




**MONTGOMERY COUNTY  
DEPARTMENT OF CORRECTION AND REHABILITATION**

**DEPARTMENTAL POLICY AND PROCEDURE MANUAL**

**POLICY NUMBER: 3000-64**

Policy and Procedure: <b>Implementation of the Prison Rape Elimination Act (PREA)</b>		Pages: <b>26</b>
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 <b>APPROVED BY:</b> _____ <b>DATE: May 1, 2022</b> Director, Department of Correction and Rehabilitation		
Annual Review: 2022 Sgt. Brandon Ward		

**PURPOSE:** The Montgomery County Department of Correction and Rehabilitation (MCDOCR) has a **zero-tolerance** policy relating to illegal sexual acts, sexual harassment, or sexual misconduct in any of the detention facilities, places of business, and community corrections occurring programs operated by the department.

The department shall protect the rights of staff, inmates, residents, clients, and all other authorized persons regardless of gender, or sexual orientation, by holding perpetrators accountable, holding correctional personnel accountable who fail to detect, prevent, and reduce the incidence of illegal or inappropriate behavior and by holding accountable correctional personnel who fail to discipline or punish the perpetrators of sexual crimes and sexual misconduct. Every allegation of sexual misconduct will be investigated, and when warranted, sanctions up to and including dismissal of authorized personnel, discipline of offenders, and criminal prosecution of authorized personnel and/or offenders will be imposed.

This policy establishes guidelines for proper and immediate reporting of such incidents and provides appropriate safeguards for victims. This policy also establishes guidelines for the management of evidence, and actions to be taken; from reporting an allegation, to substantiating an illegal sexual crime, sexual harassment, or sexual misconduct.

**I. DEFINITIONS**

1. **Actual or Constructive Control**, where used herein, refers to physical or legal control of an offender.

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2. **Agency** 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.
3. **Agency Head** means the principal official of the agency. – Director.
4. **Authorized Personnel**, where used herein, refers to all department staff members, county employees, contractors, professional visitors, and any other person whose entry into any of the department's facilities has been approved (including an intern or volunteer).

**Note:** This definition of authorized personnel does not apply to consensual sexual activity between offenders and their personal visitors (e.g. family member, spouse). These activities are prohibited by other departmental policies that prohibit sexual activity and misconduct in departmental facilities at all times.

5. **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 pretrial 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.
6. **Contractor** means a person who provides services on a recurring basis pursuant to a contractual agreement with the Department.
7. **Custodial Personnel**, where used herein, refers to **MCDOCR** staff authorized to perform hands-on physical searches of offenders.
8. **Data**, where used herein, refers to the information collected from the appropriate division and processed by the Director's Office, regarding incidents or allegations of incidents of illegal sexual acts, sexual harassment, and sexual misconduct.
9. **Detainee** means any person detained in a lock up, regardless of adjudication status.
10. **Direct Staff Supervision** means that security staff are in the same room with, and within reasonable hearing distance of, the inmate or resident.
11. **Emergency Grievance**, A matter in which disposition within the regular time limits would subject the inmate/resident to a substantial risk of personal injury, cause other serious and irreparable harm to the inmate/resident, or remove the attainability of the requested action.
12. **Employee** means a person who works directly for the Department or facility.
13. **Exigent Circumstances** 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 the facility.
14. **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 the Department for the confinement of individuals.
15. **Facility Head** means the principal official of the facility. – Division Chief.
16. **Full Compliance** means compliance with all material requirements of each standard except for *de minimis* violations, or discrete and temporary violations during otherwise sustained periods of compliance.

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17. **Gender Nonconforming**, means a person whose appearance or manner does not conform to traditional societal gender expectations.
18. **Indecent Exposure to Correctional Employee**, where used herein refers to the act by an inmate/resident wherein the inmate/resident, acting with an intent to annoy, abuse, torment, harass, or embarrass a correctional officer or authorized personnel, lewdly, lasciviously, and indecently, exposes his/her private parts in the presence of the correctional officer or authorized personnel. (See Correctional Services Article, Section 8-803, of the Annotated Code of Maryland).
19. **Inmate** means any person incarcerated or detained in a prison or jail.
20. **Intersex** means a person who's 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.
21. **Investigator**, where used herein, refers to the Chief Investigator of the Department's Internal Investigation Unit (IIU) or other persons assigned by the Director, Department of Correction and Rehabilitation (**MCDOCR**) to investigate alleged sexual crimes, sexual misconduct, or sexual harassment perpetrated by authorized personnel. The Director may decide, on a case-by-case basis, that it is appropriate to have an allegation investigated by a staff member who is of the same gender as the victim.
22. **Jail** 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.
23. **Juvenile** means any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail.
24. **Juvenile Facility** means a facility primarily for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system.
25. **Law Enforcement Staff** means employees responsible for the supervision and control of detainees in lockups.
26. **Lockup** means a facility that contains holding cells, cell blocks, or other secure enclosures that are: 1.) under the control of 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.
27. **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.
28. **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.
29. **National Prison Rape Reduction Commission**, where used herein, refers to the national committee established to carry out comprehensive legal and factual studies

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of the penological, physical, mental, medical, social, and economic impacts of prison sexual assaults in the United States.

