's Intelligence and Investigative Division;
- (c) A law enforcement agency;
- (d) An individual or agency authorized by the Secretary, or a designee, or as otherwise provided by law;
- (e) Staff of a State's Attorney's Office; and
- (f) Staff of the Office of the Attorney General.

(5) Staff shall ensure that the defendant's case record is maintained under the requirements of the Correctional Services Article for the retention of inmate case record information.

#### E. Audio Record.

(1) The audio recording of the defendant's disciplinary proceeding is a record of the Department that is for the:

- (a) Internal operations and administrative functions of the Department; and
- (b) Administration and management of the Department's business.

(2) An audio record may not be considered a right, interest, benefit, or an entitlement for the defendant.

(3) Staff shall ensure that the audio record of a defendant's disciplinary proceeding is maintained under the requirements of the Correctional Services Article for the retention of inmate case record information.

(4) A copy of an audio record may be requested and provided as required under COMAR 12.11.02 Public Information Requests, but will only be released if permitted under Correctional Services Article, §3-602, Annotated Code of Maryland.

(5) An audio recording is not considered to be part of the administrative record of a disciplinary proceeding that is forwarded to the Inmate Grievance Office or the Office of Administrative Hearings in an inmate grievance.

(6) A fee in the amount of \$5 for the cost of copying an audio record shall be charged to the interested party requesting a copy of an audio recording of a disciplinary proceeding.

## **.30 Disciplinary Proceeding Procedures — Post Disciplinary Proceeding Phase — Appeal of the Hearing Officer’s Decision or Sanction.**

### A. Appeal by the Defendant.

(1) A defendant may only appeal the:

- (a) Sufficiency of the evidence presented as part of the defendant’s disciplinary proceeding;
- (b) Interpretation of the law, rules, policy, procedures, or regulations applicable to the defendant’s disciplinary proceeding; or
- (c) Sanction imposed as a result of the defendant’s disciplinary proceeding.

(2) A defendant shall file an appeal in writing with the managing official of the facility where the defendant is housed within 15 calendar days of the date the defendant received the hearing officer’s decision.

(3) If the defendant fails to file a written appeal with the managing official or the managing official does not receive the defendant’s appeal within the 15 calendar days of the date of the hearing officer’s decision, the defendant is:

- (a) Considered to have waived the opportunity to appeal under this regulation; and
- (b) Not considered to have exhausted administrative remedies available to the defendant.

(4) If the defendant is transferred to another facility other than the facility where the defendant’s disciplinary proceeding occurred within the 15 calendar days, the defendant may file the appeal with the managing official of either facility.

(5) The managing official of the sending facility shall forward the appeal to the facility that receives the defendant.

(6) The defendant shall give notice of the transfer and appeal to the managing official of the receiving facility.

### B. Appeal by the Facility.

(1) If designated, a facility representative, or in the absence of a representative, facility staff may appeal:

- (a) The hearing officer’s decision; and
- (b) If applicable, sanctions imposed.

(2) An appeal shall be in writing and delivered to the managing official within 5 calendar days of the date of the hearing officer’s decision.

C. Appeal to the Inmate Grievance Office. A defendant may appeal the managing official’s decision to the Inmate Grievance Office as provided under COMAR 12.07.01.05 and 12.07.01.08.

### D. Appeal — Guilty Plea.

(1) If a defendant entered a guilty plea to an inmate rule violation charged and the hearing officer accepted and entered the plea into the record of the defendant’s disciplinary proceeding, the defendant may file an appeal based on only the following claims:

- (a) The process or procedures by which the defendant entered the guilty plea regarding the inmate rule violation charged was in error or the guilty plea was procedurally not permitted; and
- (b) If imposed, the hearing officer’s sanction was in error or procedurally not permitted.

(2) A defendant filing an appeal of a guilty plea may not raise a claim that:

- (a) The hearing officer’s decision was arbitrary or capricious, clearly erroneous, or not based on substantial evidence;
- (b) The hearing officer relied on evidence that was insufficient or considered in error;
- (c) There was a denial or violation of a due process, statutory, time, or procedure requirement applicable to this chapter; or

(d) There was a denial by staff or the hearing officer of a representative, a witness, or evidence requested.

E. Appeal — Waiver of Appearance.

(1) If a defendant waived the defendant's appearance before a hearing officer and in the defendant's absence the hearing officer proceeded with the defendant's disciplinary proceeding and found the defendant guilty of the inmate rule violation charged, the defendant may file an appeal that is limited to a claim that the:

(a) Process by which the hearing officer concluded that the defendant waived an appearance was in error;

(b) Hearing officer's decision regarding the inmate rule violation charged for which the defendant was found guilty was arbitrary, capricious, or clearly erroneous;

(c) Hearing officer's decision regarding the inmate rule violation charged for which the defendant was found guilty relied on evidence that was in error, insufficient, or procedurally not permitted; or

(d) Sanction imposed regarding the inmate rule violation charged for which the defendant was found guilty was in error or procedurally not permitted.

(2) A defendant who waived an appearance before the hearing officer may not raise a claim that there was a:

(a) Denial of a due process, statutory, time, or procedure requirement applicable to this chapter; or

(b) Denial of a representative, a witness, or evidence regarding the disciplinary proceeding.

F. The time period for a defendant to file an appeal expires at the end of the 15th calendar day after the date the defendant was served with the hearing officer's decision.

## **.31 Disciplinary Proceeding Procedures — Post Disciplinary Proceedings Phase — Managing Official's Review.**

### A. Review by the Managing Official.

- (1) The managing official, or a designee, shall conduct a review of the defendant's disciplinary proceeding.
- (2) The managing official may assign a designee to conduct the required review.
- (3) The managing official, or designee, shall review a defendant's disciplinary proceeding before the hearing officer even if the ultimate disposition is an informal resolution.
- (4) The informal resolution offered by staff and accepted by the defendant are not required to be reviewed.
- (5) A managing official's, or a designee's, review is a review on the record and not a de novo or new hearing.
- (6) The managing official may not:
  - (a) Reconsider the evidence in the record of the disciplinary proceeding;
  - (b) Substitute the managing official's, or a designee's, judgment for that of the hearing officer's or make de novo or new fact findings as to the inmate rule violation charged; and
  - (c) Render a de novo or new decision in lieu of the decision by the hearing officer.
- (7) The managing official, or a designee, shall document the review in the written record of the disciplinary proceeding.
- (8) The managing official, or a designee, shall complete the review of the hearing officer's decision and sanction, if imposed, regarding the inmate rule violation charged within 30 calendar days of the date the defendant received the hearing officer's decision, but after the 15 calendar day time period for the filing of an appeal by the defendant has elapsed.
- (9) The managing official, or a designee, may conduct an immediate review of the hearing officer's decision without waiting for the expiration of the defendant's appeal period:
  - (a) When the disposition of one or more of the inmate rule violations is:
    - (i) A dismissal;
    - (ii) A Not Guilty finding;
    - (iii) A finding that the defendant is or was Not Competent; or
    - (iv) An informal resolution accepted by the defendant; or
  - (b) The managing official, or a designee, reduces a sanction imposed by the hearing officer.
- (10) The managing official, or a designee, may remand the hearing officer's decision to the hearing officer for written clarification by the hearing officer of the decision or sanction regarding the:
  - (a) Disciplinary proceeding procedures;
  - (b) Evidence weighed and considered;
  - (c) Findings of fact;
  - (d) Decision as to the inmate rule violation charged; and
  - (e) Sanction, if imposed.
- (11) The time and procedure requirements for the managing official's review:
  - (a) Shall be suspended pending the managing official's, or a designee's, remand; and

(b) May not resume until the managing official, or a designee, receives the hearing officer's written response.

B. Authority and Action of the Managing Official.

(1) A managing official, or a designee, conducting the review of the hearing officer's decision shall:

(a) Review the record of the disciplinary proceeding and determine from that record if a reasonable individual could have reached the decision rendered by the hearing officer based on the evidence presented at the disciplinary proceeding;

(b) Consider an alleged time or procedural violation under this chapter, when raised in an appeal by the defendant, facility representative or facility staff; and

(c) Determine if the sanctions imposed were in compliance with the requirements of this chapter.

(2) The managing official, or a designee, when conducting the review of the hearing officer's decision regarding an inmate rule violation resulting in a guilty finding and, if imposed, the sanction, may, without explanation:

(a) Affirm the hearing officer's decision and, if imposed the sanction;

(b) Vacate the guilty finding and the sanction imposed regardless of the category of the inmate rule violation charged or procedural requirement of this chapter, and enter an incident report in the defendant's case record as the disposition for the inmate rule violation charged;

(c) Vacate the guilty finding and the sanction imposed and enter a Not Guilty disposition in the defendant's case record for the inmate rule violation charged;

(d) Vacate the guilty finding and the sanction imposed and enter a Not Competent disposition in the defendant's case record for the inmate rule violation charged; or

(e) Affirm the hearing officer's decision, but elect to modify the sanction imposed for the inmate rule violation resulting in a guilty finding by:

(i) Reducing the sanction period imposed by the hearing officer regardless of whether the reduced sanction is in compliance with or below the minimum sanction or sanction period required by a regulation of this chapter; or

(ii) Reducing an informal disposition with sanction to an incident report with no sanction.

(3) The managing official, or a designee, may not increase the sanctions imposed by the hearing officer.

(4) The managing official, or a designee, may appeal the hearing officer's decision to the Secretary, or a designee, and request the Secretary, or a designee, to reverse the hearing officer's decision and remand the inmate rule violation charged for a de novo or a new disciplinary proceeding when the managing official, or a designee, concludes the hearing officer's decision was erroneous due to one or more of the following circumstances:

(a) An arbitrary or capricious decision;

(b) A clearly erroneous decision;

(c) An erroneous interpretation of a policy, time requirement, or procedure;

(d) The decision relied on evidence alleged or found to be fraudulent or misrepresented;

(e) The decision was rendered without consideration of evidence that was either presented or not presented at the defendant's disciplinary hearing;

(f) The sanction was not in compliance with minimum requirements of regulations in this chapter; or

(g) A disposition of Not Competent was entered and there is new evidence that the defendant is competent to participate in the disciplinary proceeding or was competent at the time of the offense.

(5) The managing official's, or a designee's, recommendation for reversal and new disciplinary proceeding shall include the reason for the appeal.

(6) The time period and procedure requirements for the managing official's, or a designee's, review under this regulation shall:

(a) Be suspended pending the managing official's, or a designee's, appeal to the Secretary, or a designee; and

(b) Resume on the date the Secretary's, or a designee's, written decision regarding the managing official's, or a designee's, appeal is received by the managing official, or a designee.

C. Notification of the Managing Official's Review.

(1) Staff shall serve the documentation of a completed managing official's, or a designee's, review on the defendant within 30 calendar days of the date the defendant was previously served the hearing officer's decision.

(2) If the defendant does not receive the managing official's, or a designee's, review under the 30 calendar day time requirement the:

(a) Review process is considered to be complete; and

(b) Hearing officer's decision and sanction, if imposed, is affirmed.

## **.32 Disciplinary Proceeding Procedures — Post Disciplinary Proceedings Phase — Remanding the Inmate Rule Violation Charged.**

A. Only the Secretary, or a designee, or a court of proper jurisdiction may disturb the decision concerning an inmate rule violation charged and:

- (1) Reverse the decision of the hearing officer regarding the inmate rule violation charged: and
- (2) Remand the case for a de novo or a new disciplinary proceeding under this regulation.

B. The managing official, or a designee, when conducting a review of the hearing officer's decision or a decision previously reviewed by a managing official, or a designee, may, without regard for a procedure or time requirement under this chapter:

- (1) Appeal the hearing officer's decision regarding the inmate rule violation charged to the Secretary, or a designee, regardless of the date of the decision or if previously reviewed by a managing official; and
- (2) Request the Secretary, or a designee, to reverse the hearing officer's decision and remand the inmate rule violation charged for a de novo or a new disciplinary proceeding under this regulation.

C. The Secretary, or a designee, upon receipt and review of the managing official's, or a designee's, appeal may approve or disapprove the managing official's, or a designee's, recommendation to reverse the hearing officer's decision and remand the case for a de novo or a new disciplinary proceeding under this regulation:

- (1) If the Secretary, or a designee, disapproves the managing official's, or a designee's, recommendation, the:
  - (a) Secretary, or a designee, shall notify the managing official, or a designee, that the hearing officer's decision is affirmed; and
  - (b) Managing official, or a designee, shall notify the defendant of the Secretary's, or a designee's, decision.
- (2) If the Secretary, or designee, approves the managing official's, or a designee's, recommendation, the:
  - (a) Hearing officer's decision is considered to be reversed; and
  - (b) Inmate rule violation charged is to be scheduled for a de novo or a new disciplinary proceeding.

D. When the disciplinary proceeding is remanded for a de novo disciplinary proceeding, the managing official, or a designee, shall:

- (1) Notify the defendant of the Secretary's, or a designee's, decision;
- (2) Ensure that the defendant is scheduled for a remanded disciplinary proceeding;
- (3) Notify staff that the disciplinary proceeding is heard de novo unless ordered otherwise by the Secretary, or a designee; and
- (4) Ensure that the remanded disciplinary proceeding is not heard by the original hearing officer of record unless otherwise ordered by the Secretary, or a designee.

E. Rehearing Procedure.

- (1) Within 7 business days of the managing official's, or a designee's, notification of a Secretary's order or order of a court that the inmate rule violation charged was remanded for a de novo or a new disciplinary proceeding under this regulation, staff shall:
  - (a) Provide the defendant with a copy of the Notice of Inmate Rule Violation form and Notice of Inmate Disciplinary Hearing form regarding the remanded inmate rule violation charged;
  - (b) Provide the defendant the opportunity to request representation, a witness, or evidence at service; and
  - (c) Schedule the defendant for a disciplinary proceeding.

F. Except for the 7 business day time frame for service of the remand order on the defendant, the time and procedure requirements of this chapter shall govern the disciplinary proceeding and post disciplinary proceeding phases conducted as a remanded hearing in accordance with this regulation.



