

Executive Directive



Stephen T. Moyer
Secretary

Title: Sexual Misconduct — Prohibited	Directive Number: OSPS.050.0030
Related MD Statute/Regulations: Correctional Services Article, §2-103, Annotated Code of Maryland; State Personnel and Pensions Article, §11-106, Annotated Code of Maryland; Criminal Law Article, §3-314, Annotated Code of Maryland; Prison Rape Elimination Act of 2003 (P.L. 108-79)	Supersedes: DPSCS.050.0030 (Formerly SDD 13-2004) issued September 10, 2004
Related ACA Standards: 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	Responsible Authority: PREA Coordinator
Related MCCS Standards: COMAR 12.14.03.06B and J; 12.14.04.05A(2) and B(6); 12.14.05.05A(2) and B(6)	Effective Date: June 26, 2015 Number of Pages: 13

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.01 Purpose.

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

.02 Scope.

This directive applies to all units of the Department.

.03 Policy.

- A. The Department does not:
 - (1) Tolerate sexual misconduct by an employee, by either omission or commission; and
 - (2) Consider alleged or actual consent as a defense to an allegation of sexual misconduct.
- B. The Department shall ensure that existing efforts and new strategies to prevent, detect, and respond to acts of sexual misconduct comply with applicable federal standards (28 CFR Part 115 – August 20, 2012) established under the authority of the Prison Rape Elimination Act (PREA) of 2003 (P.L. 108-79).

.04 Definitions.

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

- (a) “Community confinement facility” means a facility housing individuals, under the authority of the Department as part of a term of confinement or a condition of pre-trial release supervision, who are participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during non-residential hours.
- (b) “Community confinement facility” includes, but is not limited to, a:
 - (i) Community treatment center;
 - (ii) Halfway house;
 - (iii) Restitution center;
 - (iv) Mental health facility;
 - (v) Alcohol or drug abuse rehabilitation center;
 - (vi) Residential re-entry center; or
 - (vii) Facility, except for a juvenile facility, used for similar purposes.
- (2) “Complaint” means a written or verbal statement alleging sexual misconduct regardless of the source of the allegation.
- (3) “Contractor” means an individual working, other than as a State employee, in any capacity for the Department or for a private or public organization authorized by contract, memorandum of understanding, or agreement to provide a service to an inmate or the Department.
- (4) “Correctional facility”:
 - (a) Has the meaning stated in Correctional Services Article, §1-101, Annotated Code of Maryland.
 - (b) Includes a community confinement facility and detention facility.
- (5) “Cross gender viewing” means an employee observes the breasts, buttocks, or genitalia of an inmate of the opposite sex while the inmate is showering, performing bodily functions, changing clothing, or any similar activity.
- (6) “Employee”:
 - (a) Means an individual assigned to or employed by the Department in a full-time, part-time, temporary, or contractual position regardless of job title or classification.
 - (b) Includes:
 - (i) A contractor;
 - (ii) An intern;

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

- (b) Contact between the mouth and the penis, vulva, or anus;
 - (c) Contact between the mouth and any body part where the employee has the intent to abuse, arouse, or gratify sexual desire;
 - (d) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the employee has the intent to abuse, arouse, or gratify sexual desire;
 - (e) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the employee has the intent to abuse, arouse, or gratify sexual desire;
 - (f) Any attempt, threat, or request by an employee to engage in the activities described in §§.04B(10)(a)-(e) of this directive;
 - (g) Any display by an employee of the employee's uncovered genitalia, buttocks, or breast in the presence of an inmate; and
 - (h) Voyeurism by an employee.
- (11) "Sexual favor" means an agreement between an employee and an inmate to participate in sexual misconduct that is obtained by threat or promise of what is believed to be special or different treatment affecting an inmate's safety, supervision status, work status, program involvement, or other privilege.
- (12) "Sexual harassment" includes repeated verbal comments or gestures of a sexual nature to an inmate by an employee, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.
- (13) "Sexual misconduct":
- (a) Means any behavior or act of a sexual nature:
 - (i) By an employee directed toward an inmate; or
 - (ii) By an employee directed toward an inmate's personal or professional associate who believes the employee exercises influence or authority over the inmate.
 - (b) May include, but is not limited to:
 - (i) A sexual crime identified under Criminal Law Article, §§3-301 — 312, Annotated Code of Maryland;
 - (ii) Kissing, hugging, and hand-holding for the sexual arousal or gratification of an individual, or for the abuse of either party;
 - (iii) Sexual abuse;