30. **Offender**, where used herein, refers to those persons legally committed to the **MCDOCR** (i.e. inmates, residents).
31. **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.
32. **Perpetrator**, where used herein, refers to the person responsible for the illegal sexual act or sexual misconduct.
33. **Perverted Practice**, where used herein, refers to the perpetrator committing a certain crime and perverted sexual practice with the victim or an animal. Perverted practices include cunnilingus, fellatio, and bestiality (refer to Section 3-322 of the Criminal Law Article of the Maryland Annotated Code).
34. **Prison** means an institution under Federal or State Jurisdiction whose primary use is for the confinement of individuals convicted of serious crimes, usually in excess of one year in length, or a felony.
35. **Prison Rape Elimination Act (PREA)**, where used herein, refers to the Federal Law, Senate Bill 1435, entitled the "Prison Rape Elimination Act of 2003." The law was enacted as Public Law 108-79 and is codified in Title 42 of the United States Code, beginning at Section 15601. The Act provides for analysis of the incidence and effects of prison rape in federal, state and local institutions, and for the marshaling of information, resources, recommendations, and funding to protect individuals from prison rape
36. **Rape**, where used herein, refers to all rape charges, except as noted below with respect to rape in the 1<sup>st</sup> degree. Rape consists of vaginal intercourse or a sexual act with another:
  - a) By force, or threat of force, without consent of the other;
  - b) If the victim is mentally defective, mentally incapacitated, or physically helpless and the perpetrator knew or reasonably should have known of the victim's condition; or
  - c) If the victim is under the age of 14 and the person performing the act is at least 4 years older than the victim.

All rape is to be charged as second-degree rape [Section 3-304 of the Criminal Law Article] unless raised to the status of a first-degree rape by the presence of one or more of the following factors:

- employment or display of a dangerous weapon or a physical object that the victim reasonably believes is a weapon;
- the perpetrator inflicts suffocation, strangulation, disfigurement, or serious physical injury upon the victim or another person while committing the offense;
- the perpetrator threatens or places the victim in fear that the victim or any person known to the victim will be imminently subjected to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;
- the perpetrator commits the crime while aided and abetted by one or more co-perpetrators;
- the perpetrator commits the offense in connection with a burglary in the first, second, or third degree.

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**Note:** As to both degrees of rape, any degree of penetration, no matter how slight, is sufficient to establish the element of vaginal intercourse (refer to Sections 3-301, 3-303, and 3-304 of the Criminal Law Article, Maryland Annotated Code).

37. **Resident** means any person confined or detained in a juvenile facility or in a community confinement facility.
38. **Secure Juvenile Facility** means a juvenile facility in which 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.
39. **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.
40. **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. Sexual abuse also includes 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.
41. **Sexual Act** where used herein, means anilingus, cunnilingus, fellatio, anal intercourse (including penetration, however slight), or an act in which an object or part of an individual's body penetrates, however slightly, into another's genital opening or anus and that can be reasonably construed to be for sexual arousal or gratification or for the abuse of either party. (See Criminal Law Article, sec. 3-301 of the Annotated Code of Maryland.)
42. **Sexual Contact**, where used herein, as used in third degree sexual offense, is the intentional touching of the victim's or perpetrator's anal or genital areas or other intimate parts for the purpose of sexual arousal or gratification, or for the abuse of either party. (refer to Sections 3-301, 3-307, and 3-308 of the Criminal Law Article).
43. **Sexual Harassment**, means repeated and unwelcomed 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 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.
44. **Sexual Offenses**, where used herein, refers to third and fourth degree sexual offenses involving the commission of sexual contact without consent with or without use of force or threat of force, or while aided and abetted by another. It also includes sexual contact with another if the victim is cognitively impaired, mentally incapacitated, or physically helpless and the perpetrator knows or reasonably should know the victim's condition. (refer to Sections 3-307 and 3-308 of the Criminal Law Article).
45. **Staff** means employees.
46. **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.

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47. **Substantiated Allegation** means an allegation that was investigated and determined to have occurred.
48. **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.
49. **Unfounded Allegation** means an allegation that was investigated and determined not to have occurred.
50. **Unsubstantiated Allegation** means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
51. **Victim**, where used herein, refers to the injured party affected by the illegal sexual act, sexual harassment, or sexual misconduct.
52. **Volunteer** means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the Department.
53. **Voyeurism** means an invasion of privacy of an inmate, detainee, or resident by a staff member, contractor, or volunteer 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.
54. **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.
55. **Youthful Detainee** means any person under the age of 18 who is under adult court supervision and detained in a lockup.

**II. MEASURING SEXUAL VIOLENCE (for PREA purposes)**

The definition of "rape" as required under the Prison Rape Elimination Act of 2003 was operationalized by disaggregating sexual violence into two categories of **inmate-on-inmate** sexual acts and two categories of **staff sexual misconduct**.