G. The managing official, or a designee, may appeal the hearing officer's decision of the remanded disciplinary proceeding in accordance with the procedures under this chapter.

H. The defendant may appeal the hearing officer's decision of the remanded disciplinary proceeding in accordance with the procedures under this chapter.

### **.33 Disciplinary Proceeding Procedures — Post Disciplinary Proceedings Phase — Review by the Secretary.**

A. The Secretary, or a designee, has the:

- (1) Authority and discretion to modify, suspend, or terminate the inmate disciplinary process consistent with due process; and
- (2) Final authority to interpret the time and procedure requirements of the inmate disciplinary process.

B. The Secretary, or a designee, without regard for a time or procedure requirement established under this chapter, may review a disciplinary proceeding or hearing officer's decision regarding the inmate rule violation charged.

C. The Secretary, or a designee, without regard for a time or procedure requirement established under this chapter, may take an action regarding a disciplinary proceeding or hearing officer's or staff's decision regarding the inmate rule violation charged that includes, but is not limited to:

- (1) Remanding the inmate rule violation charged for:
  - (a) A de novo or new inmate disciplinary proceeding; or
  - (b) Other action permitted under this chapter;
- (2) Modifying or vacating a sanction imposed regarding the inmate rule violation found guilty or an informal disposition;
- (3) Reversing a decision regarding the inmate rule violation charged found guilty, not guilty, dismissed, not competent, or due to an informal resolution;
- (4) Reducing a decision regarding the inmate rule violation charged or an informal disposition to an incident report; or
- (5) Vacating the decision regarding the inmate rule violation charged found guilty, not guilty, dismissed, not competent, or reduction to an informal resolution.

### **.34 Video Conferencing.**

The Department may, for the purposes of the inmate disciplinary process, use video conferencing or other electronic media or technology.

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## **Administrative History**

**Effective date: July 2, 2018 (45:13 Md. R. 668)**

**Title 12**  
**DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES**

**Subtitle 10 CORRECTIONAL TRAINING COMMISSION**

**Chapter 01 General Regulations**

Authority: Correctional Services Article, §§2-109 and 8-208; Public Safety Article, §3-207; Annotated Code of Maryland

**.01 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Academy" means a college, school, correctional unit, training unit, or training facility approved or certified by the Commission under this chapter to conduct entrance-level training.

(2) "Addictions counselor" means a mandated employee, a Department of Juvenile Services employee, or an employee of a correctional unit:

(a) Designated by the individual's employer as an addictions counselor;

(b) Performing duties similar to duties of an addictions counselor; or

(c) With the primary duty to provide alcohol or substance abuse drug treatment or counseling services for:

(i) Individuals under the jurisdiction of a correctional unit; or

(ii) Juveniles under the jurisdiction of the Department of Juvenile Services.

(3) Agency Head.

(a) "Agency head" means:

(i) A warden, a correctional administrator, a sheriff, an individual with an equivalent position, or a designee; or

(ii) An individual appointed, employed, or elected to manage, administer, or supervise a correctional unit, or a designee.

(b) "Agency head" includes the Secretary of Juvenile Services or the Secretary's designee.

(4) "Applicant" means the individual named on the application for certification and for whom the correctional unit is seeking certification.

(5) "Application for certification (AFC)" means a form approved by the Commission that is an official record verifying that an individual has met the applicable Commission selection standards for a mandated position.

(6) "Case management specialist (CMS)" means a Department of Juvenile Services employee who provides case management or treatment services for juveniles under the supervision of the Department of Juvenile Services (DJS).

(7) "Certification" means the legal authority under Correctional Services Article, §8-208, Annotated Code of Maryland, conferred by the Commission authorizing an individual to exercise duties related to the investigation, care, custody, control, or supervision of inmates in the custody or under the supervision of a correctional unit after complying with applicable Commission selection and training standards specified in this chapter.

(8) "Classification counselor" means an employee who provides case management, counseling, or classification services to an inmate in the custody or under the supervision of a correctional facility.

(9) "Commission" means the Correctional Training Commission or a representative authorized to act on behalf of the Commission.

(10) "Correctional officer" has the meaning stated in Correctional Services Article, §8-201, Annotated Code of Maryland.

(11) "Correctional unit" has the meaning stated in Correctional Services Article, §8-201, Annotated Code of Maryland.

(12) "Criminal gang" has the meaning stated in Criminal Law Article, §9-801, Annotated Code of Maryland.

(13) "Department of Juvenile Services employee" has the meaning stated in Correctional Services Article, §8-201, Annotated Code of Maryland.

(14) "Deputy Director" means the Deputy Director for the Police and Correctional Training Commissions, or a designee.

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(15) Derogatory Information.

(a) "Derogatory information" means negative information developed during a background investigation or reported to a correctional unit that may adversely affect the ability of an individual to perform the duties of a mandated position.

(b) "Derogatory information" includes, but is not limited to, information related to an individual's membership in a criminal gang.

(16) "Executive Director" means the Executive Director of the Police and Correctional Training Commissions.

(17) "Felony conviction" means an offense classified as such under the law of Maryland, another state, or the United States, including the District of Columbia.

(18) "First-line administrator" means a mandated employee who is promoted to a position that is designated by the correctional unit as exercising first-line administrative authority as defined under Correctional Services Article, §8-201, Annotated Code of Maryland, for a correctional administrator.

(19) "First-line supervisor" means a mandated employee who is promoted to a position that is designated by the correctional unit as exercising first-line supervisory authority as defined under Correctional Services Article, §8-201, Annotated Code of Maryland, for a correctional supervisor.

(20) "Institutional support staff" means a mandated employee who performs one or more of the duties of a correctional officer, but whose primary duties are other than that of a correctional officer, classification counselor, parole and probation agent, or monitor.

(21) "Juvenile Services support staff" means an individual employed by the Department of Juvenile Services who performs one or more of the duties of a Department of Juvenile Services employee, but whose primary duties are other than those of a case management specialist or resident advisor.

(22) "Mandated employee" means an individual required to comply with this chapter.

(23) Mandated Position.

(a) "Mandated position" means a job classification required to comply with this chapter.

(b) "Mandated position" includes a correctional officer, classification counselor, institutional support staff member, parole and probation agent, monitor, case management specialist or resident advisor, and Juvenile Services support staff.

(24) Misdemeanor Conviction.

(a) "Misdemeanor conviction" includes an offense classified as such by the laws of Maryland, another state, or the United States, including the District of Columbia.

(b) "Misdemeanor conviction" does not include a violation of a federal or state motor vehicle code except for:

(i) Vehicle operation resulting in the death of an individual, such as auto manslaughter;

(ii) Unauthorized use or theft of a motor vehicle;

(iii) Driving while intoxicated, under the influence of drugs, or alcohol, or both; or

(iv) Operating a motor vehicle without a license or while a license is suspended or revoked.

(25) "Monitor" means a drinking driver monitor employed by the Division of Parole and Probation.

(26) Moral Turpitude.

(a) "Moral turpitude" means conduct that demonstrates negative characteristics directly related to the individual's fitness or qualification to hold a mandated position.

(b) "Moral turpitude" includes, but may not be limited to:

(i) Conduct demonstrating untruthfulness;

(ii) Conduct demonstrating lack of trust;

(iii) Conduct demonstrating lack of responsibility; or

(iv) Other conduct that may undermine public trust.

(27) "Nonofficer status" means a situation in which a mandated employee, who continues to be employed by a correctional unit in a mandated position, is temporarily relieved of duties by a correctional unit, without any effect on the mandated employee's Commission certification or eligibility for Commission certification or recertification:

(a) For medical or administrative reasons that prevent the mandated employee from completing Commission-required training; or

(b) For the purpose of suspending Commission-required training.

(28) "Offense involving violence" means an offense where the applicant was convicted of a crime involving the application of force or physical violence, the attempt to commit such a crime, or any assault.

(29) "Parole and probation agent" means a Division of Parole and Probation employee who provides case management, supervision, and other programming services to individuals under the supervision of the Division of Parole and Probation.

(30) "Probationary period" has the meaning stated in Correctional Services Article, §8-209(b), Annotated Code of Maryland for probationary appointment.

(31) "Provisional appointment" has the meaning stated in Correctional Services Article, §8-209, Annotated Code of Maryland.

(32) "Resident advisor (RA)" means a Department of Juvenile Services employee who provides custodial services to juveniles under the supervision of the Department of Juvenile Services.

(33) "Training director" means the director of an academy, school, or training unit, or a designee, authorized to act for the agency head in training matters.

## **.02 Processing and Reporting Employment Status.**

### **A. Completion of the Application for Certification (AFC).**

(1) An agency head shall complete an AFC for a correctional officer, classification counselor, institutional support staff, monitor, parole and probation agent, or Department of Juvenile Services employee to apply for certification to a mandated position.

(2) An agency head is responsible for:

- (a) Accurately completing the AFC; and
- (b) Submitting the AFC to the Commission.

(3) An agency head shall:

- (a) Sign the AFC certifying that Commission selection standards have been met; and
- (b) Include the date the individual completed the certification requirements.

(4) False or misrepresented information on the AFC is a basis for rejection or revocation of certification by the Commission and may be the basis for administrative or legal action.

### **B. Filing the AFC.**

(1) An agency head shall submit the AFC to the Commission within 1 year after the individual has met each applicable selection standard under Regulation .04 or .08 of this chapter.

(2) The Commission:

(a) Shall issue a provisional appointment for the individual in the mandated position after receipt of a properly completed AFC indicating:

- (i) The individual has met each applicable Commission selection standard under Regulation .04 or .08 of this chapter; and
- (ii) Each applicable Commission selection standard was met within 1 year before the AFC was submitted to the Commission; or

(b) May certify the individual in the mandated position after receipt of a properly completed AFC indicating completion of the requirements under §B(2)(a) of this regulation and mandated employee entrance-level training requirements under Regulation .09 of this chapter.

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(3) An individual for whom an agency head has submitted an AFC in a mandated position may not legally exercise the duties of a mandated position until the individual receives a provisional certification from, or is certified by the Commission.

C. Notification of Change in Employment or Certification Status.

(1) An agency head shall notify the Commission in writing when a mandated employee:

- (a) Is separated from employment in a mandated position by death, retirement, dismissal, or resignation;
- (b) Is transferred to a different type of mandated position within the correctional unit;
- (c) Changes a legal name;
- (d) Is promoted to a first-line supervisor;
- (e) Is promoted to a first-line administrator; or

(f) Is placed on nonofficer status for more than 30 days when that status prevents the mandated employee from meeting the Commission's training requirements.

(2) An agency head shall report a change in a mandated employee's employment status under this section within 30 days of the change in a format or on a form approved by the Commission.

(3) An agency head shall include in the notification required under §C(1) of this regulation:

- (a) The mandated employee's name and Commission-assigned identification number;
- (b) The date of the action;
- (c) A statement indicating the change in status; and

(d) In a case of separation from employment with a correctional unit or from a mandated position or placement on nonofficer status, information indicating whether at the time of the separation or placement on nonofficer status the mandated employee was under:

- (i) Criminal or administrative investigation;
- (ii) Indictment;
- (iii) Formal charges;
- (iv) Suspension; or
- (v) Other similar action.

(4) Criminal Charges.

(a) An agency head shall notify the Commission when a mandated employee:

- (i) Is convicted of a felony;
- (ii) Is convicted of a misdemeanor punishable by imprisonment for 1 year or more;
- (iii) Serves a term of incarceration for a conviction of a misdemeanor offense;
- (iv) Serves a term of incarceration as a condition of probation for a felony or misdemeanor criminal offense; or

(v) Is separated from employment with a correctional unit or from a mandated position while criminal charges filed against the employee were pending and any pending charge was a felony or misdemeanor punishable by imprisonment for 1 year or more.

(b) An agency head shall include in the notification required under §C(4)(a) of this regulation information concerning the conviction, term of incarceration, or allegations being reported.

(c) An agency head shall submit the notification under §C(4)(a) of this regulation to the Commission in a format or on a form approved by the Commission within 10 days of the date:

(i) A conviction or term of incarceration under §C(4)(a)(i), (ii), (iii), or (iv) of this regulation became known to the agency head;

(ii) The mandated employee is separated from employment with a correctional unit or a mandated position; or



(iii) A mandated employee is placed on nonofficer status because the individual has been charged with a crime under §C(4)(a)(i) or (ii) of this regulation.

(5) An agency head shall make the notification required under §C(4)(a) of this regulation regardless of the outcome of administrative plea negotiation.

(6) Audit and Records.

(a) The Commission has the legal authority to audit records of reporting requirements, selection standards and training provided according to this chapter.

(b) A correctional unit or academy shall retain records of an individual's:

(i) Training for a minimum of 3 years from the date the individual completed the training; and

(ii) Selection standards for a minimum of 5 years from the date an application for certification or recertification is submitted on behalf of the individual.

### **.03 Provisional Appointment.**

A. The Commission may grant a provisional appointment to a mandated employee after the individual meets the applicable selection standards under Regulation .04 or .08 of this chapter.

B. An individual may not:

(1) Perform the duties of a mandated position unless the individual has met the applicable selection standards under Regulation .04 or .08 of this chapter; or

(2) Be authorized to carry or use a firearm unless the individual has successfully completed firearms training and qualification requirements under COMAR 12.10.04.

C. An individual may not perform the duties of a mandated position under a provisional appointment beyond the individual's probationary period.

D. An individual with a Commission provisional appointment to a mandated position classified as a correctional officer, classification counselor, institutional support staff, parole and probation agent, monitor, case management specialist, resident advisor, or Juvenile Services support staff who changes from the original position to another of these positions shall receive a new provisional appointment in the new mandated position to provide the opportunity to obtain applicable training for the new mandated position required under Regulation .09 of this chapter.

E. A provisional appointment is valid until:

(1) 365 cumulative days have elapsed from the initial date of the provisional appointment;

(2) It is determined that the applicable selection standards have not been met;

(3) The individual has been certified; or

(4) The individual's employment in a mandated position is terminated.

