



# Operating Procedure

<b>Effective Date</b> May 1, 2016	<b>Number</b> 038.3
<b>Amended</b> 12/14/16, 9/19/17, 2/13/18, 12/1/18	<b>Operating Level</b> Department
<b>Supersedes</b> Operating Procedure 038.3 (5/1/13)	
<b>Authority</b> COV §18.2-61, §18.2-64.2, §18.2-67.10, §18.2-67.4 Prison Rape Elimination Act (Public Law No. 108-79)	

**Subject**

**PRISON RAPE ELIMINATION ACT (PREA)**

<b>ACA/PREA Standards</b> 4-4281-1, 4-4281-3, 4-4281-6, 4-4281-7, 4-4281-8; 4-ACRS-6A-05, 2-CO-1C-11; §115.5 §115.6, §115.11, §115.12, §115.14, §115.16, §115.21, §115.22, §115.32, §115.33, §115.42, §115.51, §115.52, §115.53, §115.54, §115.61, §115.62, §115.63, §115.64, §115.65, §115.67, §115.71, §115.73, §115.78, §115.82, §115.86, §115.87, §115.88, §115.89, §115.211, §115.212, §115.216, §115.221, §115.222, §115.232, §115.233, §115.242, §115.251, §115.252, §115.253, §115.254, §115.261, §115.262, §115.263, §115.264, §115.265, §115.267, §115.271, §115.273, §115.278, §115.282, §115.286, §115.287, §115.288, §115.289
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**Incarcerated Offender Access**  
Yes  No

**FOIA Exempt** Yes  No   
**Attachments** Yes  #5 No

<b>Office of Primary Responsibility</b> DOC PREA Coordinator
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**I. PURPOSE**

This operating procedure provides guidance for the Department of Corrections related to Prison Rape Elimination Act of 2003 (Public Law No. 108-79) (PREA) and standards compliance, and will serve to direct staff to specific PREA related content in other DOC operating procedures.

**II. COMPLIANCE**

This operating procedure applies to all units operated by the Department of Corrections (DOC). Practices and procedures shall comply with applicable State and Federal laws and regulations, Board of Corrections policies and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

**III. DEFINITIONS**

**Abuse** - The improper use or treatment of an individual that directly or indirectly affects an individual negatively; abuse may include, but is not limited to, any improper intentional act that causes physical, mental, or emotional injury to the individual. Mental or emotional injury may be inferred by the nature and circumstances of the act.

**Carnal Knowledge** - The acts of sexual intercourse, cunnilingus, fellatio, analingus, anal intercourse, and animate and inanimate object sexual penetration. (COV §18.2-64.2)

**Fraternization** - Employee association with offenders, or their family members, outside of employee job functions, that extends to unacceptable, unprofessional and prohibited behavior. Examples include non-work related visits between offenders and employees, non-work related relationships with family members of offenders, discussing employee personal matters (marriage, children, work, etc.) with offenders, and engaging in romantic or sexual relationships with offenders. (see Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*)

**Gender Nonconforming** - A person whose appearance or manner does not conform to traditional societal gender expectations (§115.5)

**Intersex** - A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female; intersex medical conditions are sometimes referred to as disorders of sex development. (§115.5)

**Medical Authority** - The lead facility medical practitioner; clinical supervision is provided by the Chief Physician.

**Offender** - An inmate, probationer, parolee, post release supervisee, or other person placed under the

supervision or investigation of the Department of Corrections

**Physical Evidence Recovery Kit (PERK)** - An examination administered by specially trained professional medical practitioners to collect forensic evidence for criminal investigations of sexual assaults and other sexual violations; if possible, PERK examinations should be administered within 72 hours of an alleged incident of sexual intercourse and/ or sodomy.

**Rape** - [\*Prison Rape Elimination Act of 2003, 42 U.S.C. §15609\*](#) defines rape as “the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person, forcibly or against that person’s will; or not forcibly or against the person’s will, where the victim is incapable of giving consent because of his or her youth, or his or her temporary or permanent mental or physical incapacity; or ...the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person achieved through the exploitation of the fear or threat of physical violence or bodily injury.”

Code of Virginia [§18.2-61](#) defines rape as any person who has “sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.”

**Recent Sexual Assault** - A Sexual Assault that is alleged to have occurred within the previous 72 hours or previous 90 hours if there is a possibility of collecting forensic evidence (PERK Kit), as determined by a forensic nurse.

#### **Sexual Abuse (§115.6)**

- **Sexual abuse of an offender by another offender** includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:
  - Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
  - Contact between the mouth and the penis, vulva, or anus
  - Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument
  - Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.
- **Sexual abuse of an offender by a staff member, contractor, or volunteer** includes any of the following acts, with or without consent of the offender:
  - Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
  - Contact between the mouth and the penis, vulva, or anus
  - Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire
  - Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire
  - Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire
  - Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described as sexual abuse in this section
  - Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an offender
  - Voyeurism by a staff member, contractor, or volunteer
  - This definition does not include incidental touching during security searches, medical personnel

engaged in evidence gathering or legitimate medical treatment, or to health care personnel performing body cavity searches in order to maintain security and safety within a facility.