**1. Inmate-on-Inmate sexual acts:**

- A. **Nonconsensual sexual acts:** meaning sexual contact with any inmate without his/her consent, or with an inmate who is unable to consent or refuse; and
  - Contact between the penis and the vulva or the penis and the anus including penetration, however slight; or
  - Contact between the mouth and the penis, vulva, or anus; or
  - Penetration of the anal or genital opening of another person, however slight, by a hand, finger, or other object or other instrument.
- B. **Abusive sexual contacts:** meaning physical contact with any inmate without his/her consent, or with an inmate who is unable to consent or refuse; and
  - Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person excluding contact incidental to a physical altercation.
  - Any other intentional contact either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, excluding contact incidental to a physical altercation.
- C. **Sexual Harassment:** means repeated verbal statements or comments of a sexual nature to an inmate by another inmate including repeated verbal

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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.

- D. The Department prohibits all sexual activity between inmates and will discipline inmates for such activity. The Department may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

**2. Staff sexual misconduct:**

- A. Staff sexual misconduct means any behavior or act of a sexual nature (including consensual behavior) directed toward an inmate by **authorized personnel** (see definition in Section I, above). Romantic relationships between authorized personnel and inmates are included. Consensual or nonconsensual sexual acts include:

- Intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or 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; or
- Completed, attempted, threatened, or requested sexual acts that includes contact between the penis and the vulva or the penis and anus including penetration however slight, contact between the mouth and penis, vulva, or anus or contact between the mouth and any body part, with the intent to abuse, arouse, or gratify sexual desire; or
- Occurrences of indecent exposure, invasion of privacy, or voyeurism committed by authorized personnel for sexual gratification to include display of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident; or
- Penetration of the anal or genital opening, however slight, of another person by a hand, finger, or other object or other instrument that is unrelated to official duties where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.
- Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described above.
- Any display by a staff member, contractor, volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident.

- B. Staff sexual harassment, means repeated verbal statements or comments of a sexual nature to an inmate by authorized personnel, including:

- 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.

- C. Staff shall be subject to disciplinary sanctions up to and including dismissal for violating agency sexual abuse or sexual harassment policies.

- D. Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to relevant licensing bodies, and to law enforcement agencies, unless the activity was clearly not criminal.

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- E. The Department 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.

**III. SPECIFIC PROCEDURES**

**INCLUSIONS**

The terms and conditions as described throughout this procedure will apply:

- (a) To all employees, interns, volunteers, contractors, official and professional visitors, and Department representatives.
- (b) Although the Prison Rape Elimination Act requires operationalized definitions for reporting purposes, all crimes of a sexual nature may be prosecuted under the proper Maryland laws.

**EXCLUSIONS**

The terms and conditions as described throughout this procedure will not apply to:

- (a) the use of custodial personnel's hands or electronic contraband detection devices to perform searches of incarcerated offenders (while the offender is clothed or unclothed) in accordance with Contraband and Searches of Offenders policies and procedures, in order to maintain security and safety within the prison; or
- (b) custodial or medical personnel gathering physical evidence, or engaging in other legitimate medical treatment, in the course of investigating a prison sexual battery; or
- (c) the use of a health care provider's hands or fingers or the use of medical devices in the course of appropriate medical treatment unrelated to prison sexual battery; or
- (d) the use of a health care provider's hands or fingers (including the use of instruments) to perform body cavity searches in order to maintain security and safety within the prison, provided that the search is conducted in a manner consistent with constitutional requirements.
- (e) Situations, such as visual observations, made in one's course of duty or assignment.

**Note:** All Medical procedures listed herein, shall be conducted in compliance with National Health Care Commission Standards (NCCHC).

**1. Screening for Risk of Victimization and Abusiveness.**

- (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.
- (b) Intake screening shall ordinarily take place within 24 hours of arrival at the facility.
- (c) Such assessments shall be conducted using an objective screening instrument. (Initial Placement Screening Form, Intake Data Entry Form, Initial Placement Screening Summary Chart)
- (d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization:
  - (1) Whether the inmate has a mental, physical, or developmental disability;
  - (2) The age of the inmate;



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- (3) The physical build of the inmate;
  - (4) Whether the inmate has previously been incarcerated;
  - (5) Whether the inmate's criminal history is exclusively nonviolent;
  - (6) Whether the inmate has prior convictions for sex offenses against an adult or child;
  - (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
  - (8) Whether the inmate has previously experienced sexual victimization;
  - (9) The inmate's own perception of vulnerability; and
- (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.
  - (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.
  - (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.
  - (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.
  - (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.

**NOTE: Staff shall utilize the comments section on the booking forms to fully complete the assessment.**

2. **Orientation:**

Orientations of offenders shall be provided in the language offenders speak fluently. Translators may be utilized to ensure offenders receive a clear understanding of all orientation materials.