F. A provisional appointment to a mandated position under this regulation may be made for a formerly certified mandated employee who:

(1) Has not been in a mandated position with a correctional unit for over 3 years; and

(2) Meets the appropriate selection standards under Regulation .04 of this chapter.

G. Probationary Period.

(1) After an individual has met the applicable selection standards under Regulation .04 or .08 of this chapter and received a provisional appointment, the Commission shall grant a probationary period of up to 365 days to the mandated employee to perform mandated employee duties while awaiting the opportunity to complete the entrance-level training required under Regulation .09 of this chapter.

(2) The probationary period begins on the first day of the Commission provisional appointment.

(3) The 365-day period is cumulative and may not be lengthened by multiple employments in the same mandated position by different correctional units or periodic employment with the same correctional unit.

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(4) If an individual transfers as a new employee in the same mandated position from one correctional unit to another correctional unit before successfully completing the required entrance-level training, the probationary period continues from the date of the first provisional appointment, less any time the individual is not employed in the same mandated position by a correctional unit.

(5) A Commission probationary period for a mandated position under this chapter does not prohibit a correctional unit from imposing a probationary period that may:

- (a) Exceed that established by the Commission; or
- (b) Be in addition to that imposed by the Commission.

**.04 Selection Standards for Appointment to a Mandated Position and Documentation Requirements.**

A. Age. An applicant shall be 18 years old or older:

- (1) On the date of provisional appointment; or
- (2) To begin entrance-level training for a mandated position.

B. Citizenship.

- (1) An applicant shall:
  - (a) Be a United States citizen or a resident alien; and
  - (b) Submit proof of citizenship or resident alien status to the hiring correctional unit.

(2) If the applicant is a resident alien, an agency head shall submit a copy of the applicant's identification card or other official documentation issued by Immigration and Customs Enforcement of the United States Department of Homeland Security with the AFC.

C. Education Requirements.

(1) Correctional Officer, Monitor, or Resident Advisor.

- (a) An applicant for a mandated position classified as a correctional officer, monitor, or resident advisor shall possess a:
  - (i) High school diploma issued by a high school or recognized by the State Board of Education; or
  - (ii) General Educational Development (GED) certificate or diploma issued by another state or recognized by the State Board of Education.

(b) An agency head may accept a baccalaureate degree from an accredited college or university recognized by the Maryland Higher Education Commission in place of the high school diploma required under §C(1)(a) of this regulation.

(c) In the absence of a copy of a diploma, an agency head may accept a certified transcript indicating that an individual successfully completed the requirements for graduation from a high school or college under §C(1) of this regulation.

(d) If an applicant required to submit proof of education under §C(1)(a) of this regulation received a General Educational Development (GED) certificate or diploma outside Maryland or while in the military service and no certificate or diploma was issued, an agency head may accept a copy of the GED test scores that meet requirements established by the State Board of Education.

(2) Classification Counselor or Parole and Probation Agent. An applicant for a mandated position classified as a classification counselor or parole and probation agent shall possess a baccalaureate degree from an accredited college or university recognized by the Maryland Higher Education Commission.

(3) Institutional Support Staff. An agency head shall establish the educational requirements for a mandated position classified as institutional support staff.

(4) Case Management Specialist (CMS). An applicant for a mandated position classified as a case management specialist shall possess at least:

- (a) A baccalaureate degree from an accredited college or university recognized by the Maryland Higher Education Commission; or

(b) An associate of arts degree from an accredited college or university recognized by the Maryland Higher Education Commission and a minimum of 2 years experience providing direct service to delinquent, emotionally disturbed, socially maladjusted, victimized, or exceptional children.

(5) Juvenile Services Support Staff. The Department of Juvenile Services shall establish the educational requirements for a mandated position classified as juvenile services support staff.

(6) Documenting and Reporting Education Requirements.

(a) An agency head shall maintain a copy of an appropriate diploma or other acceptable documentation submitted by the applicant demonstrating that the applicant meets the education requirements for a mandated position under §C of this regulation.

(b) An agency head shall include information indicating that the applicant for employment in a mandated position meets the education requirements under §C of this regulation on the AFC form.

D. Background Investigation and Criminal History Record Check.

(1) An agency head, or a designee, shall perform a background investigation and criminal history record check of an applicant for a mandated position.

(2) An agency head, or a designee, shall include in the criminal history record check a fingerprint check as required under Regulation .05 of this chapter.

E. Physical and Mental Health Examinations.

(1) Physical Examinations.

(a) An agency head shall:

- (i) Require that an applicant is examined by a licensed, trained, and qualified medical health care professional; and
- (ii) Receive a positive recommendation from the medical health care professional.

(b) To be eligible for certification in a mandated position, the medical health care professional's recommendation shall indicate that the applicant is physically able to:

- (i) Perform duties of the mandated position for which the applicant is applying as determined by a correctional unit;
- (ii) Participate in the entrance-level training required by the Commission for the mandated position for which the individual is applying; and
- (iii) Participate in training required by the correctional unit.

(2) Mental Health Examination.

(a) An agency head shall:

- (i) Require that an applicant is examined by a licensed, trained, and qualified mental health care professional; and
- (ii) Receive a positive recommendation from the mental health care professional.

(b) To be eligible for certification in a mandated position, the mental health care professional's recommendation shall indicate that the applicant is:

- (i) Emotionally and mentally fit; and
- (ii) Able to perform duties of the mandated position for which the applicant is applying as determined by a correctional unit.

(3) Certification of Medical and Mental Health Examination Results.

(a) An agency head shall provide the following information concerning an applicant's medical and mental health examination with the AFC:

- (i) The names of the licensed medical and mental health care professionals performing the examinations; and
- (ii) The date the medical and mental health examinations were performed.

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(b) An agency head shall retain and maintain documentation concerning an applicant's medical and mental health examinations according to statutory and regulatory requirements.

F. Oral Interview.

(1) An agency head, or a designee, shall:

(a) Require that an applicant for a mandated position participates in an oral interview to assess the applicant's ability to communicate; and

(b) Include the name of the individual conducting the oral interview and the date of the interview on the AFC.

(2) An agency head, or a designee, shall maintain a record of the interview.

G. Drug Screening.

(1) An agency head shall require that an applicant for a mandated position submits to a drug screening to test for controlled dangerous substances, narcotic drugs, and marijuana according to Regulation .21 of this chapter.

(2) The agency head, or a designee, shall maintain a record of the drug screening test results and include the drug screen test results on the AFC.

(3) If the drug screening test results exceed the levels specified under Regulation .21 of this chapter, the Commission may not certify the individual in the mandated position, unless the positive drug screening test for a controlled dangerous substance, narcotic drug, or marijuana is determined to be the result of a legitimate ingestion or exposure as provided under Regulation .21 of this chapter.

H. This regulation does not prohibit an agency head from establishing more restrictive standards than Commission standards for certifying an individual in a mandated position.

I. An agency head may submit a request for a waiver of the minimum standards under this regulation according to requirements under Regulation .19 of this chapter.

**.05 Background Investigation and Criminal History Record Checks.**

A. Background Investigation.

(1) An agency head or agency authorized under §A(7) of this regulation shall perform a background investigation to determine if an applicant:

(a) Is of good moral character and reputation;

(b) Is emotionally stable;

(c) Displays the suitable behavior necessary to perform the duties of the mandated position; and

(d) Has, at any time, been a member of a criminal gang.

(2) An agency head shall ensure that a background investigation includes:

(a) A check of military records, when applicable, including obtaining a complete copy of discharge documents;

(b) A report from a credit agency regarding current and past credit history;

(c) Examination of school records or interviews with school officials if the applicant attended a school within the last 5 years;

(d) Interviews of:

(i) Personal references;

(ii) Neighbors within the last 5 years;

(iii) Current and past employers within the last 5 years; and

(iv) Coworkers within the past 5 years;

(e) An investigation for prior use of controlled dangerous substances, narcotic drugs, and marijuana as specified under Regulation .22 of this chapter; and

- (f) A search for information related to an applicant that is reported by the following criminal gang database systems:
- (i) GangNet;
  - (ii) RISSNET; or
  - (iii) Other criminal gang database systems approved by the Commission.
- (3) An agency head shall use a background investigation to determine whether:
- (a) Information concerning the applicant's citizenship, mental and emotional fitness, and other information is accurate;
  - (b) The applicant is capable of performing duties of the mandated position; and
  - (c) The applicant meets the Commission's requirements for the mandated position.
- (4) Interviews may be conducted:
- (a) In person;
  - (b) By telephone;
  - (c) By using a correctional unit form or questionnaire that the interviewer or individual interviewed is required to complete; or
  - (d) By other lawful methods designed to elicit useful information from a person concerning the applicant.
- (5) Personal Interview.
- (a) The Commission considers a personal interview appropriate when the individual to be interviewed is within 50 miles of the correctional unit.
  - (b) Interviews with personal references and others not residing in Maryland may be conducted by correspondence or telephone.
- (6) Out-of-State Applicant.
- (a) If an applicant has resided or been employed in another state, an agency head:
    - (i) May permit the background investigation to be performed by a law enforcement agency or a legitimate private background investigation agency in the area where the applicant lived or worked outside of the State; and
    - (ii) Shall ensure that a search for information related to an applicant is conducted using a reliable criminal gang database system in the state where the applicant resided or was employed.
  - (b) If an applicant was employed in a mandated position for the federal government or another state, an agency head shall include the following information on the AFC:
    - (i) The name of the federal or state organization employing the applicant in a mandated position; and
    - (ii) Information received from the previous out-of-State federal or state employer concerning the applicant.
- (7) Investigations By Other Agencies. The hiring agency head may conduct the Commission-required background investigation or may authorize another individual, office, or agency to conduct the Commission-required background investigation.
- (8) An agency head, or a designee, submitting an AFC for an applicant shall:
- (a) Maintain a record of the applicant's background investigation; and
  - (b) Include the result of the background investigation on the AFC.
- (9) Derogatory Information.
- (a) If derogatory information is discovered during the background investigation, an agency head shall submit details with the AFC.
  - (b) The Commission may refuse to certify an applicant in a mandated position based upon derogatory information.

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**B. Criminal History Record Checks and Fingerprints.**

(1) An agency head submitting an AFC for an applicant to be certified as a correctional officer or Department of Juvenile Services employee shall require that the applicant:

(a) Be fingerprinted; and

(b) Apply to the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services for a State and national criminal history records check.

(2) An applicant applying for a criminal history records check under this section shall request the results of the criminal history records check be provided to the:

(a) Applicant;

(b) Commission; and

(c) Agency submitting the AFC for the applicant.

**(3) Record of Criminal Conviction.**

(a) The Commission shall include with the Commission's records for the applicant's AFC results of the criminal history records check that reveal an applicant has:

(i) Been convicted or otherwise found guilty of a felony;

(ii) Been convicted or otherwise found guilty of a misdemeanor for which a sentence of imprisonment of 1 year or more may be imposed;

(iii) Served a term of incarceration for a conviction of a misdemeanor offense; or

(iv) Served a term of incarceration as a condition of probation for a felony or misdemeanor criminal offense.

(b) The Commission may not certify an applicant in a mandated position if the applicant has a conviction for an offense under Regulation .20 of this chapter.

(4) The Commission shall notify the applicant that the applicant may contest the contents of the criminal history records check results as provided under Criminal Procedure Article, Title 10, Annotated Code of Maryland.

(5) The Commission may refuse to certify the applicant based on derogatory information resulting from the criminal history records check or other verified reliable source.

**.06 Certification of a Mandated Employee.**

**A. Mandated Employee Certification Requirements.** The Commission shall certify an individual for appointment to a mandated position after the individual:

(1) Meets selection standards established under Regulation .04 of this chapter;

(2) Successfully completes training for that position under Regulation .09 of this chapter; and

(3) Successfully completes a field training program under Regulation .23 of this chapter.

**B. Mandated Employee Period of Certification.**

(1) The Commission shall determine the period of certification for a mandated employee.

(2) A mandated employee's certification is valid for the period determined by the Commission or until the employee:

(a) Is separated from employment;

(b) Does not meet the Commission's standards;

(c) Is transferred from a mandated position to a nonmandated position; or

(d) Is transferred from one mandated position to another mandated position with different selection or training requirements that the individual has not met.

**C. Mandated Employee Certification—Renewal.**

(1) The Commission shall establish a schedule for renewing mandated employee certification.

(2) The Commission shall renew a mandated employee's certification if the individual meets the Commission's annual training requirements under Regulation .16 of this chapter.

(3) If a mandated employee is not eligible for certification renewal under §C(2) of this regulation, at least 30 days before the end of the current certification the Commission shall:

(a) Notify the mandated employee's agency head of the date that the current mandated employee's certification will end; and

(b) Request the agency head to supply information that may affect the mandated employee's eligibility for certification renewal.

(4) If notified under the provisions of §C(3)(a) of this regulation, the agency head shall notify the affected mandated employee of the date the certification ends before the date the employee's certification ends.

#### D. Mandated Employee Certification—Lapse.

(1) A mandated employee's certification lapses on the date recorded on the certification card if it has not been renewed under §C of this regulation.

(2) An agency head may not permit a mandated employee to perform the duties of a mandated position if the mandated employee's certification has lapsed.

(3) If the mandated employee's certification has lapsed because the mandated employee did not meet the Commission's annual training standards, the mandated employee may request a hearing before the Commission to show that the mandated employee was not at fault and that:

(a) The employer did not provide the mandated employee with the required training; or

(b) The mandated employee's duty assignment prevented the individual from attending or completing the required training.

(4) If a hearing is requested under §D(3) of this regulation, the Commission shall conduct the hearing according to procedures under State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(5) If a hearing is conducted and the Commission determines that the mandated employee was not at fault because a condition under §D(3)(a) or (b) exists:

(a) The Commission shall extend certification to provide the opportunity for the mandated employee and the employer to meet the Commission's training requirements;

(b) The agency head shall continue to employ the mandated employee at the employee's established pay rate, regardless of the duties assigned, pending completion of required training; and

(c) The Commission may order the employer to pay all reasonable hearing costs.

E. Mandated Employee Recertification. The Commission shall recertify an individual formerly certified as a mandated employee in Maryland after the individual meets the applicable selection and training standards under Regulation .07 of this chapter.