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- (iv) Indecent exposure;
 - (v) Voyeurism;
 - (vi) Cross gender viewing, if performed without warning by non-medical staff at times other than incidental to a routine cell check, supervisory rounds to prevent sexual abuse and harassment, or exigent circumstances.
 - (vii) Sexual harassment;
 - (viii) Request for a sexual favor;
 - (ix) A solicitation or attempt to commit any of the acts listed under §§.04B(13)(b)(i) – (viii) of this directive;
 - (x) Action or the lack of action on the part of an employee that contributed to an incident of sexual misconduct; and
 - (xi) Retaliation.
- (c) Does not include contact with an inmate made by an employee in the course of the proper performance of an official duty such as a medical examination or an authorized and properly conducted security-related pat down or strip search.

(14) “Voyeurism”:

- (a) Means that an employee invades the privacy of an inmate for reasons unrelated to official duties.
- (b) Includes, but is not limited to:
 - (i) Peering at an inmate who is using the toilet in the inmate’s cell to perform bodily functions;
 - (ii) Requiring an inmate to expose the inmate’s buttocks, genitals, or breasts; or
 - (iii) Recording images of an inmate’s naked body or of an inmate performing bodily functions.

.05 Responsibility/Procedures.

A. An employee may not:

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

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

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

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

- (1) Each employee attends approved training related to preventing, detecting, and responding to acts of sexual misconduct;
- (2) Written policy and procedures issued by the head of the unit related to the custody and security of an inmate comply with applicable federal PREA standards;
- (3) Department and agency policy prohibiting sexual misconduct, procedures for filing a complaint, and inmate rights related to sexual misconduct are effectively communicated to an inmate:
 - (a) As part of inmate orientation;
 - (b) By inclusion in the facility's inmate orientation paperwork; and
 - (c) If applicable, the facility's inmate handbook;
- (4) Contact information for persons listed under §.05E(4) of this directive is current and effectively available to an inmate;

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

D. A supervisor, manager, or shift commander shall:

- (1) Take reasonable actions to eliminate circumstances that may result in or contribute to an incident of sexual misconduct that include conducting and documenting security rounds to identify and deter staff sexual abuse and harassment that are performed:
 - (a) Randomly on all shifts;
 - (b) Except when necessary to prevent prohibited cross gender viewing of an inmate or as part of a legitimate facility operation, unannounced in order to prohibit staff from alerting other staff that the rounds are being conducted; and
 - (c) At a frequency established by the managing official;
- (2) If aware of an act of alleged sexual misconduct, ensure that a complaint is immediately filed according to established procedures for reporting misconduct;
- (3) If applicable, ensure that appropriately trained employees take action to preserve the scene of and any evidence related to an alleged incident of sexual misconduct; and
- (4) Ensure the safety of a victim of sexual misconduct, through a coordinated response to a complaint of sexual misconduct 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 sexual misconduct may be submitted by the following individuals:
 - (a) The victim;
 - (b) An individual with knowledge of an incident of alleged sexual misconduct; or