- A. Each Division Chief will ensure that, through the orientation process and materials supplied during orientation, offenders are aware of the Department's zero-tolerance policy regarding illegal sexual crimes, inclusive of sexual misconduct and sexual harassment. Each Division Chief will also ensure that all offenders understand that they are being encouraged to immediately report any concern or fear of possible sexual crimes to any correctional staff member, including a correctional staff member other than an immediate point-of-contact line officer or staff member.
- B. This orientation will provide the offender with hard copies of materials (ex: inmate guidebook, handouts) about sexual crimes including:
  - Prevention/intervention,
  - Self-Protection,
  - Reporting sexual crimes, and

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- Treatment and counseling.
- C. This orientation will stress the fact that “We want to know.” No staff member or other authorized personnel who receives a report will demean the situation through any type of humiliation, harassment, or other form of retaliation.
- D. This orientation will clearly advise offenders of treatment and counseling opportunities available.
- E. Although offenders will be encouraged to report these incidents immediately and in person, any allegation or report of sexual crimes, sexual misconduct, sexual harassment, etc., made through submission of a Request Form (DCA-6) or Grievance (DCA-512), will be immediately referred to the designated Manager.
- F. Those offenders, who wish to anonymously report allegations of sexual crimes, sexual misconduct, sexual harassment, etc., may do so in any manner or format that is comfortable for the offender (e.g., letter to a counselor or chaplain).

**Note:** The department will immediately start an investigation whenever an alleged sexual crime, sexual harassment, sexual misconduct (or threats of the same) is reported.

3. **Prevention and Training**

- (a) All Division Chiefs will ensure that all authorized personnel are informed, regarding the Department’s zero-tolerance policy regarding illegal sexual crimes, inclusive of sexual misconduct and sexual harassment.
- (b) The **MCDOCR** Training Section staff and division training staff will ensure that all new employee orientation curriculums incorporate and train all new correctional employees and other authorized personnel who will work in any of the department’s facilities in the department’s zero tolerance philosophy regarding sexual crimes, sexual harassment, and sexual misconduct. Yearly training will be conducted to stress the importance of prevention and the reporting of any allegation or act of illegal sexual crimes, sexual harassment, or sexual misconduct, as outlined throughout this procedure. This training may include dissemination of handouts/brochures related to the department’s zero-tolerance policy on Sexual Acts/Misconduct in the workplace and/or the reading of these procedures.
- (c) Each Division Chief will ensure that literature (ex: handouts) is available and clearly displayed/presented, in both English and Spanish at her/his facility. PREA posters are posted in all **MCDOCR** facilities.
- (d) All correctional staff will ensure that they conduct themselves in a manner that fosters an environment within all **MCDOCR** facilities that clearly precludes sexual crimes. Such conduct includes, but is not limited to:
  - (1) taking all reports concerning alleged sexual crimes seriously;
  - (2) initiating immediate reporting of alleged sexual crimes, sexual misconduct and sexual harassment to the Directors Office (**MCDOCR**) via the Division Chiefs and the report writing process;
  - (3) taking immediate steps to ensure preservation of possible crime scenes, inclusive of evidence protection;
  - (4) taking all appropriate measures to ensure the safety of a victim who may have been the injured party of an alleged sexual crime, sexual misconduct, or sexual harassment or of a person who may have reported

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- an incident of alleged sexual crime, sexual misconduct, or the sexual harassment of another person;
- (5) ensuring non-harassment and non-humiliation of alleged victims or informants of alleged sexual crimes, sexual misconduct, or sexual harassment regardless of the sexual orientation or gender identification of the victim.
- (e) Senior Floor Officers or higher-level supervisors shall conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. These rounds shall be conducted on all shifts. Staff are prohibited from alerting other staff members that these supervisory rounds are occurring unless such announcement is related to the legitimate operational functions of the facility.
  - (f) Correctional staff will ensure that within twenty-four (24) hours after each inmate enters **MCDOCR** custody, each inmate will be screened for potential vulnerabilities to sexual assault, and for tendencies of acting out with sexually aggressive behavior. This screening will ensure that:
    - (1) Inmates who pose a credible threat to another inmate, or pose a special risk to the security and order of a facility, are housed appropriately so as to minimize potential conflict (to include protective management of victims and close management of potential perpetrators of sexual misconduct, if appropriate);
    - (2) Inmates identified as “high risk” with a history of criminal sexual behavior are assessed, monitored, and interviewed by mental health staff or other qualified professionals.
    - (3) Inmates identified as at risk for sexual victimization are assessed, monitored, and interviewed by mental health staff or other qualified professionals (to include protective management of potential victims).
    - (4) Initial orientation is continually provided to all newly received inmates concerning sexual battery and sexual misconduct concerns, including the provision of information on prevention/intervention, self-protection, reporting sexual abuse/assault, and treatment/counseling.
  - (g) any correctional staff member who has reason to believe that an inmate either demonstrates sexually assaultive behavior or poses a risk for sexual victimization (even though an incident may not yet have occurred), will notify a supervisor about the inmate.
    - (1) The supervisor will ensure that the inmate is referred to mental health staff for appropriate review/counseling through submission of a Mental Health Referral Form (DCA-100).
    - (2) Mental health staff will conduct a psychological screening (as they deem appropriate) and if applicable, make a recommendation for any counseling to be conducted by a qualified outside source.
  - (h) All current employees who have not received PREA 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 all employees know the Department’s current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive

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refresher training, the Department shall provide refresher information on current sexual abuse and sexual harassment policies.

- (i) The department shall document, through employee signature or electronic verification, that employees understand the training they receive.