**Sexual Assault** - Any sexual touching or contact that is non-consensual forced or coerced in any manner, including but not limited to rape, sodomy, or unlawful touching. (see COV §18.2-67.10)

**Sexual Assault Hotline** - A toll free telephone number maintained to allow offenders to report sexual abuse or misconduct by dialing #55 from any offender telephone system phone.

**Sexual Harassment** - (1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one offender directed toward another; and (2) Verbal comments or gestures of a sexual nature to an offender 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. (§115.6)

**Sexual Misconduct** - Any behavior or act of a sexual nature directed toward an offender by an employee, volunteer, visitor or agency representative; this includes but is not limited to acts or attempts to commit such acts of sexual assault, sexual abuse, sexual harassment, sexual contact, conduct of a sexual nature or implication, obscenity, and unreasonable invasion of privacy. Sexual misconduct also includes but is not limited to conversations or correspondence that suggests a sexual relationship between an offender and any party mentioned above.

**Special Agent** - A professionally qualified individual certified by the Department of Criminal Justice Services and sworn in as a law-enforcement officer and authorized to conduct lawful criminal and administrative investigations, under the direction of the Chief of the Special Investigations Unit.

**Substantiated Allegation** - An allegation that was investigated and determined to have occurred (§115.5)

**Transgender** - A person whose gender identity (*i.e.*, internal sense of feeling male or female) is different from the person's assigned sex at birth (§115.5)

**Unfounded Allegation** - An allegation that was investigated and determined not to have occurred (§115.5)

**Unsubstantiated Allegation** - An allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred (§115.5)

**Volunteer** - Any citizen of the community who, of his own free will, provides goods or services to the DOC without any financial gain

**Voyeurism (by an offender)** - An invasion of privacy of an offender by another offender, such as intentionally peering at an offender who is showering or using a toilet to perform bodily functions; or requiring an offender to expose his or her buttocks, genitals, or breasts.

**Voyeurism (by a staff member, contractor, or volunteer)** - An invasion of privacy of an offender by staff for reasons unrelated to official duties, such as peering at an offender who is using a toilet in his or her cell to perform bodily functions; requiring an offender to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an offender's naked body or of an offender performing bodily functions. (§115.6)

**Youthful Inmate** - Any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail (§115.5)

#### IV. PROCEDURE

##### A. Legal Basis

1. The Prison Rape Elimination Act of 2003 (Public Law No. 108-79) (PREA) was signed into law in 2003 to "provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape."
  - a. Meeting the objectives of PREA is a priority of the Virginia Department of Corrections (DOC).
  - b. DOC has zero tolerance for offender-on-offender sexual assault or abuse, or sexual misconduct or harassment towards offenders by staff, volunteers and contractors. (4-4281-6; 4-ACRS-6A-05; 2-

CO-1C-11)

- c. This agency strives to provide a safe environment where offenders are free from such assault and sexual misconduct, and makes every effort to detect, prevent, reduce, and punish sexual abuse, assault, harassment, and misconduct.
2. Sexual conduct by employees, volunteers, and contract personnel with offenders is prohibited by [COV §18.2-64.2](#) and [§18.2-67.4](#).
3. This operating procedure applies to all DOC employees, contractors, volunteers, offenders, and all persons who conduct business with the Virginia Department of Corrections.
4. Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*, Operating Procedure 135.1, *Standards of Conduct*, Operating Procedure, 861.1, *Offender Discipline, Institutions* and Operating Procedure 940.4, *Community Corrections Alternative Program* shall also apply.

B. Zero Tolerance Policy

1. DOC prohibits and will not tolerate any fraternization or sexual misconduct by staff, contractors, or volunteers with offenders, or between offenders as defined in this operating procedure. The DOC actively works to prevent, detect, report, and respond to any violation. (§115.11[a], §115.211[a])
2. Any behavior of a sexual nature between employees and offenders is prohibited. Employees are subject to a Group III offense under Operating Procedure 135.1, *Standards of Conduct*, (termination is the presumptive discipline for violations) and may be prosecuted under the [Code of Virginia](#).
  - a. All staff, contractors and volunteers are required to report any suspicion of fraternization or sexual behavior by staff, contractors, or volunteers with offenders.
  - b. Staff with knowledge of such behavior may be subjected to disciplinary action if they fail to report the behavior.
3. Any behavior of a sexual nature by incarcerated offenders is prohibited and subject to disciplinary action per Operating Procedure 861.1 *Offender Discipline, Institutions* and Operating Procedure 940.4, *Community Corrections Alternative Program*, and may result in criminal charges.
4. Consensual sexual activity among offenders will not be permitted. If offenders engage in this type of activity they will be subject to disciplinary action in accordance with Operating Procedure 861.1 *Offender Discipline, Institutions* and Operating Procedure 940.4, *Community Corrections Alternative Program*.
5. When a facility learns that an offender is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the offender. (§115.62, §115.262)
6. Through contracts and Board of Corrections operating standards, facilities and jails that contract for the confinement of DOC offenders shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards. (§115.12[a], §115.212[a]) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards. (§115.12[b], §115.212[b])