- (c) A “third party” on behalf of the victim or other individual who has knowledge of the alleged sexual misconduct.
- (2) A complaint of alleged sexual misconduct may be submitted in the following formats:
 - (a) In writing (includes electronic documents); or
 - (b) Verbally.
- (3) A complainant may remain anonymous.
- (4) To effectively reduce actual or implied barriers to filing a complaint, an individual may file a complaint of sexual misconduct with any one or all of the following without regard to chain of command or assignment:
 - (a) Within the Department:
 - (i) An employee;
 - (ii) A supervisor, manager, or shift commander;
 - (iii) The head of a unit;
 - (iv) The Intelligence and Investigative Division (IID);
 - (v) The Inmate Grievance Office; or
 - (b) Outside the Department:
 - (i) The Office of the Attorney General; or
 - (ii) Other private or public office able to receive and immediately forward the complaint of alleged sexual misconduct to the Department.
- (5) An employee receiving a complaint of or otherwise has knowledge of alleged sexual misconduct shall immediately report the complaint to a supervisor, manager, shift commander, or head of the unit followed by the appropriate written format used to document misconduct.
- (6) If a complaint of alleged sexual misconduct is received by a supervisor, manager, shift commander, or head of the unit at a facility other than the facility where the alleged sexual misconduct occurred, the head of the unit responsible for the facility receiving the complaint shall immediately notify the Intelligence and Investigative Division (IID) of the complaint.
- (7) An IID representative notified under §.05E(6) of this directive shall immediately:
 - (a) If the facility where the alleged sexual misconduct occurred is not a Department facility, notify the official responsible for the facility where the alleged sexual misconduct occurred and document the notification.

- (b) If the facility where the alleged sexual misconduct occurred is a Department facility, notify the appropriate Department official with responsibility for the facility where the alleged sexual misconduct 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 sexual misconduct is confidential and may only be available to individuals who have an established role in the reporting, processing, investigating, and resolving the alleged sexual misconduct and immediate and continued care of the victim.

F. Processing a Complaint.

- (1) A complaint of alleged sexual misconduct received anonymously shall be accepted and processed the same as a complaint received from an identified source.
- (2) An employee receiving a complaint of alleged sexual misconduct, shall immediately notify a supervisor, manager, shift commander, or head of the unit of the complaint.
- (3) A supervisor, manager, shift commander, or head of the unit receiving a complaint under §.05E or .05F(2) of this directive shall immediately:
 - (a) If sexual misconduct is actively taking place, dispatch staff:
 - (i) To stop the alleged incident;
 - (ii) Safeguard the victim from further harm;
 - (iii) If applicable, arrange for emergency medical services;
 - (iv) Detain the alleged perpetrator; and
 - (v) Preserve evidence and the scene of the alleged incident;
 - (b) If the sexual misconduct is not actively occurring, but the timeframe is such that there may be physical evidence at the scene or available from the victim or alleged perpetrator, dispatch staff to:
 - (i) Preserve evidence at the scene;
 - (ii) Detain the alleged perpetrator and prevent destruction of physical evidence;
 - (iii) Contact the victim and instruct the victim on the need to protect against the destruction of physical evidence; and
 - (iv) Refer the victim for appropriate medical and mental health follow up services.
 - (c) Report the complaint of alleged sexual misconduct to the IID; and
 - (d) Administratively document and process the complaint of alleged sexual misconduct according to procedures for alleged employee misconduct established under the Department's Standards of Conduct.

- (4) If the complaint of alleged sexual misconduct is received by an IID representative, the IID representative shall notify the appropriate agency head to ensure appropriate actions under §§.05F(3)(a) and (b) of this directive are initiated.
- (5) If a complaint of alleged sexual misconduct involves a contractor, in addition to requirements under §§.05F(3)(a) and (b) of this directive, the head of the unit, or a designee, shall comply with requirements under a contract, memorandum of understanding or other document establishing the relationship between the Department or agency and the contractor that address misconduct on the part of the contractor followed by written documentation used to report misconduct.

G. Investigating, Documenting, and Resolving a Complaint.

- (1) An IID investigator, or an investigator designated by the IID, shall conduct a prompt, thorough and objective investigation of every complaint of alleged sexual misconduct according to applicable statutory, regulatory, case law, contract, Department procedures, or other reasonably accepted standards related to:
 - (a) Collecting and preserving evidence;
 - (b) Interviewing victims 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 sexual misconduct involves sexual abuse, the investigator assigned to investigate the allegation shall have received specialized training related to conducting sexual abuse investigations in a confinement setting that, at a minimum, specifically addresses:
 - (a) Interviewing sexual abuse victims;
 - (b) Using *Miranda* and *Garrity* warnings;
 - (c) Sexual abuse evidence collection; and
 - (d) Criteria and evidence necessary to substantiate administrative action and, if appropriate, referral for criminal prosecution.
- (3) If the alleged sexual misconduct involves sexual abuse, the assigned investigator shall:
 - (a) If medically appropriate or necessary to preserve evidence, offer the victim access to a medical forensics examination at no cost to the victim that is performed by a:
 - (i) A Sexual Assault Forensics Examiner (SAFE);