#### F. Certification Card.

(1) The Commission shall issue a certification card to an individual who has met the Commission's certification requirements for a mandated position.

(2) The Commission shall determine the format and contents of the certification card.

(3) The certification card indicates that the individual is authorized to perform the duties of the mandated position.

(4) The mandated employee's agency head:

(a) Is responsible for the cost of replacing an issued, current certification card; and

(b) May require a mandated employee to reimburse the agency for the cost of replacement.

(5) A mandated employee shall, to the extent possible, possess a valid certification card while the mandated employee is on duty.

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(6) A certification card issued by the Commission:

- (a) Lapses at midnight on the date printed on the card;
- (b) Remains the property of the Commission; and

(c) Shall be returned, by an agency head, to the Commission when an individual is no longer employed as a mandated employee.

(7) An agency head shall return a mandated employee's certification card, removed from the individual under §F(6)(c) of this regulation, to the Commission within 30 working days of the date the individual is no longer employed as a mandated employee.

(8) An agency head shall retain the certification card of a mandated employee on nonofficer status until the individual:

- (a) Returns to active duty; or
- (b) Is no longer employed in a mandated position.

G. Department of Juvenile Services Contractor Employee Selection, Training Standards, and Certification Requirements.

(1) An employee of a nonprofit or for-profit organization (contractor) under contract with the Department of Juvenile Services performing duties equivalent to those performed by a Department of Juvenile Services employee in a mandated position shall meet the same selection and training standards and certification requirements as the Department of Juvenile Services mandated employee.

(2) If the contractor under §G(1) of this regulation changes or the Department of Juvenile Services assumes responsibility for the services previously provided by a contractor, mandated employee certification for a contractual employee shall continue under a new contractor or the Department of Juvenile Services if the employee:

(a) Continues employment under the new contractor or the Department of Juvenile Services without a break in service that exceeds 30 days;

(b) Continues to perform the same duties and responsibilities of the mandated position for which the employee is certified;

(c) Under the new employer, continues to perform duties at a facility formerly under the authority of the previous contractor; and

(d) Continues to meet Commission training and certification requirements for the mandated position.

**.07 Recertification Requirements.**

A. The Commission may recertify an applicant in a mandated position if the applicant was previously certified in the same mandated position when:

(1) Hired by a second or successive correctional unit in the same mandated position within 3 years of termination from the previous correctional unit;

(2) The Commission receives a completed AFC for the individual; and

(3) The applicant meets applicable Commission-required:

(a) Recertification standards for the mandated position under Regulation .08 of this chapter; and

(b) Applicable training standards under §C or D of this regulation for the mandated position.

B. Recertification. The Commission may grant a provisional certification to an applicant who has received a previous provisional certification to a mandated position but was not certified by the Commission in that mandated position after the applicant met the recertification standards for the mandated position under Regulation .08 of this chapter.

C. Recertification to a Mandated Position Within 3 Years of Separation.

(1) The Commission may recertify an applicant previously certified by the Commission in a mandated position without requiring the applicant to meet Commission entrance-level training requirements under Regulation .09 of this chapter if the applicant:

(a) Has been separated from a correctional unit for less than 3 years;



- (b) Receives a provisional certification at a new or the same correctional unit in the same mandated position;
- (c) Meets Commission recertification standards under Regulation .08 of this chapter; and
- (d) Meets Commission training requirements under §C(2) of this regulation.

(2) Training Requirements for Mandated Employee Recertification.

(a) In-Service Training.

(i) If an applicant has met the in-service training requirements for the current or previous calendar year, additional in-service training is not required for recertification in the same mandated position.

(ii) If an applicant has not met the in-service training requirements for the current or previous calendar year, the applicant shall successfully complete in-service training required under Regulation .16 of this chapter for the mandated position before recertification.

(b) Firearms Training and Qualification — Recertification Requirements.

(i) A mandated employee required to carry or use a firearm shall complete firearms training and qualification requirements under Regulation .16 of this chapter with each firearm that the individual is authorized to carry or use before the individual is permitted to carry or use the firearm.

(ii) An applicant is required to meet firearms training and qualification requirements under Regulation .16 of this chapter before recertification regardless of firearms training and qualifications completed at a previous correctional unit.

D. Recertification to a Mandated position After 3 Years of Separation.

(1) The Commission may recertify an applicant in a mandated position who has been separated from employment at a correctional unit in a mandated position for 3 years or more and the applicant is reemployed at the same or a new correctional unit after the applicant:

- (a) Meets Commission recertification standards under Regulation .08 of this chapter; and
- (b) Successfully completes:

(i) Entrance-level training under Regulation .09 of this chapter for the mandated position; and

(ii) If the applicant is required to carry or use a firearm, entrance-level firearms training and qualification for each firearm the applicant is required to carry or use according to requirements under COMAR 12.10.04.

(2) The Commission may grant an applicant under this regulation a new provisional certification under Regulation .03 of this chapter to provide an opportunity to complete the required training.

**.08 Standards for Recertification.**

A. An applicant for recertification to a mandated position who previously received a provisional certification in a mandated position by the Commission shall meet the standards under this regulation for the mandated position that the applicant is seeking recertification to before the applicant may perform duties of the mandated position.

B. Information Required for a Recertification Applicant. An agency head, or a designee, submitting an AFC for recertification under this regulation shall require that the following are performed for the applicant:

- (1) A criminal history record check and fingerprinting under Regulation .05 of this chapter;
- (2) A drug screening under Regulation .21 of this chapter;
- (3) A check with the applicant's previous correctional unit to:
  - (a) Determine the reason for separation;
  - (b) Ensure that the applicant left in good standing; and
  - (c) Assess past work performance;

(4) An investigation for the applicant's prior use of controlled dangerous substances, narcotic drugs, and marijuana according to requirements under Regulation .22 of this chapter;

- (5) The physical and mental health examinations required under Regulation .04 of this chapter; and

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(6) The background investigation review and assurances, or full background investigation, as required under §E of this regulation.

C. Required Additional Information for Certain Applicants. If an applicant for recertification has not been employed in a mandated position at a correctional unit for the last 90 days or more before filing an AFC for recertification, in addition to information required under §B of this regulation, the agency head, or a designee, shall conduct a modified background investigation for the period that the applicant was not employed in a mandated position at a correctional unit that includes obtaining information related to the applicant through:

- (1) A check with each employer during the applicant's absence from mandated duties and responsibilities;
- (2) A check with the applicant's coworkers during the applicant's absence from mandated duties and responsibilities; and
- (3) Interviews of personal references and neighbors provided by the applicant for the most recent period of the applicant's absence from mandated duties and responsibilities.

D. An agency head, or a designee, shall:

- (1) Complete an AFC to verify that applicable selection standards have been met; and
- (2) Forward, to the Commission, the completed AFC along with criminal history record check and derogatory information discovered during the background investigation.

E. Review of Previous Background Investigations.

(1) An agency head, or a designee, submitting an AFC for recertification shall review the background investigation conducted by the applicant's previous agency head to ensure that a complete and accurate investigation was performed.

(2) The agency head, or a designee, submitting an AFC for recertification is responsible for correcting any omission or discrepancy in a prior background investigation that was conducted in conjunction with an AFC submitted to the Commission by an agency head less than 5 years from the date of the applicant's AFC for recertification.

(3) If records of a previous background investigation are not available, the agency head, or a designee, submitting an AFC for recertification shall conduct a full background investigation according to requirements under Regulation .05 of this chapter.

#### **.09 Minimum Standards for Mandated Employee Entrance-Level Training.**

A. An applicant for certification in a mandated position shall successfully complete the Commission-approved entrance-level training for the mandated position in which the individual is employed before the Commission may certify the individual in the mandated position.

B. General Requirements.

- (1) The entrance-level training required by this regulation for a mandated position shall:
  - (a) Be approved by the Commission; and
  - (b) Include the mandated subject areas and minimum training hours under this regulation for a specific mandated position.

(2) The Commission may not permit hours used to meet entrance-level firearms training and qualification requirements under COMAR 12.10.04 or field training requirements under Regulation .23 of this chapter as part of the minimum hours of entrance-level training specified for each mandated position in this regulation, regardless of whether the activity is conducted contemporaneously with or separate from the entrance-level training.

C. Correctional Officer and Classification Counselor — Entrance-Level Training Requirements.

(1) Commission-approved entrance-level training for a mandated position classified as a correctional officer or classification counselor is a minimum of 160 hours.

(2) Commission-approved entrance-level training for a mandated position classified as a correctional officer or classification counselor shall include the following subject areas:

- (a) Administrative procedures;
- (b) Introduction to corrections;

- (c) Supervision, interpersonal relations, and treatment of inmates;
- (d) Security, custody, and control of inmates; and
- (e) Discipline of inmates.

D. Institutional Support Staff — Entrance-Level Training Requirements.

(1) Commission-approved entrance-level training for a mandated position classified as institutional support staff requires an individual to successfully complete entrance-level training:

- (a) Required under §C of this regulation; or
- (b) Required under §D(2) of this regulation.

(2) Commission-approved entrance-level training for a mandated position classified as institutional support staff is a minimum of 88 hours and shall include the subject areas required under §C(2) of this regulation.

E. Parole and Probation Agent — Entrance-Level Training Requirements. Commission-approved entrance-level training for a mandated position classified as a parole and probation agent is a minimum of 204 hours and shall include the following subject areas:

- (1) Program orientation and evaluation;
- (2) Introduction to corrections;
- (3) Supervision tasks;
- (4) Investigation tasks; and
- (5) Enforcement tasks.

F. Parole and Probation Drinking Driver Monitor — Entrance-Level Training Requirements. Commission-approved entrance-level training for a mandated position classified as a parole and probation agent drinking driver monitor is a minimum of 90 hours and shall include the following subject areas:

- (1) Program orientation and evaluation;
- (2) Introduction to corrections;
- (3) Administrative tasks;
- (4) Monitoring tasks; and
- (5) Enforcement tasks.

G. Resident Advisor — Entrance-Level Training Requirements. Commission-approved entrance-level training for a mandated position classified as a resident advisor is a minimum of 160 hours and shall include the following subject areas:

- (1) Juvenile services in the criminal justice system;
- (2) Human growth and development;
- (3) Laws and regulations;
- (4) Facility admissions and orientation;
- (5) Custody and control;
- (6) Transportation;
- (7) Integrated case management;
- (8) Documentation;
- (9) Safety and security;
- (10) Youth gang awareness and interventions; and
- (11) First aid.

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H. Case Management Specialist — Entrance-Level Training Requirements. Commission-approved entrance-level training for a mandated position classified as a case management specialist is a minimum of 160 hours and shall include the following subject areas:

- (1) Juvenile services in the criminal justice system;
- (2) Human growth and development;
- (3) Laws and regulations;
- (4) Community intake;
- (5) Transportation;
- (6) Integrated case management;
- (7) Counseling;
- (8) Documentation;
- (9) Safety and security;
- (10) First aid; and
- (11) Youth gang awareness and interventions.

I. Juvenile Services Support Staff — Entrance-Level Training Requirements. Commission-approved entrance-level training for a mandated position classified as juvenile services support staff is a minimum of 120 hours and shall include the following subject areas:

- (1) Juvenile services in the criminal justice system;
- (2) Human growth and development;
- (3) Laws and regulations;
- (4) Transportation;
- (5) Integrated case management;
- (6) Documentation;
- (7) Safety and security;
- (8) First aid; and
- (9) Youth gang awareness and interventions.

**.10 Commission Mandated Employee Entrance-Level Training Performance Objectives.**

A. For the Commission to approve mandated employee entrance-level training, the entrance-level training shall include activities that ensure that an individual applying for certification in a mandated position has met performance objectives that:

- (1) Are composed and sanctioned by the Commission; and
- (2) Address tasks that are essential to the applicable mandated position regardless of the correctional unit employing the individual.

B. The Commission shall furnish a copy of the performance objectives upon request by a correctional unit, academy, or school.

C. An agency head or training director, or a designee, providing Commission-approved mandated employee entrance-level training shall:

- (1) Cover the Commission performance objectives during Commission-approved entrance-level training exactly as written by the Commission; and
- (2) Determine the sequence, content, and duration of training to cover the Commission's performance objectives.

**.11 Successful Completion of Commission-Approved Mandated Employee Entrance-Level Training.**

A. The training director, or a designee, shall conduct testing to verify that each individual attending Commission-approved mandated employee entrance-level training has learned or can perform each of the Commission's performance objectives in each subject area required for the applicable mandated position.

B. A training director, or a designee, may use a single question or demonstration to test an individual for knowledge or performance of:

- (1) A single Commission performance objective; or
- (2) Multiple Commission performance objectives.

C. An individual attending Commission-approved entrance-level training for certification in a mandated position shall achieve a score of 75 percent on each test or demonstration to be eligible for certification by the Commission in the mandated position.

D. An individual attending Commission-approved entrance-level training for certification in a mandated position who is absent for more than 10 percent of the training may not be certified by the Commission unless the academy director determines that the individual has completed sufficient work.

E. A training director of an academy conducting Commission-approved entrance-level training for certification in a mandated position may require the individual attending to meet entrance-level training requirements, standards, and objectives that exceed entrance-level training requirements, standards, and objectives required by the Commission.

F. Once an individual completes Commission-approved mandated employee entrance-level training, the training director, or a designee, shall:

- (1) Report to the Commission, in a format determined by the Commission, the results of each individual attending the training for certification in a mandated position; and
- (2) Maintain records of the tests and testing procedures for each individual attending the training.

G. Failure to Successfully Complete Mandated Employee Entrance-Level Training.

(1) If an individual attending Commission-approved mandated employee entrance-level training does not meet the requirements for successful completion of the training:

- (a) The training director, or a designee, shall notify the individual's agency head; and
- (b) The Commission may not certify the individual in the applicable mandated position.

(2) An agency head may request in writing that the Deputy Director permit an individual who does not successfully complete Commission-approved entrance-level training for certification in a mandated position to attend one additional Commission-approved entrance-level training to attempt to meet the Commission's requirements for entrance-level training for the same mandated position.