**4. Reporting Incidents / Allegations**

- A. All incidents or allegations of sexual battery, sexual misconduct and sexual harassment that occurred in a facility, whether occurring at a Montgomery County Department of Correction and Rehabilitation facility or reported to have occurred while the inmate was in custody at another facility, will be reported in accordance with established policies and procedures (refer to **MCDOCR P&P 1300 – 20 Incident Notification**).
- B. **Reporting to Other Confinement Facilities**
  - 1. Upon receiving an allegation that an inmate was sexually abused while confined at a non-DOCR facility, the head of the DOCR facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.
  - 2. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation. DOCR shall document that it has provided such notification.
  - 3. The DOCR facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with PREA standards.
- C. Staff shall accept reports made verbally, in writing, anonymously, and from third parties, and shall promptly document any verbal reports.
- D. In all instances of incidents involving alleged sexual crimes, sexual misconduct, or sexual harassment, the on-duty supervisor will ensure that an Incident Report (DCA-36) is processed and submitted to the facility Division Chief.
- E. The perpetrator suspected of committing a sexual offense will be managed in accordance with established policies and procedures pending a complete and thorough investigation and employment of the disciplinary process (if appropriate), inclusive of external criminal charges, if applicable. Perpetrators who have been found guilty of sexual crimes, or sexual harassment, through the course of either internal or external hearings will be processed in accordance with **MCDOCR** discipline policies, and possibly through judicial and/or administrative process.
- F. Any member or authorized personnel including, but not limited to medical staff, mental health staff, social service and social work practitioners, who has knowledge of or who has received information, written or verbal, regarding commission of sexual crimes/sexual harassment, or sexual misconduct or an inmate's concern or fear that the inmate will become the victim of impending sexual crimes/sexual harassment, or sexual misconduct, must immediately notify a supervisor who will then take immediate steps to evaluate the victim's concern/allegation. In cases where inmates are the victims, department staff will send a departmental PREA information sheet/brochure to community referral practitioners (outside counselors, therapists, etc.) and give inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis

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- organizations, so that they are aware of PREA requirements and their role in alerting departmental staff. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible. The supervisor notified will ensure proper medical treatment (if applicable) and the safety of the victim by means provided in department policies and procedures.
- G. 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.
  - H. Any correctional staff member who fails to report or take immediate action regarding such incidents, or who intentionally inflicts humiliation upon the victim or informant, or who trivializes a report of alleged sexual crimes, sexual harassment, or sexual misconduct, or fails to report any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation may be subject to procedures outlined in **MCDOCR** Standards of Conduct (P&P 3000-7) and Montgomery County policy and or disciplinary measures up to and including dismissal. If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.
  - I. 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 Departmental policy, to make treatment, investigation, and other security and management decisions including housing, bed, work, education, and program assignments.
  - J. Inmates who have been a victim of a sexual crime, or who are aware of a sexual crime, sexual harassment, or sexual misconduct perpetrated by authorized personnel should immediately report the incident to the nearest correctional staff member or report the matter by any other means they feel comfortable with (e.g., letter to chaplain). All reasonable measures to secure the safety of the reporting offender will be implemented.
  - K. Victims of a sexual crime should try to preserve as much physical evidence of the crime as possible. Prior to reporting a sexual crime, there should be no showering, washing, etc., of the body and/or clothing or bed linen.
  - L. Staff will also ensure the preservation of any such evidence by securing the site of the crime (if possible) and the clothing or any other items of the victim and the perpetrator (if known), which may be pertinent to an investigation.
  - M. The Director's Office will be notified immediately by the Division Chief of any allegation of sexual crimes, sexual harassment, or sexual misconduct so that an investigation can be initiated.
  - N. If the inmate does not make the allegation until he/she arrives at a medical department, medical staff will immediately notify a supervisor on duty. The supervisor receiving the allegation will notify the senior supervisor on duty, who in turn will notify the Division Chief and they will notify the Director.
  - O. 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.

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- P. If an inmate makes a report of an alleged sexual crime where the incident occurred outside the department's control (within the community):
- (1) These reports/allegations will be referred to local law enforcement authorities.
  - (2) The investigative elements of this Policy and Procedure will not apply to an incident occurring in the community, unless it is alleged that authorized personnel were involved in the incident.
- Q. If an inmate on home detention makes a report of sexual crimes, sexual misconduct, or sexual harassment where the incident occurred while the inmate was incarcerated within a **MCDOCR** facility, under control of the department, prior to the inmate's release to home detention status. These reports/allegations will be referred to the Director's Office.
- R. If the alleged sexual crime occurred more than forty-eight (48) hours prior to the reporting of the incident, the Director's Office will be notified before initiating the post-sexual battery guidelines as described in this procedure (see below).
- Note:** It is understood that even though the incident may have occurred more than forty-eight (48) hours before reporting, there may still be evidence that exists that will be helpful in the investigation and that can be collected.
- S. Inmates/detainees/residents may not be disciplined for refusing to answer, or for not disclosing complete information in response to the following:
1. Whether the inmate/detainee/resident has a mental, physical, or developmental disability.
  2. Whether the inmate/detainee/resident is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming.
  3. Whether the inmate/detainee/resident has previously experienced sexual victimization.
  4. The inmates/detainees/residents own perception of vulnerability.
- T. Inmates and employees have the right to be free from retaliation for reporting sexual abuse and sexual harassment. Staff are to report any retaliation immediately to the Deputy Warden of Custody and Security.
- U. The Department shall employ multiple protective 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.
- V. 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 agency 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. In the case of inmates, such monitoring shall also include

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periodic status checks. An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.