- (ii) Sexual Assault Nurse Examiner (SANE); or
 - (iii) If after documented attempts to provide a SANE or SAFE are unsuccessful, a medical professional who has been specifically trained to conduct medical forensics examinations.
- (b) If requested by the victim and the services are reasonably available, have one of the following accompany, for the purpose of support, the victim through the forensic examination and investigation interviews:
 - (i) A qualified victim advocate;
 - (ii) A Department employee who is otherwise not involved in the incident and has received education and training concerning sexual assault and forensic examination issues and has been appropriately screened and determined to be competent to serve in this role; or
 - (iii) A non-Department community-based organization representative who meets the criteria for a Department employee established under §.05G(3)(b)(ii) of this directive.
- (4) Upon completing an investigation of a complaint of alleged sexual misconduct, the investigator shall:
 - (a) Thoroughly document all aspects of the investigation in a written report so as to best support subsequent administrative action and, if appropriate, referral for criminal prosecution;
 - (b) Include in the report a determination indicating the complaint of alleged sexual misconduct to be:
 - (i) Substantiated (the investigation determined the sexual misconduct occurred);
 - (ii) Unsubstantiated (the investigation produced insufficient information to determine whether or not the alleged sexual misconduct occurred); or
 - (iii) Unfounded (the investigation determined that the alleged sexual misconduct did not occur);
 - (c) Make appropriate Department administrative notifications, which include the PREA Facility Compliance Manager, concerning the result of the investigation;
 - (d) If the incident possibly involves criminal activity, refer the case to the appropriate office responsible for prosecuting criminal violations in the jurisdiction where the incident occurred; and
 - (e) File and maintain the report of investigation for a period of five years after the alleged perpetrator is no longer an employee.
- (5) The departure of an employee alleged to have committed sexual misconduct or the victim of sexual misconduct from the Department is not a basis for terminating an investigation of alleged sexual misconduct.

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- (6) A victim of alleged sexual misconduct may not be compelled to submit to a polygraph or other truth-telling examination as a condition for proceeding with an investigation of alleged sexual misconduct.

H. Victim Notification.

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

I. Sanctions.

- (1) An employee is subject to disciplinary action, up to and including termination of employment with the Department if it is determined that the employee:
 - (a) Except under exigent circumstances, did not perform responsibilities established under this directive; or

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- (b) Neglected or violated other duties or responsibilities that contributed to an incident of sexual misconduct.
- (2) An employee determined to have committed sexual misconduct is in violation of Department Standards of Conduct and is subject to:
 - (a) A penalty under the Standards of Conduct, up to and including termination of employment with the Department;
 - (b) Criminal prosecution; and
 - (c) If applicable, notification of a relevant licensing authority.
- (3) A contractor determined to have committed sexual misconduct is:
 - (a) Considered to be in violation of terms or conditions of a contract or other agreement establishing the relationship between the contractor and the Department or agency;
 - (b) Subject to sanctions according to provisions of the contract or agreement;
 - (c) Is subject to criminal prosecution; and
 - (d) If applicable, notification of a relevant licensing authority.
- (4) A complaint of alleged sexual misconduct made in good faith based upon a reasonable belief that the alleged sexual misconduct occurred may not be considered a false report or lying, even if the required investigation does not establish sufficient evidence to substantiate the allegation of sexual misconduct.

.06 Attachment(s).

There are no attachments to this directive.

.07 History.

- A. This directive supersedes DPSCS.050.0030, dated May 12, 2014 by updating titles and names to comport with Department re-alignment.
- B. This directive 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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