**.12 Alternate Entrance-Level Training Requirements.**

A. An individual shall successfully complete Commission-approved entrance level training under §B of this regulation within 1 year of appointment if the individual is:

(1) Employed in a State, county, or municipal position that is not a mandated position under this chapter and performs duties and responsibilities similar to a mandated employee; or

- (2) Under private contract to operate a:
  - (a) Community adult rehabilitation center;
  - (b) Prerelease unit;
  - (c) Work release unit; or
  - (d) Other community residential program for offenders.

B. An individual described under §A of this regulation shall successfully complete Commission-approved entrance level training according to requirements under either:

- (1) §C under Regulation .09 of this chapter; or

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(2) §D under Regulation .09 of this chapter and 100 hours of training meeting requirements of §C of this regulation.

C. The 100 hours of training required under §B(2) of this regulation:

- (1) May be developed by the individual's employing agency;
- (2) Shall be approved by the Commission; and
- (3) Shall, at a minimum, include the following subject areas:
  - (a) Orientation to and a tour of the correctional unit or community program;
  - (b) The correctional unit's or community program's:
    - (i) Mission;
    - (ii) Policy and procedures;
    - (iii) Staffing; and
    - (iv) Resident population or program participants;
  - (c) Facility security and control and emergency and fire control procedures; and
  - (d) Either:
    - (i) The American Red Cross basic first aid and safety program; or
    - (ii) Another first aid and safety program approved by the Commission.

D. An employer of an individual required to meet entrance-level training requirements under this regulation shall:

- (1) Forward to the Commission, in a form or in a format provided by the Commission, information concerning an employee's entrance-level training required under this regulation; and
- (2) Maintain records of each employee's successful completion of entrance-level training under this regulation for audit by the Commission.

**.13 Minimum Standards for Attending an Academy Providing Commission-Approved Mandated Employee Entrance-Level Training.**

A. In addition to Commission requirements for selection and attending an academy providing Commission-approved mandated employee entrance-level training, the individual may be required to meet standards established by the agency head.

B. Before an individual may attend Commission-approved mandated employee entrance-level training, the agency head, or a designee, shall:

- (1) Have the individual complete the requirement for a medical examination under regulation .04 of this chapter that indicates that the individual is physically able to participate in the Commission-approved mandated employee entrance-level training;
- (2) Conduct a criminal history record check of the National Crime Information Center (NCIC) files that meets selection requirements under Regulation .04 of this chapter;
- (3) Provide the individual with a copy of the selection standards under Regulation .04 of this chapter; and
- (4) Have the individual attending the training acknowledge in writing that the individual is aware that completion of the Commission-approved entrance-level training is not a guarantee of Commission certification in a mandated position.

C. Entrance-Level Firearms Training.

- (1) A mandated employee authorized to use a firearm shall successfully complete the entrance-level firearms training program under COMAR 12.10.04 before being issued or permitted to carry a firearm.
- (2) A firearms program may be taken as part of an entrance-level training program or taken separately.

**.14 Commission Certification Requirements for an Academy Providing Commission-Approved Mandated Employee Training.****A. Academy Certification.**

- (1) The Commission may certify an academy to conduct Commission-approved mandated employee training.
- (2) The Commission may approve the following types of academy certification:

(a) Temporary certification that authorizes an academy to conduct Commission-approved mandated employee training under limited conditions;

(b) Provisional certification that provides an academy preliminary approval to conduct Commission-approved mandated employee training before receiving certification; or

(c) Certification authorizing an academy to conduct Commission-approved mandated employee training subject to continued compliance with Commission academy standards.

(3) The Commission shall establish standards required to be met for each type of academy certification provided under §A(2) of this regulation.

**B. General Requirements.** An academy seeking certification to provide Commission-approved mandated employee training shall submit a request to the Commission documenting that the academy:

- (1) Has a need to conduct Commission-approved mandated employee training;
- (2) Is in compliance with Commission standards for instructors and curricula;
- (3) Provides an atmosphere that supports learning;
- (4) Provides suitable lighting, ventilation, and acoustic qualities;
- (5) Meets applicable federal, State, and local health, safety, and fire safety laws and regulations;
- (6) Has a physical structure that if practical provides:
  - (a) At least 25 square feet of classroom space for each individual attending;
  - (b) Locker space for each individual attending;
  - (c) Appropriate desk space, work tables, and seating to support classroom and other related learning activities;
  - (d) Storage for learning and training materials; and
  - (e) Instructional and training equipment and material to support the training provided;
- (7) Has adequate space for skills training and conducting practical exercises; and

(8) Has an instructor certified by the Commission or the Police Training Commission to conduct Commission-approved mandated employee training, unless the individual providing the training is exempt under COMAR 12.10.06 or COMAR 12.04.06 from instructor certification requirements.

**C. Commission certification of an academy under this regulation is not an exemption from Commission requirements for Commission approval of training provided by the academy under Regulations .09 and .16 of this chapter.**

**D. Individuals Attending Commission-Approved Training.**

(1) If an individual is attending Commission-approved mandated employee training that is required by the Commission for the mandated position, the individual's agency head, or a designee, shall:

- (a) Excuse the individual from performing assigned duties and responsibilities during the training; and
- (b) Compensate the individual at the individual's appropriate salary while attending the training.

(2) The training director of an academy providing the Commission-approved mandated employee training required by the Commission for a mandated position is responsible for the personal conduct of each individual attending the training.

(3) The training director, or a designee, is the commanding official or supervisor for each individual attending the training.

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(4) The training director shall provide each individual attending the Commission-approved mandated employee training a copy of the academy's rules and regulations governing the individual's daily conduct while attending the training.

(5) The disciplinary rules or regulations of the academy apply to each individual attending training.

(6) A training director shall notify an individual's agency head if, while at the academy:

(a) The individual commits a breach of conduct that requires disciplinary action; or

(b) The individual's progress in Commission-required subject areas indicates the individual is failing the Commission-approved mandated employee training required by the Commission.

(7) An agency head of an individual failing Commission-approved mandated employee training required by the Commission may withdraw the individual from the training at any time before completing the training.

(8) A training director and the agency head sending the individual to the academy may negotiate arrangements for reimbursement of costs associated with the individual attending the academy.

(9) An individual not employed in a mandated position may voluntarily enroll in an academy to participate in Commission-approved mandated employee training required by the Commission if the individual meets the selection standards specified under Regulation .15 of this chapter.

E. Academy Authority.

(1) An academy certified by the Commission may provide Commission-approved mandated employee:

(a) Entrance-level training;

(b) In-service training;

(c) Supervisor training;

(d) Administrator training;

(e) Instructor training;

(f) Firearms training and qualification; or

(g) Other required training.

(2) A training director may establish rules of conduct for the academy that exceed Commission requirements under this regulation.

(3) A written academy rule or lawful verbal direction or order issued by a Commission-certified academy representative has the same authority as a Commission requirement or standard.

(4) A training director may establish academy requirements for successful completion that exceed Commission requirements.

F. Academy Certification Lapse or Revocation.

(1) Certification Lapse.

(a) Commission certification for an academy shall lapse if the academy does not conduct Commission-approved training for a period of 2 years.

(b) An agency head or training director may apply for the academy's recertification if the agency head or training director can demonstrate the need for the academy to conduct Commission-approved mandated employee training required by the Commission.

(2) Academy Certification Revocation. The Commission may revoke an academy's certification if the academy:

(a) Discontinues presenting Commission-approved training;

(b) Conducts Commission-approved training without Commission-certified instructors providing the training;

(c) Demonstrates a pattern of deficiencies identified by audits or fails to correct identified deficiencies following an audit;

(d) Training director does not successfully complete the training director orientation program under §H of this regulation; or

(e) Violates a provision of this regulation.



G. Academy Audit.

(1) Commission-approved mandated employee training provided by an academy is subject to review and audit by the Commission.

(2) The Commission shall audit a Commission-certified academy providing Commission-approved mandated employee training required by the Commission at least every 2 years.

(3) An agency head or training director responsible for an academy shall correct deficiencies identified during an audit according to requirements established by the Commission and recorded in the Commission's audit report.

H. Training Director Orientation. An individual appointed as a training director of a Commission-certified academy, within 3 months of appointment, shall successfully complete a training director orientation program designed and approved by the Commission.

**.15 Voluntary Attendance — Commission-Approved Mandated Employee Entrance-Level Training.**

A. An individual may voluntarily attend Commission-approved mandated employee entrance-level training if the individual meets the requirements under this regulation, and is not:

- (1) Employed in a mandated position;
- (2) Currently employed by a correctional unit and required to comply with requirements for a mandated position; or
- (3) An applicant for a mandated position.

B. Standards for Voluntary Attendance — Commission-approved Mandated Employee Entrance-Level Training.

(1) An individual who is not an applicant for or employed in a mandated position requesting to voluntarily attend Commission-approved mandated employee entrance-level training shall:

(a) Meet selection standards established for the academy conducting the Commission-approved mandated employee entrance-level training;

(b) Authorize the training director to conduct a records check of the National Criminal Information Center;

(c) Submit to a medical examination conducted by a licensed health care professional and receive written certification from the licensed health care profession that the individual is physically able to participate in the Commission-approved mandated employee entrance-level training;

(d) Be 18 years old or older at the time the individual enters the academy;

(e) Receive from the training director a copy of the selection standards for the mandated position under Regulation .04 of this chapter; and

(f) Acknowledge an understanding, in writing, that successful completion of the Commission-approved mandated employee entrance-level training does not guarantee Commission certification in a mandated position.

C. An agency head hiring an individual for a mandated position may request a waiver, according to Regulation .19 of this chapter, of the Commission-approved mandated employee entrance-level training requirement, if the individual, before applying for the mandated position, voluntarily attended and successfully completed Commission-approved mandated employee entrance-level training for the mandated position within 2 years of being hired by the agency head.

**.16 Mandated Employee In-Service Training and Firearms Training and Qualification.**

A. Mandated Employee In-Service Training.

(1) An agency head shall ensure that a mandated employee at or below the rank of a first-line supervisor completes a minimum of 18 hours of Commission-approved mandated employee in-service training by December 31 of each calendar year.

(2) The Commission shall only accept successful completion of Commission-approved mandated employee in-service training toward a mandated employee's in-service training requirements.

(3) Commission-approved mandated employee in-service training may be conducted, according to Commission requirements, by the individual's agency or another agency.

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(4) The Commission does not require a Commission-certified mandated employee to meet the in-service training requirement under this regulation during the same calendar year the mandated employee successfully completed Commission-approved entrance-level mandated employee training for the same mandated position.

(5) The Commission may apply a mandated employee's successful completion of Commission-approved supervisor, administrator, or instructor training toward a mandated employee's in-service training requirement for the calendar year in which the Commission-approved supervisor, administrator, or instructor training was completed.

(6) An agency head who receives a waiver of the Commission requirements for an employee to complete Commission-approved mandated employee entrance-level training under Regulation .19 of this chapter shall ensure that the mandated employee successfully completes Commission-approved mandated employee in-service training during the first full calendar year of employment and during each successive calendar year of employment in the mandated position with the correctional unit.

B. Mandated Employee Firearms Training and Qualification Requirements.

(1) A mandated employee, authorized to carry or use a firearm, shall complete Commission-approved firearms training and qualification under COMAR 12.10.04 during each calendar year.

(2) The Commission does not require a mandated employee required to carry or use a firearm to complete firearms training and qualification under this regulation if, in the same calendar year, the mandated employee successfully completes Commission-approved:

- (a) Entrance-level firearms training and qualification with the same firearm;
- (b) Firearms instructor training and qualification under COMAR 12.10.04 for the same firearm;
- (c) Firearms refresher training and qualification under COMAR 12.10.04 for the same firearm; or
- (d) Firearms conversion training and qualification under COMAR 12.10.04 for the same firearm.

C. Mandated Employee In-Service Training and Firearms Training and Qualification Approval.

(1) The Commission shall:

- (a) Determine the format for submitting training for approval; and
- (b) Assign a program number to approved training.

(2) Training is not approved until the Commission assigns a program number.

(3) A request for the Commission to approve training shall:

- (a) Include the topics to be studied;
- (b) Include the time allocated to each topic;
- (c) Include a brief explanation of why, in terms of current job needs, the topics are included;

(d) Identify each instructor providing training on a specific subject and the number of hours that the instructor is scheduled to provide the training on the subject; and

(e) Unless the Commission instructs otherwise, be submitted to the Commission at least 20 working days before the training is scheduled to begin.

(4) Only an instructor certified by the Commission or the Police Training Commission may conduct Commission-approved training unless the individual providing the training is exempt under COMAR 12.04.06 or 12.10.06 from instructor certification requirements.

(5) Except for provisions under §C(6) of this regulation, the Commission may approve mandated employee training for a period of 3 years.

(6) The agency head or training director of a correctional unit, agency, academy, or school conducting Commission-approved mandated employee training shall submit training to the Commission for approval:

- (a) When a significant change is made in the format or content of Commission-approved training; or
- (b) After the period of approval established by the Commission has expired.

D. Curriculum, Attendance, and Testing for Mandated Employee In-Service Training, Firearms Training and Qualification.

(1) The agency head or training director shall report a mandated employee's successful completion of Commission-approved in-service training to the Commission on or before January 31 of the year immediately following the training.

(2) The agency head or training director shall report in-service training information in a format determined by the Commission.

(3) Testing.

(a) An agency head or training director providing Commission-approved mandated employee training shall test each mandated employee attending Commission-approved mandated employee training to determine successful completion.

(b) A mandated employee shall achieve a minimum test score of 70 percent on each test before the Commission may apply the training to the mandated employee's training requirements under this regulation.

(c) The commission shall determine the method for reporting a mandated employee's training information.

(4) The Commission requires that an agency head or training director providing Commission-approved mandated employee training establishes a method to evaluate the training provided.

(5) If a mandated employee is absent for more than 10 percent of the time required for a Commission-approved annual in-service training program, including electronic control device and firearms training and qualification, the employee may not receive credit toward the annual in-service training requirements of this chapter for any portion of the program, unless the Deputy Director approves the individual to receive full or partial credit.

