
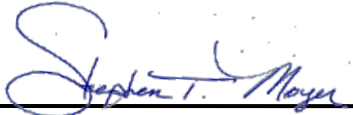


# Executive Directive



<b>Title:</b> <b>Inmate on Inmate Sexual Conduct - Prohibited</b>	<b>Executive Directive Number:</b> <b>OSPS.200.0004</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.200.0004 Dated March 12, 2014
<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> November 13, 2015 <b>Number of Pages:</b> 12



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Secretary



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## .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: OSPS.200.0004**

- (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: OSPS.200.0004**

- (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;

**Executive Directive Number: OSPS.200.0004**

- (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: OSPS.200.0004**

- (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: OSPS.200.0004**

- (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. A supervisor, manager, or shift commander shall:**

- (1) Take reasonable actions to eliminate circumstances that may result in or contribute to an incident of inmate on inmate sexual conduct;
- (2) 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;
- (3) If applicable, ensure that appropriately trained employees take action to preserve the scene and other evidence related to an alleged incident of inmate on inmate sexual conduct; and
- (4) 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 that includes:
  - (a) Immediately stopping an incident in progress;
  - (b) If applicable, immediate medical attention;
  - (c) Appropriate action to provide immediate and continued personal protection;
  - (d) Referral for medical and mental health care follow up; and
  - (e) Non-medical or mental health related counseling and support services.

**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.

**Executive Directive Number: OSPS.200.0004**

- (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 Internal 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 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 agency head responsible for the facility receiving the complaint shall immediately notify IID of the complaint.
- (7) An IID representative notified under §.05E(6) of this directive shall immediately:
  - (a) If the facility where the alleged inmate on inmate sexual conduct occurred is not a Department facility, notify the official responsible for the facility where the alleged inmate on inmate sexual conduct occurred and document the notification.
  - (b) If the facility where the alleged inmate on inmate sexual conduct occurred is a Department facility, notify the appropriate Department official with responsibility for the facility where the

**Executive Directive Number: OSPS.200.0004**

alleged inmate on inmate sexual conduct occurred to ensure that the complaint is addressed according to requirements established under this directive and document the notification.

- (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:
  - (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 Internal 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.



**Executive Directive Number: OSPS.200.0004**

- (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 and witnesses;
  - (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.
- (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.

**Executive Directive Number: OSPS.200.0004**

- (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;
  - (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.

## Executive Directive Number: OSPS.200.0004

### 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.
- (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 determined to have committed sexual conduct is subject to:
  - (a) A penalty established under Inmate Disciplinary Process; and

**Executive Directive Number: OSPS.200.0004**

- (b) If applicable, criminal prosecution.
- (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
  - (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 Number COS.200.0004 dated March 12, 2014 and supersedes provisions of any other prior existing Department communication with which it may be in conflict.

**.08 Correctional Facility Distribution Code.**

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