- W. Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to file reports relating to allegations of sexual abuse, and shall also be permitted to file such reports on behalf of inmates. Third-party allegations on behalf of an inmate can be initiated by contacting the Department's PREA investigator.
- X. There is no specific requirement or law in the State of Maryland that makes it mandatory to report a sexual assault however all MCDOCR staff shall follow the guidelines outlined in this policy for reporting incidents/allegations.
- Y. If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable person's statute, the Department shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.
- Z. All dismissals for violations of Department sexual abuse or sexual harassment policies, or resignations by staff that would have been dismissed if not for their resignation, shall be reported to the Montgomery County Police, unless the activity was clearly not criminal.

5. **Guidelines for Staff Action Following Receipt of an Allegation of Sexual Crime**

The following steps should be taken after receiving an allegation of a sexual crime:

- (a) First responders should immediately ensure the safety of the reporter by separating the alleged victim and abuser, secure the scene of the incident (if applicable) and immediately contact a supervisor.
- (b) A supervisor will conduct an immediate interview with the victim to determine whether the collection of physical evidence is indicated. If physical evidence is indicated, the supervisor should take all necessary steps to ensure the preservation of evidence (as outlined in department policy).
- (c) 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.
- (d) The supervisor shall contact the Montgomery County Police Department and request a unit to respond to the facility to investigate the alleged sexual crimes. Investigations into the crime of "Indecent Exposure to Correctional Employee" shall in most cases be referred to the police department for investigation.
- (e) Any unethical act/behavior of sexual abuse or sexual misconduct committed by **MCDOCR** licensed professional staff or other authorized personnel, upon substantiated allegation, may result in reporting the matter to the professionals licensing agency.
- (f) In the cases of rape or sexual offenses where evidence may be available, **request** the victim and **ensure** the perpetrator (if known) do not take any actions that could destroy physical evidence such as washing or showering in any manner, brushing teeth, urinating, defecating, smoking, drinking, or eating. Clothing and bed linens should be treated as evidence as well.
- (g) No attempt will be made to clean or treat the victim unless the injuries are such that not treating them would cause deterioration of the victim's medical condition.

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- (h) The victim shall be transported and/or required to go to the emergency room as soon as possible. MCDOCR Medical staff does not conduct Sexual Assault Forensic Examinations. The examination shall be conducted without financial cost to the victim where evidentiary or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFE) or Sexual Assault Nurse Examiners (SANE) where possible. If SAFE or SANE are not available, the examination can be performed by other qualified practitioners or hospital staff. The Department shall document its efforts to provide SAFEs or SANEs.
- (i) Law Enforcement personnel accompanying an offender victim to the emergency room will ensure that a standard medical "sexual assault kit" is requested.
- (j) 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.
- (k) For inmate victims, medical staff will ensure that all necessary written documents are completed (with the above actions completely and accurately listed, as they have occurred) and will maintain these documents in the inmate's medical records.
- (l) Upon the inmate's return to the facility, medical staff will make a mental health referral (DCA-100) for evaluation and counseling, at a minimum, for the next working day. Medical staff must ascertain what tests the inmate received at the emergency room. Copies of those results will be obtained and placed in the inmate's medical records. The medical records of inmate victims and suspected inmate perpetrators (only if identified by the Director's Office as a suspect) will be reviewed and appropriate testing identified.
- (m) For inmate victims and perpetrators, medical staff will ensure provisions are made for testing for sexually transmitted diseases, unless already completed by emergency room personnel.
- (n) Regardless of the results of the tests, preventative and protective education, including information about symptoms and transmission, will be provided to inmate victims and alleged inmate perpetrators, and treatment will also be offered, as appropriate.
- (o) 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.
- (p) Reporting of inmates assessed by the medical department, for those sexual crimes reported, will be an integral part of post-sexual crimes treatment and referral. In order to ensure and maintain privacy of information, the Health Administrator shall be contacted to determine what information may be reported and to whom the information can be reported to.
- (q) Since the Department does not offer therapy, counseling, and other interventions designed to address and correct underlying reasons or motivations for the abuse, the Department does not consider whether to require the offending inmate to participate in such interventions as a condition of access to programming or other benefits.



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- (r) The Department 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.
- (s) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.
- (t) If pregnancy results from the conduct described in section (s) above, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

**6. Sexual Abuse Incident Reviews:**

- A. The Department 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.
- B. Such review shall ordinarily occur within 30 days of the conclusion of the investigation.
- C. The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
- D. The review team shall:
  - (1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
  - (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;
  - (3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
  - (4) Assess the adequacy of staffing levels in that area during different shifts;
  - (5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
  - (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 Department head and PREA compliance manager.
- E. The Department shall implement the recommendations for improvement or shall document its reasons for not doing so.