E. Attending Training Hosted by Other Agencies.

(1) An agency head or training director responsible for training a mandated employee may send the individual to Commission-approved mandated employee training hosted by another agency without prior Commission approval.

(2) An agency head or training director responsible for training a mandated employee who sends the mandated employee to another agency for Commission-approved training shall:

(a) Ensure that the training has been assigned a program number by the Commission; and

(b) Submit the mandated employee's training information to the Commission.

**.17 Failure to Complete Commission-Required Mandated Employee In-Service Training and Firearms Training and Qualification.**

A. Mandated Employee In-Service Training.

(1) Except as provided under §A(2) of this regulation, if a mandated employee does not complete the 18 hours of in-service training by December 31 of a calendar year, the agency head or training director responsible for training the mandated employee shall add the number of hours of in-service training missed to the new calendar year's required 18 hours of in-service training.

(2) If a mandated employee is scheduled for certification renewal on July 1 of any year, but does not receive the entire 18 hours of mandated employee in-service training by December 31 of the previous calendar year, the agency head or training director responsible for training the mandated employee shall:

(a) Provide the employee, before the July 1 date on which the employee is scheduled for certification renewal, the Commission-approved mandated employee in-service training missed in the previous calendar year; and

(b) Provide the current year's requirement of 18 hours of Commission-approved mandated employee in-service training by December 31 of the current calendar year.

B. Firearms Training and Qualification.

(1) If a mandated employee does not successfully complete Commission-approved firearms training and qualification under this regulation before December 31 of a calendar year, the agency head or training director responsible for training the mandated employee may not permit the mandated employee to use or carry a firearm until the mandated employee successfully completes firearms training and qualification with the firearm the mandated employee is required to use or carry.

(2) If a mandated employee has not successfully completed Commission-approved firearms training and qualification under this regulation for the firearm the mandated employee is required to use or carry for 3 or more consecutive calendar years, the

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mandated employee shall complete Commission-approved entrance-level mandated employee firearms training and qualification under COMAR 12.10.04 before an agency head may permit the mandated employee to carry or use a firearm.

C. Except for a mandated employee on nonofficer status, if an agency does not provide required training in 2 consecutive years or displays a repetitive pattern of not providing the required training, the Commission shall initiate appropriate action.

D. Nonofficer Status.

(1) Commission-approved Mandated Employee In-Service Training. If a mandated employee does not successfully complete mandated employee in-service training because the mandated employee is on nonofficer status, the agency head or training director responsible for training the mandated employee shall provide the mandated employee with the required in-service training in the calendar year in which the mandated employee returns to active duty.

(2) Firearms Training and Qualification.

(a) If a mandated employee does not successfully complete firearms training and qualification requirements under this regulation because the individual is on nonofficer status, before the employee may carry or use a firearm, the mandated employee shall successfully complete Commission-approved firearms training and qualification under this regulation:

- (i) For each firearm the mandated employee is required to use or carry; and
- (ii) In the same calendar year that the individual returns to active duty.

(b) If a mandated employee returning from nonofficer status has not, during the previous 3 calendar years, successfully completed Commission-approved mandated employee annual firearms training and qualification with the firearm the mandated employee is required to use or carry, before the employee may use or carry a firearm, the mandated employee shall successfully complete Commission approved mandated employee entrance-level firearms training and qualification:

- (i) Under COMAR 12.10.04; and
- (ii) In the same calendar year the mandated employee returns to active duty.

(3) If a mandated employee returns to active duty from nonofficer status and the mandated employee's certification has lapsed, the agency head shall ensure that the mandated employee meets requirements for mandated employee certification renewal under Regulation .06 of this chapter.

(4) If an agency head or training director responsible for training a mandated employee under this regulation does not provide training documents to the Commission in a timely manner, a mandated employee's certification renewal may be delayed.

E. Waivers.

(1) The Deputy Director may grant a request for a waiver of annual in-service training or annual firearms training and qualification if the correctional unit or agency provides information demonstrating that an individual successfully completed comparable training in the same calendar year.

(2) A request for a waiver of training requirements under this regulation shall be submitted in accordance with Regulation .19 of this chapter by the agency head or training director responsible for training a mandated employee.

F. Audit Requirements.

(1) Commission-approved in-service training and firearms training and qualification information is subject to audit by the Commission.

(2) An agency head or training director providing Commission-approved mandated employee in-service training or mandated employee firearms training and qualification, or both, shall maintain documentation until audited by the Commission, including:

- (a) Curriculum;
- (b) Listing of instructors;
- (c) Attendance;
- (d) Test and qualification scores; and
- (e) Other information required by this regulation.

(3) An agency head or training director sending a mandated employee to another academy for Commission-approved mandated employee training shall maintain records of in-service training and firearms training and qualification provided by the academy conducting the training until audited by the Commission.

(4) To verify compliance with Commission requirements, the Commission shall annually audit a portion of the following Commission-approved annual in-service programs:

- (a) Mandated employee training;
- (b) Electronic control device training;
- (c) Firearms training; and
- (d) Firearms qualification.

#### **.18 Minimum Training Standards — Mandated Employee Supervisors and Administrators.**

##### **A. General Requirements.**

(1) Except for provisions under §A(2) of this regulation, the Commission requires a mandated employee promoted to a first-line, or higher, mandated employee supervisor position to successfully complete Commission-approved mandated employee supervisor training within 1 year of the date of the promotion.

(2) The Commission does not require a mandated employee to successfully complete Commission-approved mandated employee supervisor training if:

(a) The mandated employee successfully completed Commission-approved mandated employee supervisor training within the 2 years immediately preceding the date of the promotion from a position below that of a first line mandated employee supervisor to a first line, or higher, mandated employee supervisor position; or

(b) A mandated employee supervisor has successfully completed Commission-approved mandated employee supervisor training and the individual is promoted to a new mandated employee supervisor position that does not include administrator duties.

(3) Except for provisions under §A(4) of this regulation, the Commission requires a mandated employee promoted to a first-line, or higher, mandated employee administrator position to successfully complete Commission-approved mandated employee administrator training within 1 year of the date of the promotion.

(4) The Commission does not require a mandated employee to successfully complete Commission-approved mandated employee administrator training if:

(a) The mandated employee successfully completed Commission-approved mandated employee administrator training within the 2 years immediately preceding the date of the promotion; or

(b) A mandated employee administrator has successfully completed Commission-approved mandated employee administrator training and the individual is promoted to a new mandated employee administrator position.

(5) The Commission requires a mandated employee promoted to a first line, or higher, mandated employee administrator position from a position below that of a first line mandated employee supervisor who has not met the mandated employee supervisor or administrator training requirements under this regulation to successfully complete, within 1 year of the date of the promotion, Commission-approved mandated employee:

- (a) Supervisor training; and
- (b) Administrator training.

##### **B. Minimum Mandated Employee Supervisor and Administrator Training Requirements.**

(1) The Commission requires that:

(a) Only Commission-approved or certified instructors provide mandated employee supervisor and administrator training;

(b) A mandated employee shall obtain a minimum 70 percent overall test score to successfully complete the training;

(c) Mandated employee supervisor and administrator training are a minimum of 35 hours for each form of training;

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(d) Unless determined otherwise by the agency head or training director and the Commission, a mandated employee required to attend Commission-approved mandated employee supervisor or administrator training may not receive credit toward the training requirement under this regulation if the mandated employee is absent for more than 10 percent of the required hours of a Commission-approved supervisor or administrator training program;

(e) The Commission's training objectives for the mandated employee supervisor and administrator training are covered as written by the Commission; and

(f) An agency head or training director submit the proposed mandated employee supervisor or administrator training to the Commission for approval at least 20 days before the date the training is scheduled to start.

(2) An agency head or training director shall submit rosters, required reports, and grades to the Commission upon completion of training.

(3) Upon request by an agency head or training director, the Commission shall provide a copy of a training outline and training objectives for Commission-approved mandated employee supervisor and administrator training.

(4) If an agency head or training director amends Commission-approved mandated employee supervisor or administrator training, the agency head or training director shall submit the amended training to the Commission for approval at least 20 working days before the date the amended training is to begin.

C. Waivers.

(1) The Commission may waive requirements for successful completion of Commission-approved mandated employee supervisor or administrator training if an agency head or training director provides the Commission with documentation establishing that the mandated employee successfully completed parallel Commission-approved mandated employee supervisor or administrator training.

(2) An agency head or training director requesting a waiver of training requirements under this regulation shall submit the request to the Deputy Director for approval.

D. Failure To Complete Commission-Required Mandated Employee Supervisor or Administrator Training. If a mandated employee required to meet training requirements under this regulation has not successfully completed required Commission-approved supervisor or administrator training by the first year anniversary date of promotion to a mandated employee first-line, or higher, supervisor or mandated employee first-line, or higher, administrator position, the agency head shall:

(1) Relieve the mandated employee of mandated employee supervisory or administrative duties related to the position; and

(2) Inform the Commission in writing within 30 days of the anniversary date of action taken to relieve the mandated employee of mandated supervisory or administrative duties.

**.19 Procedures for Requesting a Waiver.**

A. Selection Standards.

(1) An agency head or training director may submit a written request for a waiver of mandated employee selection standards to the Commission.

(2) The training director or agency head submitting the request for waiver of mandated employee selection standards shall include a completed AFC supporting the waiver request.

B. Training Standards.

(1) An agency head or training director may submit a signed written request for a waiver of mandated employee training standards to the Commission.

(2) A signed written request for a waiver of Commission-required mandated employee training shall include:

(a) Course content or an outline of parallel training;

(b) A description of the parallel training received;

(c) The number of hours of parallel training completed; and

(d) Other information that the Commission may request.

C. Mandated Employee Entrance-Level Training Waiver.

(1) The Commission may approve a waiver of Commission-required mandated employee entrance-level training if the individual:

(a) Was employed in the same type of mandated position with a correctional unit within the last 3 years; and

(b) Completed an entrance-level training determined by the Commission to be comparable to the Commission-approved mandated employee entrance-level training under Regulation .09 of this chapter.

(2) An agency head or training director may submit a signed written request for a waiver of Commission-approved mandated employee entrance-level training to the Commission.

(3) If the Commission grants a waiver of Commission-approved mandated employee entrance-level training, the individual shall meet the following requirements before the Commission grants certification in the mandated position:

(a) Certification in first aid and safety;

(b) Certification in cardiopulmonary resuscitation (CPR); and

(c) Completion of the entrance-level firearms training and qualification under COMAR 12.10.04, if applicable.

D. A request for a waiver on behalf of an individual may not again be submitted under this regulation within 1 year after the date on which the Commission has denied the request for the waiver on behalf of the individual.

**.20 Disqualifying Criminal Convictions for Correctional Officers.**

A. A correctional officer applicant is not eligible for certification if the applicant has:

(1) A felony conviction for:

(a) Aggravated assault;

(b) Murder or manslaughter;

(c) Robbery;

(d) Arson;

(e) Kidnapping;

(f) A handgun or weapon-related violation;

(g) A first, second, or third degree sexual offense; or

(h) Two or more felonies not arising from the same incident;

(2) A conviction for an offense that resulted in incarceration when less than 10 years have elapsed since the applicant was released from incarceration or terminated from parole or probation, whichever last occurred;

(3) A misdemeanor conviction that resulted in incarceration when less than 5 years have elapsed since the applicant was released from incarceration or terminated from parole or probation, whichever last occurred;

(4) Three or more misdemeanor convictions, except convictions for minor traffic violations, arising out of separate occurrences if:

(a) At least one of the misdemeanor convictions was for an offense involving violence or moral turpitude; and

(b) A term of imprisonment was served for any conviction; or

(5) A misdemeanor or felony conviction for a criminal offense under Criminal Law Article, Title 9, Subtitle 8, Annotated Code of Maryland, or similar conviction in a jurisdiction outside of the State.

B. This regulation does not:

(1) Require an agency head to employ an individual as a correctional officer who has a criminal record; or

(2) Prevent an agency head from setting higher criminal history standards than specified in this regulation.

C. The Commission may reject the appointment of an individual with a criminal record not covered by this regulation.

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**.21 Drug Screening Procedures.****A. Urine Sample Collection.**

(1) An agency head conducting drug screening shall ensure that the process used by the correctional unit includes the minimum requirements under this section.

(2) The correctional unit representative collecting a urine sample from an individual applying for a mandated position required to submit a urine sample shall:

(a) Before collecting the sample, verify the identity of the individual providing the sample by examining a driver's license or other acceptable form of photographic identification;

(b) Before collecting the sample, obtain written consent from the individual authorizing:

(i) Collection and analysis of the sample; and

(ii) Disclosure of the sample analysis to the correctional unit and the Commission;

(c) Obtain the urine sample in a manner that reasonably prevents substitution, alteration, or tampering;

(d) Ensure that a minimum of 50 milliliters of urine is collected from the individual providing the sample;

(e) Ensure that:

(i) A urine sample is collected using a proper container that was sealed by the manufacturer when presented to the individual providing the sample; and

(ii) Once the container's seal is broken by the individual providing the sample and the urine sample is deposited in the container, the container is sealed by the individual supplying the urine sample;

(f) The container is sealed using tamper-proof tape that extends over and around the container;

(g) Once the sealed container is accepted from the individual supplying the urine sample, record on the container the:

(i) Name of the individual providing the urine sample;

(ii) Date the urine sample was taken; and

(iii) Name of the individual who received the sample from the individual providing the sample; and

(h) Ensure that the urine sample is secured and stored in a manner that preserves the chain of custody.

**B. Positive Urine Sample Results.**

(1) A urine sample screened positive under §C(2) of this regulation is considered evidence of recent use of a controlled dangerous substance, narcotic drug, or marijuana.

(2) A positive screen for a controlled dangerous substance, narcotic drug, or marijuana conclusively establishes that the individual providing the sample:

(a) Is not of good moral character established under Regulation .04 or .07 of this chapter; and

(b) Except as provided under §B(3) of this regulation, may not be employed or Commission-certified in a mandated position.