C. PREA Coordinators

1. The Director has designated an agency-wide PREA coordinator to work in the office of the Chief of Corrections Operations with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities. (§115.11[b], §115.211[b])
2. Regional level PREA Analysts have been designated to direct facility PREA activities.
3. Each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards. (§115.11[c])

D. Prevention

1. Offender Training

- a. When an offender enters a DOC facility from a jail, the offender shall receive information explaining the DOC's zero-tolerance policy for sexual abuse and sexual harassment and instruction on how to report incidents or suspicions of sexual abuse or sexual harassment. (§115.33[a], §115.233[a]) This information shall be communicated verbally and in writing, in language clearly understood by the offender. (4-4281-1)
    - i. Immediately upon intake to DOC, the offender shall receive an initial PREA training, utilizing the *Preventing Sexual Abuse & Sexual Assault - Trainer Outline - Intake* (see Attachment 2a). The offender will watch Section 1 of the *PREA: What You Need to Know* video and a copy of the *Zero Tolerance for Sexual Abuse and Sexual Harassment* brochure (see Attachment 1, Attachment 1S for Spanish version, or Attachment 1H for hearing impaired) that includes the Sexual Assault Hotline number will be provided.
    - ii. Within 10 days of arrival, the offender shall receive a comprehensive PREA training, utilizing the *Preventing Sexual Abuse & Sexual Assault - Trainer Outline - Comprehensive* (see Attachment 2b) including use of the video *PREA: What You Need to Know*. (§115.33[b], §115.233[a])
    - iii. Facilities shall make arrangements for offenders that speak languages other than English or Spanish, and with offenders who are deaf, visually impaired, or otherwise disabled, as well as to offenders with limited reading skills, to receive training and materials in a language understood by the offender. (§115.33[d] §115.233[c])
    - iv. The offender shall document receiving the *Zero Tolerance for Sexual Abuse and Sexual Harassment* brochure and both of the *Preventing Sexual Abuse and Sexual Assault Trainings* (Intake and Comprehensive) by signing the [Acknowledgement of Preventing Sexual Abuse and Sexual Assault Training](#) 038\_F4 ([Spanish](#) 038\_F4S). The signed *Acknowledgement* will be uploaded as an external document in VACORIS, identified as a *Special Entry Note*. (§115.33[e], §115.233[d])
    - v. It is mandatory that offenders attend both trainings. Offenders refusing shall be charged with Offense Code 200, per Operating Procedure 861.1, *Offender Discipline, Institutions*.
  - b. Information shall include the following topics: (4-4281-1)
    - i. Definition of sexual misconduct/assault, and behaviors prohibited by staff, contractors, volunteers and offenders
    - ii. DOC Zero Tolerance Policy
    - iii. Prevention/ Intervention
    - iv. Self-protection
    - v. Reporting sexual abuse/assault
    - vi. Treatment and counseling
    - vii. Offender telephone sexual abuse Hotline Number #55
  - c. Offenders received from another DOC facility via transfer will be provided a copy of the *Zero Tolerance for Sexual Abuse and Sexual Harassment* brochure (see Attachment 1, Attachment 1S for Spanish version, or Attachment 1H for hearing impaired) that includes the Sexual Assault Hotline number. (§115.233[b]) If the [Acknowledgement of Preventing Sexual Abuse and Sexual Assault Training](#) 038\_F4 ([Spanish](#) 038\_F4S) is not found in VACORIS, the offender shall be provided the comprehensive PREA training as described above for a new intake. (§115.33[c])
  - d. In addition to providing such education, each facility shall ensure that key information is continuously and readily available or visible to offenders through posters, offender handbooks, or other written formats. (§115.33[f] §115.233[e])
2. Employee and Volunteer Training
    - a. All DOC employees who regularly enter facilities shall receive instruction related to the prevention, detection, response, reporting, investigation, and sanctions related to sexual assault/abuse/misconduct/harassment. Training will be provided in accordance with Operating Procedure 350.2, *Training and Development*.
    - b. Employees shall be responsible for understanding and preventing sexually abusive behavior



- through training, awareness of environment, detection of incidents of sexual abuse or behavior that may lead to abuse, and being responsive to offender reporting. (see Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*)
- c. Employees shall be responsible for recognizing indicators of inappropriate relationships and prevention strategies. (see Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*)
  - d. Violations of Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*, will result in disciplinary action outlined in Operating Procedure 135.1 *Standards of Conduct* and possible criminal prosecution.
  - e. Employees shall be aware of methods that encourage offenders to report sexual assault/abuse as specified by Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*.
  - f. All contractors and volunteers with the DOC who have contact (or could have contact) with offenders shall be trained on their responsibilities to prevent, detect, monitor and report allegations and incidents of sexual abuse and sexual harassment of offenders and probationers and will be required to sign Attachment 6, *Prison Rape Elimination Act (PREA) Training Acknowledgement*. (§115.32[a], §115.232[a])
    - i. The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with offenders, but all volunteers and contractors who have contact with offenders shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents. (§115.32[b], §115.232[b])
    - ii. See Operating Procedure 027.1, *Volunteer Program*, for guidance on volunteer training.
    - iii. See Operating Procedure 102.6, *Staff Orientation*, for guidance on contractor training.
    - iv. At minimum, such persons should be provided with a copy of the brochure *A Guide to Maintaining Appropriate Boundaries with Offenders* (see Attachment 4).
3. Employee, Contractor, and Volunteer Screening - A background investigation with a criminal history record investigation (e.g. VCIN) will be conducted on prospective employees, volunteers, and contractors in accordance with Operating Procedure 101.8, *Background Investigation Program* (to be re-issued as Operating Procedure 102.3), to ensure against the hiring of any person with a history of perpetrating sexual assault, abuse, misconduct, or harassment.
4. Youthful inmates (§115.14)
  - a. A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.
  - b. Direct supervision by facility staff is required at all times when a youthful inmate and an adult offender has sight, sound, or physical contact with one another.
  - c. DOC provides specialized housing arrangements for youthful inmates to meet the requirements of this standard.
  - d. Exigent circumstances may require removal to a special housing unit or restrictive housing unit at those institutions operating under the restrictive housing program. .
5. Offender Screening - In accordance with Operating Procedure 730.2, *Mental Health Services: Screening, Assessment, and Classification*, Operating Procedure 810.1, *Offender Reception & Classification*, and Operating Procedure 810.2, *Transferred Offender Receiving and Orientation*, offenders will be screened for potential vulnerability to sexual assault, or tendencies to act out with sexually aggressive behavior at intake, transfer, and as needed while incarcerated.
  - a. Upon receiving an allegation that an offender was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred. (§115.63[a], §115.263[a])

- b. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation. (§115.63[b], §115.263[b])
  - c. The Facility Unit Head shall document that it has provided such notification. (§115.63[c], §115.263[c])
  - d. The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards. (§115.63[d], §115.263[d])
6. Use of Offender Screening Information
- a. The DOC shall use information from the offender's *Classification Assessment* to inform housing, bed, work, education, and program assignments with the goal of keeping separate those offenders at high risk of being sexually victimized from those at high risk of being sexually abusive. (§115.42[a], §115.242[a])
  - b. The DOC shall make individualized determinations about how to ensure the safety of each offender. (§115.42[b], §115.242[b])
  - c. Specialized decisions to provide specific individual accommodations to transgender or intersex offenders and offenders diagnosed by Mental Health staff with Gender Dysphoria shall be made by the Gender Dysphoria Committee.
  - d. In deciding whether to assign a transgender or intersex offender to a facility for male or female offenders, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the offender's health and safety, and whether the placement would present management or security problems. (§115.42[c], §115.242[c])
  - e. Placement and programming assignments for each transgender or intersex offender shall be reassessed at least twice each year to review any threats to safety experienced by the offender. (§115.42[d])
    - i. The Institutional Program Manager (IPM) or designated staff for facilities without an IPM shall pull the *Facility Offender Alert* custom report from VACORIS in the months of January and July in order to complete a six month reassessment of housing and programs for all transgender and intersex offenders.
    - ii. The staff member must meet with the offender to discuss their program and housing needs and to ensure their current assignments are still appropriate.
    - iii. A transgender or intersex offender's own views with respect to his or her own safety shall be given serious consideration. (§115.42[e], §115.242[d])
    - iv. A note shall be placed in VACORIS indicating "six month housing and program assignment reassessment completed" and documenting any necessary action taken regarding changes to housing and programs.
    - v. The IPM or designated staff shall refer the offender to QMHP for follow-up, as needed.
    - vi. All reassessments shall be completed by the last day of the designated months.
  - f. Transgender and intersex offenders shall be given the opportunity to shower separately from other offenders. (§115.42[f], §115.242[e])
  - g. The DOC shall not place lesbian, gay, bisexual, transgender, or intersex offenders in dedicated facilities, units, or wings solely on the basis of such identification or status. (§115.42[g], §115.242[f])
7. Offenders with disabilities and offenders who are limited English proficient. (§115.16, §115.216)
- a. The DOC shall take appropriate steps to ensure that offenders with disabilities (including, for example, offenders who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment.
    - i. Such steps shall include, when necessary to ensure effective communication with offenders

- who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
- ii. The DOC shall ensure that written materials are provided in formats or through methods that ensure effective communication with offenders with disabilities, including offenders who have intellectual disabilities, limited reading skills, or who are blind or have low vision.
  - iii. The DOC is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans With Disabilities Act, 28 CFR 35.164.
- b. The DOC shall take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to offenders who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
  - c. The DOC shall not rely on offender interpreters, offender readers, or other types of offender assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the offender's safety, the performance of first-response duties under, or the investigation of the offender's allegations.