**7. Case Records**

- (a) All case records associated with reports of sexual crimes, sexual harassment, and sexual misconduct, including incident reports, investigative reports, perpetrator and victim information, case disposition, and copies of medical and counseling evaluation findings, recommendations for post-release treatment and/or counseling will be retained in the office of the MCDOCR PREA Manager , for a period of five (5) years after the date the investigation concluded.

**Note:** All original copies of medical and psychiatric/psychological treatment/counseling records, and related clinical records, shall remain in the files of the Health Care Administrator.

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- (b) Each Division Chief is responsible for maintaining full data on investigations of sexual crimes, sexual harassment, and sexual misconduct that may occur in their respective facility.
  - (c) The **MCDOCR** Deputy Warden of Programs and Services is responsible for gathering and providing statistics mandated under PREA.
8. **Contracting for the Confinement of Inmates** – The MCDOCR does not contract for the confinement of inmates.
  9. **Inmates with Disabilities or are Limited English Proficient** – 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 PREA Standard 115.64, or the investigation of the inmate’s allegations.
  10. **Staffing Plan**: - In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan. Whenever necessary, but no less frequently than once each year, for each facility the Department operates, in consultation with the PREA coordinator, the Department shall assess, determine, and document whether adjustments are needed to the staffing plan. The staffing plan will provide for adequate levels of staffing, to protect inmates against sexual abuse.
  11. **Video Monitoring**: - The Department shall assess, determine, and document whether adjustments are needed to the facility’s deployment of video monitoring systems and other monitoring technologies whenever necessary, but no less frequently than once each year, for each facility the Department operates, in consultation with the PREA coordinator.
  12. **Resources**: - The Department shall assess, determine, and document whether adjustments are needed to the Department’s deployment of resources the Department has available to commit to ensure adherence to the staffing plan.
  13. **Grievance/Discipline**:

A. Emergency Grievance:

1. Special provisions will be made for responding to grievances of an emergency nature. An emergency is generally an unforeseen combination of circumstances or the resulting state that calls for immediate action. (i.e. substantial risk of imminent sexual abuse.) The Division Administrator will determine whether a grievance is an emergency within forty-eight (48) hours after receipt of the grievance.
2. If a grievance submitted as an emergency is ruled at any level not to be an emergency, it will be returned to the inmate/resident citing the reasons why the grievance is not considered an emergency. The response will also indicate that the grievance can be resubmitted as a regular grievance.
3. Emergency grievances will be forwarded immediately, without substantive review, to the level at which corrective action can be taken. It will be the duty of all correctional employees to forward the emergency grievance in an expedited fashion to the appropriate supervisory/management level within the institution.
4. Like other grievances, emergency grievances can be appealed to the Division Administrator and to the Department Director. The Division Administrator (or the Department Director where appropriate) or designee will take prompt action

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(within 24 hours) upon receipt of an emergency grievance appeal. The inmate/resident will be notified in writing immediately after a decision is made in these cases.

5. Emergency grievances must be resolved, and a written response provided to the inmate/resident within five (5) calendar days. The initial response and final Department decision shall document the Department's determination whether the inmate is in substantial risk of imminent sexual abuse or other danger and the action taken in response to the emergency grievance
- B. The Department shall not impose a time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse.
- C. The Department may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse.
- D. The Department shall not require an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.
- E. Nothing in this section shall restrict the Department's ability to defend against an inmate lawsuit on the ground that the applicable statute of limitations has expired.
- F. The Department shall ensure that an inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and such grievance is not referred to a staff member who is the subject of the complaint.
- G. The Department shall issue a final decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance. Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal. The Department may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The Department shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.
- H. At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.
- I. Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.
- J. If a third-party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process. If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision.
- K. The Department may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith.

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- L. 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.
- M. The agency may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
- N. 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.
- O. 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.

14. **Agency Protection Duties:** - When authorized personnel learn that an inmate is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate.

**IV. Youthful Inmates/Detainees:**

**A. Housing:**

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 the use of a shared dayroom or other common space, shower area, or sleeping quarters. The Department will make best efforts to avoid placing youthful inmates in isolation to comply with this provision.

- 1. Absent exigent circumstances, the Department will not deny youthful inmates daily large muscle exercise and any legally required special education services to comply with this provision.
- 2. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.

**B. Areas outside of housing units:**

- 1. The Department must either maintain sight and sound separation between youthful inmates/detainees and adult inmates

**OR**

- 2. Provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.

**V. Use of Screening Information:**

- (a) The Department shall use information from the risk screening 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.
- (b) The Department shall make individualized determinations about how to ensure the safety of each inmate.

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- (c) In deciding whether to assign a transgender or intersex inmate to a housing unit or a programming assignment, 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.
- (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.
- (e) A transgender or intersex inmate's own view with respect to his or her own safety shall be given serious consideration.
- (f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
- (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.
- (h) The Department 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.
- (i) 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.
- (j) The Department shall provide such victims with medical and mental health services consistent with the community level of care.

**VI. Protective Custody:**

- 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 the Department can not conduct such an assessment immediately, the Department may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.
- B. Inmates at high risk for sexual victimization placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the Department restricts access to programs, education, and work opportunities, the Department shall document:
  - 1. The opportunities that have been limited
  - 2. The duration of the limitation; and
  - 3. The reasons for such limitations
- C. The department shall assign inmates at high risk for sexual victimization 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.