(3) An agency head shall ensure that a positive screen for a controlled dangerous substance, narcotic drug, or marijuana is not the result of legal use by the individual.

**C. Urine Sample Analysis.**

(1) To ensure the reliability and integrity of the testing process, an employing agency conducting drug screening shall ensure that the process used to analyze the urine sample includes the minimum requirements under this section.

(2) An agency conducting drug screening under this chapter shall ensure that:

(a) A urine sample is screened by:

(i) Enzyme immunoassay;

(ii) Radioimmunoassay testing; or

(iii) Other equally scientifically rigorous screening method;



(b) The drug screening tests for the presence of the following controlled dangerous substances, narcotic drugs, or marijuana or classes of controlled dangerous substances, narcotic drugs, or marijuana or controlled dangerous substance, narcotic drug, or marijuana metabolites at the minimum levels, measured in nanograms per milliliter, specified:

- (i) Amphetamines — 1,000;
- (ii) Barbiturates — 300;
- (iii) Cannabis or cannabinoids — 50;
- (iv) Opiates — 300;
- (v) Cocaine or cocaine metabolite — 300;
- (vi) Phencyclidine — 25; and
- (vii) Benzodiazepines — 300;

(c) A positive drug screen is confirmed for each controlled dangerous substance, narcotic drug, or marijuana identified by:

- (i) Gas chromatography;
- (ii) Mass spectrometry; or
- (iii) Other equally scientifically rigorous method; and

(d) Drug screening and sample analysis are conducted according to provisions under Health-General Article, §17-214, Annotated Code of Maryland.

(3) The Commission:

(a) Considers a urine sample collected and analyzed under this regulation that shows a presence of a controlled dangerous substance, narcotic drug, or marijuana in a quantity equaling or exceeding the limits for the controlled dangerous substance, narcotic drug, or marijuana under §C(2)(b) of this regulation to be a positive drug screen; and

(b) Requires confirmation of a positive drug screen according to §C(2)(c) of this regulation before accepting the results as conclusive.

## **.22 Prior Substance Abuse by Applicants for Certification.**

A. This regulation:

(1) Except as provided under §A(2) of this regulation, applies to an applicant; and

(2) Does not apply to:

- (a) An individual already employed in a correctional unit and certified by the Commission as a mandated employee; or
- (b) Except as provided under §B(2)(b) of this regulation, an addictions counselor.

B. General Policy.

(1) An applicant involved in illegal prior or current use, sale, manufacture, or distribution of a controlled dangerous substance, as specified in this regulation, has manifested character traits, judgment, behavior, or activity which may be considered unacceptable by the Commission for certification in a mandated position.

(2) The Commission may not approve an appointment or certify an individual in a mandated position if:

(a) There is an indication that the individual illegally abused or used a controlled dangerous substance or performance enhancing drug for no legitimate medical reason within the past 3 years as specified in this regulation; or

(b) The individual was found guilty or convicted of a misdemeanor or felony for the sale, manufacture, or distribution of a controlled dangerous substance.

(3) A correctional unit may set more restrictive standards than those specified in this regulation.

C. Prior and Current Use Criteria. The Commission may not certify an individual in a mandated position who used the following drugs for no legitimate reason within the 3 years immediately before the date of the application:

(1) Amphetamines. Drugs in this class may have a legitimate medical use.

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- (2) Barbiturates. Drugs in this class may have a legitimate medical use.
- (3) Opiates. Some drugs such as morphine and codeine in this class have a legitimate medical use, while others, such as opium and heroin have no medical use.
- (4) Cannabis or Cannabinoids. Drugs in this class may have a legitimate medical use.
- (5) Cocaine or Cocaine Metabolite. These substances may have only limited topical medical use.
- (6) Hallucinogens (including PCP, LSD, and mescaline and their derivatives). These drugs have no medical use.
- (7) Benzodiazepines. These substances have a legitimate medical use.
- (8) Inhalants (including solvents, glue, paint, aerosols, and amyl nitrates). These substances have no medical use.
- (9) Anabolic Steroids (Natural and Synthetic). Drugs in this class may have a legitimate medical use.
- (10) Any other substance prohibited by federal or State law.

D. Indication of Use.

(1) If a background investigation, lie detector test, interview, drug screening, or other process indicates prior or current use of a controlled dangerous substance, narcotic drug, marijuana, or performance enhancing drug, as specified in this regulation, the agency head, or a designee, shall investigate to determine if the use was legitimate and report the results of the investigation to the Commission with the Application for Certification.

(2) If there is an indication that current or prior use of a controlled dangerous substance, narcotic drug, marijuana, or performance enhancing drug is or was legitimate, the agency head, or a designee, shall obtain proper medical documentation from a licensed health care professional.

(3) If there is no legitimate medical reason for use of a controlled dangerous substance, narcotic drug, marijuana, or performance enhancing drug within the 3 years before the date of the application, the Commission may not certify the applicant in a mandated position.

(4) The agency head, or a designee, shall evaluate an applicant's use of a prescribed controlled dangerous substance, narcotic drug, marijuana, or performance enhancing drug specified in this regulation to determine whether the applicant is currently abusing the substance and is medically fit to perform the duties of a mandated position.

(5) If there is an indication of continued use of a controlled dangerous substance, narcotic drug, marijuana, or performance enhancing drug by an applicant or if it is determined that an applicant is currently abusing or is dependent on a prescribed controlled dangerous substance, narcotic drug, marijuana, or performance enhancing drug, the Commission may not certify the applicant in a mandated position.

(6) If an applicant is using or has used a controlled dangerous substance, narcotic drug, marijuana, or performance enhancing drug which was legally obtained for valid medical reasons and there is no indication of abuse or dependence by the applicant, the agency head, or a designee, may employ the applicant and apply to the Commission for certification in the mandated position.

(7) An agency head, or a designee, shall maintain records and documentation of an applicant's prior or current abuse, dependence on, or legitimate medical use of a controlled dangerous substance, narcotic drug, marijuana, or performance enhancing drug as specified in this regulation and the records and documents are subject to audit by the Commission.

E. Requesting a Waiver.

- (1) A correctional unit may request a waiver under Regulation .19 of this chapter of any provisions of this regulation.
- (2) A waiver request shall be considered by the Commission on an individual basis at a regularly scheduled meeting.

**.23 Field Training.**

A. An individual shall complete field training before the Commission certifies the individual in a mandated position.

B. A correctional unit's field training for a mandated position:

- (1) Shall be designed by the correctional unit and include activities to familiarize the individual with the:
  - (a) Duties of the mandated position; and

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- (b) Policies, procedures, and practices of the correctional unit;
- (2) May be conducted in conjunction with, or separately from, Commission-approved entrance-level training;
- (3) Shall be a minimum of 80 hours;
- (4) May not be used to meet the minimum Commission entrance-level training hourly requirement; and
- (5) Shall be managed by a Commission-certified mandated employee, the agency head, or a designee.

C. Documenting Field Training.

- (1) The agency head, or a designee, shall:

- (a) Complete and submit a written statement to the Commission documenting an individual's successful completion of field training under this regulation; and

- (b) Date and sign the written statement.

D. Upon receipt of the notice from an agency head, or a designee, documenting an individual's completion of field training, the Commission shall process the individual's application for certification under Regulation .06 of this chapter.

**Administrative History**

Effective date: May 14, 1975 (2:10 Md. R. 760)

Regulations .01B, C, .03 amended effective April 14, 1976 (3:8 Md. R. 427)  
Existing Regulation .03 repealed and new Regulation .03 adopted effective May 15, 1981 (8:10 Md. R. 877)  
Regulations .01—.05 amended effective March 10, 1978 (5:5 Md. R. 325)  
Regulation .01B amended effective May 19, 1978 (5:10 Md. R. 781)  
Regulation .01 amended effective June 2, 1978 (5:11 Md. R. 885)  
Regulation .01B, D, E, G amended effective February 20, 1981 (8:4 Md. R. 343)  
Regulation .01G adopted effective July 14, 1978 (5:14 Md. R. 1138)  
Regulation .01G-1 and G-2 adopted effective February 20, 1981 (8:4 Md. R. 343)  
Regulation .01H amended effective July 14, 1978 (5:14 Md. R. 1138)  
Regulation .01I adopted effective November 28, 1980 (7:24 Md. R. 2262)  
Regulation .05D adopted effective February 20, 1981 (8:4 Md. R. 343)

Chapter revised effective November 8, 1982 (9:22 Md. R. 2197)

Regulation .01B amended effective February 19, 1990 (17:3 Md. R. 301)  
Regulation .02 amended effective February 19, 1990 (17:3 Md. R. 301)  
Regulation .02B amended effective July 2, 1984 (11:13 Md. R. 1177); July 13, 1986 (13:14 Md. R. 1634)  
Regulation .02B, C amended effective June 20, 1994 (21:12 Md. R. 1062)  
Regulation .03 amended effective December 14, 1987 (14:25 Md. R. 2661); February 19, 1990 (17:3 Md. R. 301)  
Regulation .03B, .06C, .07 amended effective July 13, 1986 (13:14 Md. R. 1634)  
Regulation .04 amended effective December 1, 1986 (13:24 Md. R. 2560); February 19, 1990 (17:3 Md. R. 301)  
Regulation .05A amended effective April 9, 1984 (11:17 Md. R. 628); July 2, 1984 (11:13 Md. R. 1177); November 5, 1984 (11:22 Md. R. 1900); July 24, 1989 (16:14 Md. R. 1569)  
Regulation .05B amended effective July 2, 1984 (11:13 Md. R. 1177); June 20, 1994 (21:12 Md. R. 1062)  
Regulation .05C amended effective February 6, 1989 (16:2 Md. R. 161); June 20, 1994 (21:12 Md. R. 1062)  
Regulation .05D amended effective November 5, 1984 (11:22 Md. R. 1900); November 28, 1988 (15:24 Md. R. 2772)  
Regulation .05 amended effective February 19, 1990 (17:3 Md. R. 301)  
Regulation .06 amended effective June 20, 1994 (21:12 Md. R. 1062)  
Regulation .06B amended effective January 16, 1995 (22:1 Md. R. 20)  
Regulation .07A amended effective August 8, 1988 (15:16 Md. R. 1916); August 20, 1990 (17:16 Md. R. 1992)  
Regulations .09—.11 adopted effective January 1, 1987 (13:24 Md. R. 2560)  
Regulation .09 amended effective February 19, 1990 (17:3 Md. R. 301); June 20, 1994 (21:12 Md. R. 1062)

Regulations .01—.11 repealed and new Regulations .01—.18 adopted effective October 20, 1997 (24:21 Md. R. 1451)

Regulation .01B amended effective July 1, 2000 (27:10 Md. R. 967)  
Regulation .04C, E amended effective July 1, 2000 (27:10 Md. R. 967)  
Regulation .05 amended effective July 1, 2000 (27:10 Md. R. 967)  
Regulation .07C amended effective July 1, 2000 (27:10 Md. R. 967)  
Regulation .08B amended effective July 1, 2000 (27:10 Md. R. 967)  
Regulation .09 amended effective July 1, 2000 (27:10 Md. R. 967)  
Regulation .11B amended effective July 1, 2000 (27:10 Md. R. 967)

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Regulation .12F amended effective July 1, 2000 (27:10 Md. R. 967)  
Regulation .19 adopted effective July 1, 2000 (27:10 Md. R. 967)

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Chapter revised effective January 7, 2002 (28:26 Md. R. 2274)  
Regulation .01B amended effective September 13, 2004 (31:18 Md. R. 1351); May 23, 2005 (32:10 Md. R. 925)  
Regulation .02A amended effective September 13, 2004 (31:18 Md. R. 1351)  
Regulation .03D amended effective September 13, 2004 (31:18 Md. R. 1351)  
Regulation .04C amended effective September 13, 2004 (31:18 Md. R. 1351)  
Regulation .06 amended effective January 1, 2005 (31:17 Md. R. 1313); January 1, 2005 (31:23 Md. R. 1654)  
Regulation .06A amended effective September 29, 2003 (30:19 Md. R. 1333)  
Regulation .09B, C amended effective September 29, 2003 (30:19 Md. R. 1333)  
Regulation .10 amended effective August 30, 2004 (31:17 Md. R. 1313)  
Regulation .12 amended effective January 1, 2005 (31:17 Md. R. 1313)  
Regulation .12D amended effective September 29, 2003 (30:19 Md. R. 1333)  
Regulation .15C amended effective September 29, 2003 (30:19 Md. R. 1333)  
Regulation .19A amended effective September 13, 2004 (31:18 Md. R. 1351)  
Regulation .20 adopted effective September 29, 2003 (30:19 Md. R. 1333)  
Regulation .21 adopted effective September 29, 2003 (30:19 Md. R. 1333)  
Regulation .22 adopted effective January 1, 2004 (30:19 Md. R. 1333)

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Chapter revised effective November 5, 2007 (34:22 Md. R. 1978)  
Regulation .01B amended effective November 16, 2009 (36:23 Md. R. 1817)  
Regulation .05A amended effective November 16, 2009 (36:23 Md. R. 1817)  
Regulation .08B, C amended effective January 1, 2010 (36:24 Md. R. 1858)  
Regulation .19B amended effective January 1, 2010 (36:26 Md. R. 1996)  
Regulation .20A, B amended effective January 1, 2010 (36:26 Md. R. 1996)  
Regulation .22A amended effective November 16, 2009 (36:23 Md. R. 1817)

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Chapter revised effective January 1, 2013 (39:16 Md. R.1081)  
Regulation .01B amended effective February 17, 2014 (41:3 Md. R. 202)  
Regulation .02B amended effective December 11, 2014 (41:24 Md. R. 1428)  
Regulation .02C amended effective February 17, 2014 (41:3 Md. R. 202); August 18, 2014 (41:16 Md. R. 947); August 31, 2015 (42:17 Md. R. 1111)  
Regulation .04C amended effective February 17, 2014 (41:3 Md. R. 202)  
Regulation .05B amended effective February 17, 2014 (41:3 Md. R. 202); August 18, 2014 (41:16 Md. R. 947); February 29, 2016 (43:4 Md. R. 333)  
Regulation .08 amended effective February 17, 2014 (41:3 Md. R. 202)  
Regulation .09G—I amended effective October 9, 2017 (44:20 Md. R. 945)  
Regulation .11F amended effective February 17, 2014 (41:3 Md. R. 202)  
Regulation .13B amended effective February 17, 2014 (41:3 Md. R. 202)  
Regulation .14 amended effective February 17, 2014 (41:3 Md. R. 202)  
Regulation .15A amended effective February 17, 2014 (41:3 Md. R. 202)  
Regulation .15D repealed effective February 17, 2014 (41:3 Md. R. 202)  
Regulation .16 amended effective February 17, 2014 (41:3 Md. R. 202)  
Regulation .17 amended effective February 17, 2014 (41:3 Md. R. 202)  
Regulation .18B amended effective February 17, 2014 (41:3 Md. R. 202)  
Regulation .19D adopted effective August 31, 2015 (42:17 Md. R. 1111)  
Regulation .20A amended effective February 17, 2014 (41:3 Md. R. 202)  
Regulation .22 amended effective January 1, 2017 (43:24 Md. R. 1351)

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Annotation: COMAR 12.10.01 cited in Attorney General Opinion No. 86-032 (May 16, 1986)

**Title 12**  
**DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES**  
**Subtitle 11 OFFICE OF THE SECRETARY**  
**Chapter 01 Internal Investigative Unit**

Authority: Correctional Services Article, §10-701, Annotated Code of Maryland

**.01 Purpose.**

This chapter establishes procedures for:

- A. Filing complaints of alleged misconduct with the Internal Investigative Unit;
- B. Conducting and coordinating investigations undertaken or assigned by the Internal Investigative Unit;
- C. Reporting and notification requirements related to investigations undertaken or assigned by the Internal Investigative Unit; and
- D. Reporting violations of criminal and Maryland Public Ethics Law, State Government Article, Title 15, Annotated Code of Maryland, by an employee to the Assistant Attorney General for the Department and the Chief Counsel to the Governor.