#### E. Detection and Reporting

##### 1. Offender Responsibilities

- a. Offenders shall have the opportunity to report sexual abuse and sexual harassment, retaliation by other offenders or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents to any employee, and will not be required to report only to the immediate point-of-contact line officer (4-4281-7). An offender may report such incidents to any employee, including chaplains, medical, mental health or counseling staff, security staff or administrators, by informing the employee in any manner available, e.g. verbally, through the offender telephone system Sexual Assault Hotline Number #55, or in writing using an *Offender Request* (see Operating Procedure 801.6, *Offender Services*) or *Informal Complaint* (see Operating Procedure 866.1, *Offender Grievance Procedure*). (§115.51[a], §115.251[a])
- b. An offender who is sexually assaulted shall immediately notify staff that a sexual assault has occurred. Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports as an *Internal Incident Report* with PREA checked in the description field in accordance with Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*. (§115.51[c], §115.251[c])
- c. Offenders who observe, are involved in, or have any knowledge or suspicion of a sexual assault or unauthorized relationship shall immediately notify staff.
- d. The agency shall also provide at least one way for offenders to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward offender reports of sexual abuse and sexual harassment to agency officials, allowing the offender to remain anonymous upon request. (§115.51[b], §115.251[b])
- e. The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of offenders. (§115.51[d], §115.251[d])
- f. An offender who makes a report of offender-on-offender sexual violence or employee sexual misconduct or harassment that is determined to be false, may be charged with a disciplinary offense if it is determined the report was made in bad faith following consultation with the PREA Analyst.
  - i. Offenders shall not be charged for reports of sexual abuse made in good faith, based upon a reasonable belief that the alleged conduct occurred. (§115.78[f], §115.278[f])



- ii. Such a report shall not constitute falsely reporting an incident or lying, even if an investigation does not establish sufficient evidence to substantiate the allegation.
  - g. There is no time limit on when an offender may submit a grievance regarding an allegation of sexual abuse. (§115.52[b], §115.252[b]) See Operating Procedure 866.1, *Offender Grievance Procedure* and Operating Procedure 866.2, *Offender Complaints, Community Corrections*.
  - h. Third Party Assistance (§115.52[e], §115.252[e])
    - i. Third parties, including fellow offenders, staff members, family members, attorneys, and outside advocates, shall be permitted to assist offenders in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of offenders.
    - ii. If a third party files such a request on behalf of an offender, 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.
    - iii. If the offender declines to have the request processed on his or her behalf, the agency shall document the offender's decision.
  - i. The Department of Corrections public web site provides contact information on how to report sexual abuse and sexual harassment on behalf of an offender. (§115.54, §115.254)
2. Staff Responsibilities
- a. Any employee, volunteer, or contractor shall immediately report to his or her supervisor or the officer in charge any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the DOC; retaliation against offenders or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. If applicable, an incident report shall be submitted in compliance with Operating Procedure 038.1 *Reporting Serious or Unusual Incidents*. (§115.61[a], §115.261[a])
  - b. Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in operating procedures, to make treatment, investigation, and other security and management decisions. (§115.61[b], §115.261[b])
  - c. Employees, volunteers, and contractors shall report to the supervisor, Organizational Unit Head or officer in charge any suspicion or knowledge of other staff, volunteer or contractor fraternization with offenders. (see Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*)
  - d. If the alleged victim is under the age of 18, aged, incapacitated, or offenders who are receiving services from a DOC Licensed Mental Health Program, the Organizational Unit Head, or Administrative Duty Officer in their absence, is required to immediately report any alleged abuse to the local Department of Social Services. (§115.61[d], §115.261[d])

#### F. Response

- 1. Each facility shall develop a written institutional plan (see [Sexual Assault Response Checklist 038\\_F6](#)) to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership. (§115.65, §115.265)
- 2. Staff Responsibilities
  - a. When an offender reports physical sexual assault or abuse, the supervisor, officer in charge, or Unit Head shall: (see Attachment 5, *Sexual Assault Victim Search/Evidence Collection Protocol*)
    - i. Ensure the victim's safety
    - ii. Attempt to preserve any evidence such as discouraging the victim from showering, eating, brushing teeth, or drinking until after evidence collection

- iii. Ensure the victim is escorted to the facility medical unit as soon as possible to provide appropriate assessment and treatment per *Medical and Nursing Guidelines* and Operating Procedure 720.7, *Emergency Medical Equipment and Care*
  - iv. If there are no qualified medical or mental health practitioners on duty at the time a report of sexual assault or sexual abuse is made, security staff first responders shall take preliminary steps to protect the victim and shall immediately notify the facilities designated medical and mental health practitioner. (§115.82[b], §115.282[b])
- b. Staff first responder duties
- i. Upon learning of an allegation that an offender was sexually abused, the first security staff member to respond to the report shall be required to: (§115.64[a], §115.264[a])
    - (a) Separate the alleged victim and abuser
    - (b) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence
    - (c) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating
    - (d) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating
  - ii. 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. (§115.64[b], §115.264[b])
- c. The individual in charge at the scene of an alleged sexual assault shall take appropriate action necessary to preserve the physical and testimonial evidence until it is released to the responding Special Investigations Unit Investigator.
- d. Supervisor Responsibility after Receiving Report of Abuse
- i. The Organizational Unit Head or Administrative Duty Officer shall immediately initiate necessary action, or verify that action has been taken, to protect all physical evidence and the safety and welfare of the offender. The Organizational Unit Head or Administrative Duty Officer may make a temporary administrative reassignment of the victim and/or perpetrator to protect the offender or offenders involved. An investigation shall be conducted and documented. (4-4281-3)
  - ii. The supervisor or their designee will immediately question the victim to determine the suspect or suspects; where and when the sexual assault occurred; and if facts warrant further investigation. While all available information must be gathered and confirmed, medical assessment and physical evidence collection must not be delayed pending any investigation of the incident.
  - iii. The supervisor shall also:
    - (a) Immediately contact the Special Investigation Unit. (see Operating Procedure 030.4, *Special Investigations Unit*). An investigator will ensure protocol is followed to investigate the sexual abuse, misconduct or assault.
    - (b) Ensure that the victim is immediately escorted to the facility's medical unit area for examination, treatment, and evaluation per Nursing Evaluation Tools and Operating Procedure 720.7, *Emergency Medical Equipment and Care*
    - (c) Ensure that photographs are taken to document any physical evidence such as torn clothing, bruises, abrasions, etc.
    - (d) If there is indication of sexual assault, ensure the victim is transported to the local hospital for further treatment, examination, documentation, collection of forensic evidence (PERK kit), and testing for sexually transmitted diseases. Administrative staff must be careful not to impede an offender's access to health care when needed.

- (e) With the victim's consent, the examination includes the collection of evidence from the victim, using a kit approved by the appropriate authority (PERK kit recommended). Although it is recommended that a PERK kit be collected within 72 hours, it should be used beyond that time whenever there is possibility of evidence remaining.
  - (f) Ensure referral for counseling and mental health service needs if warranted
  - (g) Ensure that upon return from the hospital emergency room, the victim is interviewed for protective custody needs
  - (h) Ensure follow up medical treatment or mental health service needs are arranged
  - (i) Complete an *Incident Report* marked PREA and Confidential for all recent sexual assaults (those occurring within the previous 72-90 hours).
  - (j) Notify the Operations and Logistics Unit (Notification to OLU shall only include the statement "Alleged recent sexual assault at (facility name). If an *Incident Report* has been completed, the OLU should be provided with the *IR Number* from VACORIS). No additional information shall be reported.
  - (k) Notify the PREA Supervisor or PREA Analyst
- iv. If the alleged perpetrator is an employee, he or she shall be reassigned to a post with no offender contact, suspended, or placed on pre-disciplinary leave with pay based on circumstance or situation, pending completion of the investigation as outlined in Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*.
- e. All case records associated with claims of sexual abuse or sexual harassment, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendation for post-release treatment or counseling shall be retained for as long as the alleged abuser is incarcerated or employed by the agency, plus five years. (4-4281-8; §115.71[i], §115.271[i])
3. Investigation
- a. An administrative or criminal investigation conducted in accordance with PREA standards shall be completed for all allegations of sexual abuse and sexual harassment. (§115.22[a], §115.222[a], §115.71[k], §115.271[k])
  - b. Initial investigation may be conducted by the facility investigator.
    - i. Unless it is quickly and definitively determined that the allegation is unfounded, allegations of sexual abuse or sexual harassment shall be referred for investigation to the DOC Special Investigations Unit. (§115.22[b], §115.222[b])
    - ii. The facility shall document all such referrals. (§115.22[b], §115.222[b])
  - c. The Special Investigations Unit (SIU) shall conduct investigations into criminal behavior, procedural or administrative violations, or employee misconduct affecting the operations of the DOC. The Chief of the Special Investigations Unit or a designee shall review the nature of the allegations received to determine if an investigation is warranted.
  - d. Upon notification of an allegation of sexual abuse or misconduct, investigative staff shall follow Operating Procedure 030.4, *Special Investigations Unit*. (§115.22[d], §115.222[d])
  - e. The Special Investigator shall ensure that all evidence collected at the facility and at the hospital (PERK test, evidence collection, etc.) is handled in accordance with Operating Procedure 445.2, *Facility Searches and Inspections*.
  - f. During the investigation of sexual abuse, the facility shall cooperate with SIU and shall endeavor to remain informed about the progress of the investigation. (§115.71[l], §115.271[l])
  - g. Documentation and recording of investigations shall occur according to Operating Procedure 030.4, *Special Investigations Unit*.
  - h. Upon receipt of an allegation of sexual abuse, the facility shall have 30 days to complete an administrative investigation into the allegation.
    - i. If the facility determines that the investigation will not be completed within 30 days, the investigator shall contact the Regional PREA Analyst to discuss an extension.

- ii. Once a determination is made by the Regional PREA Analyst that an extension is needed, periodic updates shall be provided by the facility to the Regional PREA Analyst at an interval of their discretion.
  - iii. If a determination is made that the sexual abuse allegation will be handled by the Special Investigations Unit, the facility investigator shall notify the Regional PREA Analyst.
  - iv. Upon completion of the investigation, a [PREA Investigative Report](#) 038\_F9 shall be completed and submitted to the facility PREA compliance manager who will review the *Investigative Report* to ensure that each required component of the *Investigative Report* is addressed.
  - v. The facility PREA compliance manager will complete a [PREA Investigative Report Checklist](#) 038\_F10, and submit a copy of the [PREA Investigative Report](#) 038\_F9 and [PREA Investigative Report Checklist](#) 038\_F10 to the Facility Unit Head, Regional PREA Analyst, Statewide PREA Coordinator, and PREA Hotline Coordinator within (7) seven working days.
  - vi. The investigative report shall include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings. (§115.71[f(2)], §115.271[f(2)])
- i. Reporting to offenders
- i. Following an investigation into an offender's allegation that he or she suffered sexual abuse in a DOC facility, the investigator in charge shall inform the offender as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. (§115.73[a], §115.273[a])
  - ii. Following an offender's allegation that a staff member has committed sexual abuse against the offender, the DOC shall subsequently inform the offender (see Attachment 3, *Response to Offender PREA Allegation - Sample Letters*) whenever: (§115.73[c], §115.273[c])
    - (a) The DOC has determined that the allegation is unfounded;
    - (b) The DOC has determined that the allegation is unsubstantiated;
    - (c) The staff member is no longer posted within the offender's unit;
    - (d) The staff member is no longer employed at the facility;
    - (e) The DOC learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
    - (f) The DOC learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
  - iii. Following an offender's allegation that he or she has been sexually abused by another offender, the agency shall subsequently inform the alleged victim (see Attachment 3, *Response to Offender PREA Allegation - Sample Letters*) whenever: (§115.73[d], §115.273[d])
    - (a) The DOC has determined that the allegation is unfounded;
    - (b) The DOC has determined that the allegation is unsubstantiated;
    - (c) The DOC learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
    - (d) The DOC learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
  - iv. All such notifications or attempted notifications shall be documented and sent to the offender in the same manner as legal mail (See Operating Procedure 803.1, *Offender Correspondence* for legal mail requirements). (§115.73[e], §115.273[e])
  - v. DOC's obligation to report under this standard shall terminate if the offender is released from DOC custody. (§115.73[f], §115.273[f])
4. Offender Victim Advocate
- a. The DOC shall attempt to make available to the victim a victim advocate from a rape crisis center. (§115.21[d], §115.221[d])
  - b. 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. (§115.21[e], §115.221[e]) A qualified DOC staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general. (§115.21[h], §115.221[h])

- c. Offender access to outside confidential support services
  - i. Offenders may contact their facility PREA Compliance Manager, Unit Manager, or Mental Health staff for contact information for access to outside victim advocates for emotional support services related to sexual abuse. The facility shall enable reasonable communication between offenders and these organizations and agencies, in as confidential a manner as possible. (§115.53[a], §115.253[a])
  - ii. The facility shall inform offenders, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws. (§115.53[b], §115.253[b])
  - iii. The DOC maintains a Memorandum of Understanding (MOU) with a community service provider who is able to provide offenders with access to confidential emotional support services related to sexual abuse. A copy of this agreement is available from the PREA Coordinator. (§115.53[c], §115.253[c])
5. Protection against Retaliation
  - a. All staff and offenders who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations shall be protected from retaliation by other offenders or staff. (§115.67[a], §115.267[a])
    - i. Allegations of retaliation shall be reported through the same methods as available for reporting sexual abuse or sexual harassment.
    - ii. Such allegations shall be investigated as for an allegation of sexual abuse.
  - b. The DOC shall employ multiple protection measures, such as housing changes or transfers for offender victims or abusers, removal of alleged staff or offender abusers from contact with victims, and emotional support services for offenders or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations. (§115.67[b], §115.267[b])
  - c. For at least 90 days following a report of sexual abuse, the DOC shall monitor the conduct and treatment of offenders or staff who reported the sexual abuse and of offenders who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by offenders or staff, and shall act promptly to remedy any such retaliation.
    - i. Items to be monitored include any offender disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff.
    - ii. The DOC shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need. (§115.67[c], §115.267[c])
  - d. In the case of offenders, such monitoring shall also include periodic status checks. (§115.67[d], §115.267[d])
  - e. If any other individual who cooperates with an investigation expresses a fear of retaliation, the DOC shall take appropriate measures to protect that individual against retaliation. (§115.67[e], §115.267[e])
  - f. The DOC's obligation to monitor shall terminate if it determines that the allegation is unfounded. (§115.67[f], §115.267[f])
6. The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. (§115.86[a], §115.286[a]) The sexual abuse incident review will be documented on a [PREA Report of Incident Review](#) 038\_F11. The facility shall complete a *PREA Report of Incident Review* at the conclusion of every investigation into an allegation of sexual



harassment where the allegation has been determined to be substantiated. (see Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*)

- a. The PREA Compliance Manager should submit the [PREA Report of Incident Review](#) 038\_F11 to the Regional PREA Analyst for review and approval, prior to submission by the PREA Compliance Manager to the Regional Office, within 14 calendar days of completion of the investigation.
- b. If the facility determines that the [PREA Report of Incident Review](#) 038\_F11 will not be completed within 14 calendar days, the Regional PREA Analyst shall be contacted to discuss an extension.

#### G. Management of Sexual Aggressors

1. Any offender designated as a High Risk Sexual Aggressor (HRSA) by the *Classification Assessment* shall be referred to Mental Health staff for assessment and follow-up in accordance with Operating Procedure 730.2, *Mental Health Services: Screening, Assessment, and Classification*.
  - a. Mental Health staff will complete an annual follow-up to monitor and assess current level of functioning, risk, and needs for those offenders who are designated HRSA.
  - b. An offender's risk level will be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the offender's risk of sexual victimization or abusiveness.
  - c. The QMHP will meet with the offender upon his/her request, upon referral by the staff, and/or annually to offer available services, encourage participation in relevant programming, and monitor progress for a period of no less than 1 year.
2. An aggressor legally convicted of a sexual assault while incarcerated will be considered a sex offender by statute and subject to the requirement of the Sex Offender Registry.
3. Offenders who are convicted of sexual assault should be given the opportunity to participate in sex offender treatment programs offered by the DOC, consistent with resource availability and facility security considerations.

#### H. Data Collection

1. The DOC 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. (§115.87[a], §115.287[a])
2. The agency shall aggregate the incident-based sexual abuse data at least annually. (§115.87[b], §115.287[b])
3. 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. (§115.87[c], §115.287[c])
4. The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews. (§115.87[d], §115.287[d])
5. The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its offenders. (§115.87[e], §115.287[e])
6. Upon request, the DOC shall provide all such data from the previous calendar year to the Department of Justice no later than June 30. (§115.87[f], §115.287[f])
7. Data Review for Corrective Action
  - a. The DOC shall review data collected and aggregated pursuant to this operating procedure in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: (§115.88[a], §115.288[a])
    - i. Identifying problem areas
    - ii. Taking corrective action on an ongoing basis

- iii. Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole
  - b. Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the DOC's progress in addressing sexual abuse. (§115.88[b], §115.288[b])
  - c. The DOC report shall be approved by the Director and made readily available to the public through its website. (§115.88[c], §115.288[c])
  - d. The DOC 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. (§115.88[d], §115.288[d])
8. Data storage, publication, and destruction
- a. The DOC shall ensure that data collected of allegations of sexual abuse at facilities under its direct control are securely retained. (§115.89[a], §115.289[a])
  - b. The DOC shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website. (§115.89[b], §115.289[b])
  - c. Before making aggregated sexual abuse data publicly available, the DOC shall remove all personal identifiers. (§115.89[c], §115.289[c])
  - d. The DOC shall maintain this sexual abuse data collected for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise. (§115.89[d], §115.289[d])

## V. REFERENCES

28 CFR Part 115, National Standards To Prevent, Detect, and Respond to Prison Rape

*Medical and Nursing Guidelines*

Operating Procedure 027.1, *Volunteer Program*

Operating Procedure 030.4, *Special Investigations Unit*

Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*

Operating Procedure 101.8, *Background Investigation Program* (to be re-issued as Operating Procedure 102.3)

Operating Procedure 102.6, *Staff Orientation*

Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*

Operating Procedure 135.1, *Standards of Conduct*

Operating Procedure 350.2, *Training and Development*

Operating Procedure 445.2, *Facility Searches and Inspections*

Operating Procedure 720.7, *Emergency Medical Equipment and Care*

Operating Procedure 730.2, *Mental Health Services: Screening, Assessment, and Classification*

Operating Procedure 801.6, *Offender Services*

Operating Procedure 803.1, *Offender Correspondence*

Operating Procedure 810.1, *Offender Reception & Classification*

Operating Procedure 810.2, *Transferred Offender Receiving and Orientation*

Operating Procedure 861.1, *Offender Discipline, Institutions*

Operating Procedure 866.1, *Offender Grievance Procedure*

Operating Procedure 866.2, *Offender Complaints, Community Corrections*

Operating Procedure 940.4, *Community Corrections Alternative Program*

[Department of State Police Sex Offender and Crimes Against Minors Registry](#)

VI. FORM CITATIONS

[Acknowledgement of Preventing Sexual Abuse and Sexual Assault Training](#) 038\_F4 [Spanish](#) 038\_F4S

[Sexual Assault Response Checklist](#) 038\_F6

[PREA Investigative Report](#) 038\_F9

[PREA Investigative Report Checklist](#) 038\_F10

[PREA Report of Incident Review](#) 038\_F11

VII. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years from the effective date.

*The office of primary responsibility reviewed this operating procedure in May 2017 and no changes are needed at this time.*

*The office of primary responsibility reviewed this operating procedure in May 2018 and no changes are needed at this time.*

*Signature Copy on File*

*3/4/16*

A. David Robinson, Chief of Corrections Operations

Date