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- D. If an involuntary segregated housing assignment is made, the Department shall clearly document:
  - (1) The basis for the facility's concern for the inmate's safety; and
  - (2) The reason why no alternative means of separation can be arranged.
- D. Every 30 days, the Department shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.
- E. This includes any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse.

**VII. Criminal and Administrative Agency Investigations**

**Upon promotion to the rank of Lieutenant, Specialized training through the NIC will be completed before acting as a PREA investigator. Both Basic and Advanced training must be completed. Once a certificate has been issued, a copy will be sent to the Training section for documentation purposes. All Lieutenants are required to complete both Basic and Advanced training at a reasonable time upon appointment, not to exceed 12 months. Any reasons for delay will be documented with the Training and Accreditation section under Supervision of Human Resources.**

- 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.
- B. Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations described above.
- 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.
- D. When the quality of evidence appears to support criminal prosecution, the investigating Department shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- 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. The Department shall not 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.
- 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.
  - 3. 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

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- 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.
- H. Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.
- I. The agency 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 agency, plus five (5) years.
- J. The departure of the alleged abuser or victim from the employment or control of the facility or Department shall not provide a basis for terminating an investigation.
- K. When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.
- L. 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

Additional Methods of Investigation initiation,

- 1) Web Tip: When a Web-Tip comes in via the electronic mail group, the policy will be that the LT. who is currently on shift, and within the unit of concern, will take on the task of investigating this allegation. There should not be any passing of investigations between Shift Administrators once an investigation is initiated. Web-Tips are forwarded by Warden or designee upon receipt in the Email group. The Warden or designee will then forward to the shift commanders immediately and a confirmation is required to ensure timely investigations.
- 2) Internal Tip Phone Line- On a regular basis, the ACO will be responsible for calling in to the Internal Tip Line to check messages. If any message has a PREA complaint, the ACO will notate any pertinent information. This information will be passed onto the DW of Custody and Security or designee for specified facility of occurrence. An investigation will begin once the DW of Custody and Security or designee assigns this case to an investigator.

Investigation Submission:

Completed Investigative packets will include at a minimum

- 1) Completed Checklist of all inclusions
- 2) Completed Investigation Narrative to include outcome, acceptance or refusal of medical, mental health or religious services.
- 3) Completed notification forms: Initial and final
- 4) Supporting evidence mentioned in narrative that aided in the outcome determination; to include, Video, phone recordings, incident reports.

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Throughout the process, it is the assigned investigators responsibility to update the data aggregation spreadsheet, as the information is available. This should mirror the information found in the narrative. If a Criminal investigation is applicable, the investigator will submit the investigation as a pending file and submit a supplemental report with the completed Criminal investigation after obtaining from Montgomery County Police or investigating agency.

**VIII. Reporting to Inmates**

- A. Following an investigation into an inmate's allegation that they suffered sexual abuse in a Department facility, the Department shall inform the inmate that an investigation has been initiated. Verbal or written confirmation of this notification is documented on the PREA inmate notification form and included in the Investigative Packet. A follow up notification is to be given to the inmate upon final determination as to whether the allegation has been substantiated, unsubstantiated, or unfounded.
- 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.
- 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:
  - (1) The staff member is no longer posted within the inmate's unit;
  - (2) The staff member is no longer employed at the facility;
  - (3) The Department learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
  - (4) The Department learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
- 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:
  - (1) The Department learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
  - (2) The Department learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
- E. All such notifications or attempted notifications shall be documented.
- F. The Department's obligation to report shall terminate if the inmate is released from the agency's custody.

**IX. Data Collection:**



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- 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.
- B. The Department shall aggregate the incident-based sexual abuse data at least annually
- 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.
- 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.
- E. Upon request, the Department shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.
- F. The Department shall ensure that the collected data is securely retained.
- G. The Department shall make all aggregated sexual abuse data, from facilities under its direct control readily available to the public annually through the Department website.
  - 1. Prior to making the aggregated sexual abuse data public, all personal identifiers shall be removed.
- H. All sexual abuse data collected shall be maintained for at least 10 years after the date of the initial collection.

**REVIEW:**

- 1. The Department shall review data collected and aggregated to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:
  - (1) Identifying problem areas;
  - (2) Taking corrective action on an ongoing basis; and
  - (3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.
- 2. 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.
- 3. The agency 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.

**X. Audits**

- A. The Department shall ensure that the auditor's final report is published on the Department's website within 30 days of receiving the report.
- B. During each one-year period starting on August 20, 2013 the Department shall ensure that at least one-third of each facility type operated by the Department, or by a private organization on behalf of the Department, is audited.
- C. The agency shall bear the burden of demonstrating compliance with the standards.

**POLICY AND PROCEDURE:** Implementation of the Prison Rape Elimination Act (PREA)

**POLICY NUMBER:** 3000-64

- D. The auditor shall have access to, and shall observe, all areas of the audited facilities.
- E. The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators.
- F. The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees.
- G. Inmates, residents, and detainees shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.
- H. Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.
- I. The auditor and the agency shall jointly develop a corrective action plan to achieve compliance.
- J. If the agency does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.