**.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Agency" means an organization, institution, division, or unit established by statute or created by the Secretary within the Department.

(2) "Agency head" means the highest authority of an agency.

(3) "Contraband" means any item that an inmate is prohibited from possessing according to law, regulation, or Department, agency or correctional facility policy.

(4) "Controlled dangerous substance (CDS)" has the meaning stated in Criminal Law Article, §5-101, Annotated Code of Maryland.

(5) "Department" means the Department of Public Safety and Correctional Services.

(6) "Director" means the Director of the Internal Investigative Unit.

(7) Employee.

(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 special appointee;

(ii) A volunteer; or

(iii) An intern.

(8) "Escape" means any conduct by an inmate that may be charged as an escape under Maryland law.

(9) "Facility" means a structure or space used, owned, or leased by the Department to conduct Department administrative and operational activities.

(10) Inmate.

(a) "Inmate" means an individual in the custody or under the supervision of the Department.

(b) "Inmate" includes an individual:

(i) In pretrial, sentenced, or presentenced (after guilty finding but before sentencing) status actually or constructively confined by the Department;

(ii) In a Department home detention program; or

(iii) Under the supervision of the Division of Parole and Probation.

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(11) "Internal Investigative Unit (IIU)" means the Department of Public Safety and Correctional Services Internal Investigative Unit.

(12) "Investigator" means a Department employee permanently assigned to or on special assignment to assist the IIU with the responsibilities specified under Correctional Services Article, §10-701(a)(3), Annotated Code of Maryland.

(13) Nonagency Employee.

(a) "Nonagency employee" means an individual who, by contract or other lawful arrangement, provides services to an inmate or the Department.

(b) "Nonagency employee" includes an employee of the Department of Education.

(14) "Secretary" means the Secretary of Public Safety and Correctional Services.

**.03 Scope of IIU Investigative Authority.**

A. The Director, or a designee, shall investigate:

(1) An alleged violation of criminal law committed by an employee while on duty;

(2) An alleged violation of criminal law committed by an employee while off duty if that violation impacts, or has the potential to impact, negatively on the Department;

(3) An alleged violation of criminal law committed by an inmate, a visitor, a nonagency employee, or another individual that may affect the safety or security of a Department facility;

(4) An alleged violation of Maryland Public Ethics Law, State Government Article, Title 15, Annotated Code of Maryland, by an employee or nonagency employee; and

(5) Other alleged violations that have a negative impact on the Department.

B. The Director, or a designee, shall perform other duties and investigative responsibilities assigned by the Secretary.

**.04 IIU Responsibility.**

A. Appointment; Reporting.

(1) The Secretary shall appoint the Director.

(2) The Director shall report directly to the Secretary.

B. The Director shall:

(1) Oversee IIU activities;

(2) Assign IIU employees to perform administrative and investigative duties and responsibilities;

(3) Supervise employees permanently assigned to the IIU;

(4) Ensure the confidentiality of all reports, records, and documents related to investigations conducted or assigned by the Director, or a designee;

(5) Coordinate, with the Secretary, the release of information regarding investigations conducted or assigned by the Director, or a designee;

(6) Serve as the principal contact regarding IIU operational activities with officials of federal, state, and local agencies, other Department investigative entities, and appropriate government organizations;

(7) If an investigation affects another enforcement agency, consult with the appropriate representative of that agency;

(8) Develop and maintain procedures to manage IIU operational activities;

(9) If appropriate, consult with an agency head concerning an investigation or the potential for public or media interest related to an investigation;

(10) Annually, report on trends, status, and results of investigations and related IIU activities in a manner determined by the Secretary;

(11) Ensure that an employee on special assignment to the IIU properly reports all investigative activities;

(12) Require that an investigator permanently assigned to the IIU is certified as a police officer according to requirements under COMAR 12.04.01;

(13) Maintain a record of all complaints received by the IIU; and

(14) Maintain a tracking system to monitor activity and disposition of each investigation conducted or assigned by the Director, or a designee.

**.05 Incidents Required to be Reported to the IIU.**

A. Except as provided under §B of this regulation, an employee shall immediately notify the Director, or a designee, if the employee is involved in or has knowledge of:

(1) An alleged violation by an employee of:

(a) The criminal law of the United States, a state, or a political subdivision of a state;

(b) Transportation Article, Annotated Code of Maryland, or an equivalent law of another state, involving the operation of a motor vehicle while under the influence of alcohol or a CDS; or

(c) Maryland Public Ethics Law, State Government Article, Title 15, Annotated Code of Maryland;

(2) An alleged violation of the criminal law of the United States, a state, or a political subdivision of a state committed by an inmate, a visitor, a nonagency employee, or other individual that affects the safety or security of a Department facility;

(3) An allegation of excessive force by an employee or nonagency employee;

(4) The possession or trafficking of contraband by an inmate, employee, or nonagency employee at a Department facility;

(5) An allegation that an on-duty employee or nonagency employee is under the influence of alcohol or a CDS, including the illegal use of a prescription drug;

(6) The death of an employee or nonagency employee while on duty;

(7) The death of an off-duty employee or nonagency employee if the manner of death:

(a) Is connected to the individual's employment with or services the individual provides to the Department; or

(b) Could have a negative effect on the Department;

(8) The death of an inmate;

(9) An attempted suicide by an inmate;

(10) An escape or attempted escape by an inmate;

(11) An incident where an employee displays or handles a firearm in a careless or unsafe manner;

(12) An incident where an employee discharges a firearm, other than on a firing range;

(13) The arrest of, or service of a criminal summons on, an employee or nonagency employee;

(14) The execution of a search warrant on property owned by or under the control of an employee or nonagency employee;

(15) An allegation of prohibited social, personal, intimate, or sexual relationship between an inmate and an employee or nonagency employee;

(16) An allegation of prohibited communication, transaction, association, or relationship, between an employee or nonagency employee and the following acting on behalf of an inmate:

(a) Visitor;

(b) Friend;

(c) Relative; or

(d) Other individual;

(17) An allegation involving an employee or nonagency employee which, if publicized, would reflect negatively on the Department or State; and

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(18) An allegation involving an agency head or the agency head's staff, which, if handled by the agency head or the agency head's superior, could pose a conflict of interest.

B. If an allegation required to be reported under §A of this regulation is discovered during a proceeding properly before the Inmate Grievance Office, as part of the administrative remedy procedure, or other similar Department administrative process, the employee responsible for the process:

(1) May notify the Director, or a designee, if, in the employee's judgment, the allegation warrants notifying the IIU; and

(2) Shall notify the Director, or a designee, if, while processing an allegation, another allegation required to be reported under §A of this regulation is discovered that warrants notification according to §B(1) of this regulation.

**.06 Police Authority.**

When performing duties associated with the IIU, an investigator who is certified as a police officer according to requirements under COMAR 12.04.01 may exercise the authority of a police officer under Correctional Services Article, §10-701(b) and (c), Annotated Code of Maryland.

**.07 Authority and Responsibility of an Investigator.**

An IIU investigator:

A. Shall have unrestricted access to all areas of a Department facility;

B. In addition to the authority under Regulation .06 of this chapter, may:

(1) Access Department records;

(2) Request assistance from an agency employee;

(3) Request assistance from another law enforcement agency;

(4) Inspect facilities, vehicles, or equipment; and

(5) Require an employee to provide testimonial or physical evidence; and

C. Shall:

(1) Conduct an investigation in an impartial and reasonable manner according to the oath of office and law of the United States and the State;

(2) Be courteous, attentive, and receptive to an individual reporting or providing evidence related to a complaint under investigation;

(3) Ensure the safety and chain of custody for items and evidence received;

(4) Maintain confidentiality of all matters related to investigations; and

(5) Prepare an investigative report that, at a minimum, contains:

(a) Complete and detailed information regarding the complaint or incident;

(b) A clear account of investigative actions; and

(c) All relative information supporting the finding.

**.08 Agency Heads.**

An agency head or a designee shall:

A. Notify the Director or a designee, and if required, local law enforcement, of an allegation required to be reported under Regulation .05 of this chapter;

B. Relinquish authority for an investigation undertaken by the IIU, including an investigation initially assigned to an agency head, or a designee, that is subsequently assumed by the IIU;

C. Provide to the IIU investigator unrestricted access to all areas of the agency head's facility;

D. Ensure that agency employees cooperate with the IIU investigator;

E. If requested by the IIU, assign agency employees to assist the IIU investigator and serve as an IIU liaison;



- F. Coordinate agency employee, nonagency employee, and inmate interviews requested by an IIU investigator;
- G. Provide reports, documents, and information requested by an IIU investigator;
- H. Ensure confidentiality of all reports, records, investigative activities, and documents relating to an IIU investigation;
- I. Provide workspace within the facility for use by the IIU personnel during an investigation;
- J. Secure and preserve the scene of an incident until released to an IIU investigator or appropriate law enforcement personnel; and
- K. Be accountable for investigations conducted at the agency level ensuring that:
  - (1) Where appropriate, investigative activities are conducted according to requirements for an IIU investigator;
  - (2) Required reports are completed; and
  - (3) Investigative reports are forwarded to the Director, or a designee, for review, filing, and retention.

**.09 IIU Notification Procedures.**

- A. An employee involved in or with knowledge of an alleged violation under Regulation .05 of this chapter, regardless of whether the employee believes the allegation to be founded, shall immediately file a complaint with the Director, or a designee.
- B. The Director, or a designee, receiving notification under §A of this regulation shall:
  - (1) If possible, identify the employee or individual making the complaint; or
  - (2) If the complaint is made anonymously, record it as anonymous.
- C. The Director, or a designee, shall receive and handle an anonymous complaint in the same manner as a complaint where the employee or other individual filing the complaint or the victim is identified.
- D. An employee filing a complaint under §A of this regulation shall forward a written report of the complaint, in a form determined by the Director, directly to the Director or a designee, by the close of the next workday after filing the complaint with the IIU.
- E. An employee, a nonagency employee, an inmate, a visitor, or anyone on the behalf of these individuals may file a complaint directly to the Director, or a designee, or a law enforcement agency.

**.10 IIU Post-Notification Responsibilities.**

- A. After a complaint is filed with the IIU, the Director, or a designee, shall evaluate the information provided and:
  - (1) Decide whether an IIU investigator shall investigate the complaint; or
  - (2) Refer the complaint for investigation to the appropriate agency head.
- B. The Director shall establish a system to record each complaint received and track disposition of each complaint recorded.

**.11 Report of Investigation.**

- A. The Director, with the approval of the Secretary, shall determine the format and content of a report of investigation.
- B. The IIU is the repository for all reports of investigations conducted by an IIU investigator or assigned through the IIU to an agency head for investigation.
- C. The Director shall coordinate release of an investigative report with the Secretary consistent with all laws, rules, regulations, policy, and procedures.

**.12 Public Corruption and Misconduct.**

- A. If an investigation of a complaint under this chapter determines that an employee has committed a violation of a criminal or the Maryland Public Ethics Law, State Government Article, Title 15, Annotated Code of Maryland, the Director, or a designee, shall notify the:
  - (1) Chief counsel to the Governor; and
  - (2) Assistant attorney general for the Department.

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B. An agency head completing an investigation that determines an employee has committed a violation of a criminal law or Maryland Public Ethics Law, State Government Article, Title 15, Annotated Code of Maryland, shall immediately report the findings to the Director, or a designee, who shall make the notifications required under §A of this regulation.

**Administrative History**

Effective date: August 28, 2006 (33:17 Md. R. 1437)

*21.06.05.01*

### **.01 Right to Inspect.**

Designees of the procurement agency, the Department of Legislative Services, or any other State unit authorized by law, may inspect at reasonable times the plant, place of business, or jobsite of any bidder or offeror, contractor, prospective subcontractor or assignee, or subcontractor or assignee.

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## **.02 Scope of Contract.**

Mandatory provision for all contracts. This provision shall reflect the unilateral right of the State to order in writing changes in the work within the scope of the contract.

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## **.22 Compliance with Laws.**

Mandatory provision for all contracts. The following clause is preferred:

"The Contractor hereby represents and warrants that:

"A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

"B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

"C. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

"D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract."