



# Virginia Department of Corrections

## Authority, Inspection, and Auditing

### Operating Procedure 038.3

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

#### Authority:

Directive 038, *Incident Reporting*

**Effective Date:** September 1, 2022

**Amended:** 1/3/23, 5/26/23

#### Supersedes:

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**Access:**  Restricted  Public  Inmate

#### ACA/PREA Standards:

5-ACI-3D-09, 5-ACI-3D-11, 5-ACI-3D-14,  
5-ACI-3D-15, 5-ACI-3D-16; 4-ACRS-6A-05,  
2-CO-1C-11; §115.11, §115.12, §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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### REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

### COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, American Correctional Association (ACA) standards, Prison Rape Elimination Act (PREA) standards, and DOC directives and operating procedures.

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## DEFINITIONS

**Abuse** - The improper act or treatment of an individual that directly or indirectly causes physical, financial, mental, or emotional injury to the individual. Mental or emotional injury may be inferred by the nature and/or circumstances of the act.

**Auxiliary Aids and Services** - Assistance provided through services, equipment, or modifications to provide equal access for disabled or impaired individuals to activities, programs, and privileges, these aids and services may include, but are not limited to:

- Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments
- Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals who are blind or have visual impairments
- Functional devices to increase mobility including but not limited to walkers, canes, crutches, and manual or powered wheelchairs for individuals with mobility impairments
- Acquisition or modification of equipment or devices and other similar services and actions

**Carnal Knowledge** - The acts of sexual intercourse, cunnilingus, fellatio, anallingus, anal intercourse, and animate and inanimate object sexual penetration; see COV §18.2-64.2, *Carnal knowledge of a person detained or arrested by a law-enforcement officer or an inmate, parolee, probationer, juvenile detainee, or pretrial defendant or posttrial offender; penalty.*

**Community Corrections Alternative Program (CCAP)** - A system of residential facilities operated by the Department of Corrections to provide evidence-based programming as a diversionary alternative to incarceration in accordance with COV §53.1-67.9, *Establishment of community corrections alternative program; supervision upon completion.*

**Discharge (Facility Release)** - The release of an inmate or probationer/parolee from a facility due to satisfying the requirements for release from that facility; discharge may be due to parole, good time release, pardon, court order, completion of Community Corrections Alternative Program or other reasons. Discharge may be to the community with or without probation/parole/post-release obligations or discharge may be to law enforcement authorities for other legal obligations or deportation.

**Fraternalization** - Employee association with inmates/probationers/parolees, their family members, or close friends of inmates/probationers/parolees, outside of employee job functions, that extends to unacceptable, unprofessional and prohibited behavior; examples include non-work related visits between inmates/probationers/parolees and employees, non-work related relationships with family members or close friends of inmates/probationers/parolees, connections on social media, discussing employee personal matters (marriage, children, work, etc.) with inmates/probationers/parolees, and engaging in romantic or sexual relationships with inmate/probationer/parolees; see Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders.*

**Inmate** - A person who is incarcerated in a Virginia Department of Corrections facility or who is Virginia Department of Corrections responsible to serve a state sentence.

**Intern** - An individual who is undergoing supervised practical training and is serving an internship to advance their area of study; without compensation from the DOC; interns receiving compensation from the DOC are considered employees and will be managed in accordance with their employment status.

**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.

**LGBTI** - An acronym encompassing Lesbian, Gay, Bisexual, Transgender, and Intersex inmates.

**Limited English Proficiency (LEP) Inmates and Probationers/Parolees** - Individuals whose primary language is not English and who have a limited ability to read, write, speak or understand English.

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



**Medical Practitioner** - A Physician, Nurse Practitioner, or Physician's Assistant.

**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 120 hours of an alleged incident of sexual intercourse and/or sodomy.

**Primary Language** - The language in which an individual is most effectively able to communicate.

**Probationer/Parolee** - A person who is on community supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of Courts, paroling authorities, the Virginia Department of Corrections, or other release authority; this includes post release supervision and Community Corrections Alternative Programs.

**Program Visitor** - A citizen volunteer who provides a one-time, on call or single task voluntary service.

**Mental Health Clinician** - An individual with at least a Master's degree in psychology, social work, or relevant human services field with knowledge, training, and skills in the diagnosis and treatment of mental disorders, which may include a Psychiatric Provider, Social Worker, or Registered Nurse.

**Rape** - 34 U.S.C. §30309, *Definitions* 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.” COV §18.2-61, *Rape* 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 120 hours.

#### **Sexual Abuse**

- **Sexual abuse of an inmate or CCAP probationer/parolee by another inmate or CCAP probationer/parolee** 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 inmate or CCAP probationer/parolee by employees, contractors, volunteers or interns** includes any of the following acts, with or without consent of the inmate or probationer/parolee:
  - 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, volunteer or intern has the intent to abuse, arouse, or gratify sexual desire
  - Any attempt, threat, or request by a staff member, contractor, volunteer or intern to engage in the activities described as sexual abuse in this section



- Any display by a staff member, contractor, volunteer or intern of their uncovered genitalia, buttocks, or breast in the presence of an inmate or CCAP probationer/parolee
- Voyeurism by a staff member, contractor, volunteer, or intern
- 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, *General definitions*.

**Sexual Assault Hotline** - A toll free telephone number maintained to allow inmates and CCAP probationers/parolees to report sexual abuse or misconduct by dialing #55 from any inmate and CCAP probationer/parolee 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 inmate or CCAP probationer/parolee directed toward another; and (2) Verbal comments or gestures of a sexual nature to an inmate or CCAP probationer/parolee by a staff member, contractor, volunteer, or intern including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures, including but not limited to the intentional or repeated use of a gendered pronoun or form of address that does not reflect the gender identity of the inmate or CCAP probationer/parolee being addressed.

**Sexual Misconduct** - Any behavior or act of a sexual nature directed toward an inmate/probationer/parolee or an employee by an employee, volunteer, contractor, 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 includes but is not limited to conversations or correspondence that suggests a sexual relationship between an inmate/probationer/parolee and any party mentioned above. A violation of Operating Procedure 135.3, *Standards of Ethics and Conflict of Interest*, relating to consensual personal relationships/sexual harassment in the workplace may also constitute sexual misconduct.

**Substantiated Allegation** - An allegation that was investigated and determined to have occurred.

**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.

**Unfounded Allegation** - An allegation that was investigated and determined not to have occurred.

**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.

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

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

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



## PURPOSE

This operating procedure provides guidance on the requirements of the Prison Rape Elimination Act (PREA) of 2003 and compliance with the *PREA National Standards* in the Department of Corrections (DOC).

## PROCEDURE

- I. Prison Rape Elimination Act (PREA)
  - A. The Prison Rape Elimination Act (PREA) signed into law in 2003 established the requirement for correctional facilities to adopt national standards for the prevention, detection, and reduction of sexual abuse and sexual harassment of individuals in confinement; see 28 CFR Part 115, *Prison Rape Elimination Act National Standards* and 34 U.S.C. Chapter 303, *Prison Rape Elimination*
  - B. This operating procedure applies to all staff, contractors, volunteers, interns, inmates, CCAP probationers/parolees, and all persons who conduct business with the Virginia Department of Corrections (DOC).
  - C. Compliance with PREA is a priority for the DOC and staff strive to provide a safe environment where inmates and probationers/parolees are free from sexual misconduct and staff make every effort to detect, prevent, and reduce sexual abuse, assault, harassment, and misconduct.
    1. The PREA/ADA Supervisor is the DOC PREA Coordinator with sufficient time and authority to develop, implement, and oversee DOC efforts to comply with the *PREA National Standards* in all DOC facilities. (§115.11[b], §115.211[b])
    2. Regional PREA Analysts oversee facility efforts to comply with the *PREA National Standards* and directs facility PREA activities within their assigned Region.
    3. A PREA Compliance Manager designated by the Facility Unit Head, with sufficient time and authority coordinates the facility's efforts to comply with the *PREA National Standards*. (§115.11[c])
  - D. The DOC has a Zero Tolerance Policy that strictly prohibits staff, contractor, volunteer, and intern fraternization and sexual misconduct with inmates and probationers/parolees, or between inmates and CCAP probationers/parolees. The DOC actively works to prevent, detect, report, and respond to any violation. (5-ACI-3D-14; §115.11[a], §115.211[a])
    1. All staff, contractors, volunteers, and interns must provide a positive role model for inmates and probationers/parolees, promote a safe, secure, healing environment, and observe the rules of conduct when interacting with inmates and probationers/parolees; see Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*. (5-ACI-3D-14)
      - a. The DOC prohibits any behavior of a sexual nature such as abuse, assault, harassment, misconduct between staff, contractors, volunteers, or interns and inmates or CCAP probationers/parolees, regardless of consensual status. (4-ACRS-6A-05; 2-CO-1C-11)
      - b. Staff must immediately report any allegation of staff, contractor, volunteer, and intern fraternization with an inmate or CCAP probationer/parolee to the Regional PREA Analyst.
      - c. Staff, contractor, volunteer, and intern sexual conduct with an inmate or CCAP probationer/parolee is a violation of COV §18.2-64.2, *Carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial or post trial offender*; penalty and §18.2-67.4, *Sexual battery*; COV violations are subject to criminal prosecution.
      - d. Staff are further subject to a Group III offense; see Operating Procedure 135.1, *Standards of Conduct*. Termination is the presumptive discipline for all violations.
        - i. All violations of Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*, will result in disciplinary action; see Operating Procedure 135.1, *Standards of Conduct*.
        - ii. Staff with knowledge of staff, contractor, volunteer, or intern fraternization or sexual



- misconduct with inmates or probationers/parolees have a duty to report and any staff member who fails to report such behavior may be subject to disciplinary action.
- e. The DOC will prohibit any contractor, volunteer, or intern who engages in sexual abuse of an inmate or CCAP probationer/parolee from further contact with inmates and probationers/parolee.
    - i. The DOC PREA Coordinator must report all contractors, volunteers, and interns who sexually abuse an inmate or CCAP probationer/parolee to the relevant licensing bodies and to law enforcement agencies unless the activity was clearly not criminal.
    - ii. The DOC may prohibit a contractor, volunteer, or intern from further contact with inmates and CCAP probationers/parolees for any other violation of a sexual nature.
2. Contracts and Contract Renewals
- a. Through contracts and Board of Corrections operating standards, all new contracts and contract renewals with jails and other non-DOC facilities for the confinement of inmates or probationers/parolees must include the entity's obligation to adopt and comply with the PREA standards; see Operating Procedure 260.1, *Procurement of Goods and Services*. (§115.12[a], §115.212[a])
  - b. Any new contract or contract renewal will provide for DOC contract monitoring to ensure that the contractor is complying with the PREA standards. (§115.12[b], §115.212[b])
3. DOC has zero tolerance for inmate-on-inmate and CCAP probationer/parolee-on-CCAP probationer/parolee sexual harassment, assault, or abuse. (4-ACRS-6A-05; 2-CO-1C-11)
- a. Sexual harassment, assault, and abuse by inmates and CCAP probationers/parolees is prohibited and subject to disciplinary action and may, result in criminal charges; see Operating Procedure 861.1, *Offender Discipline, Institutions*, and Operating Procedure 940.4, *Community Corrections Alternative Program*.
  - b. Consensual sexual activity among inmates or CCAP probationers/parolees is prohibited. Inmates and CCAP probationers/parolees who engage in this type of activity will be subject to disciplinary action; see Operating Procedure 861.1 *Offender Discipline, Institutions*, and Operating Procedure 940.4, *Community Corrections Alternative Program*.

## II. Prevention

### A. Inmate and CCAP Probationer/Parolee Training

#### 1. Zero Tolerance Policy

- a. All inmates and CCAP probationers/parolees newly received into the DOC will receive information explaining the DOC's Zero Tolerance Policy for sexual abuse and sexual harassment and instructions on how to report incidents or suspicions of sexual abuse or sexual harassment. (5-ACI-3D-09; §115.33[a], §115.233[a])
- b. The information provided to newly received inmates and CCAP probationers/parolees must include the following topics: (5-ACI-3D-09)
  - i. Definition of sexual misconduct/assault and the behaviors prohibited by staff, contractors, volunteers, interns, inmates, and CCAP probationers/parolees
  - ii. DOC Zero Tolerance Policy
  - iii. Prevention/Intervention
  - iv. Self-protection
  - v. Reporting sexual abuse/assault/harassment
  - vi. Treatment and counseling
  - vii. Inmate and CCAP probationer/parolee sexual abuse hotline number #55
  - viii. Free emotional support through sexual abuse hotline number #55, option 2
- c. Staff will communicate this information verbally and in writing.

#### 2. Intake PREA Training



- a. On the day of arrival, inmates and CCAP probationers/parolees will receive an initial intake PREA training; see Attachment 2a, *Preventing Sexual Abuse & Sexual Assault - Trainer Outline (Intake)*. (5-ACI-3D-09)
  - b. The inmate or CCAP probationer/parolee will:
    - i. Watch Section 1 of the *PREA: What You Need to Know* video
    - ii. Receive a copy of the *Zero Tolerance for Sexual Abuse and Sexual Harassment*; see Attachment 1E, Attachment 1H for Hearing Impaired, or Attachment 1S for Spanish Version.
    - iii. Sign the *Preventing Sexual Abuse and Assault Training Acknowledgement 038\_F4 (Spanish 038\_F4S)* to document completion of the *Preventing Sexual Abuse and Sexual Assault Training (Intake)* and the *Zero Tolerance for Sexual Abuse and Sexual Harassment* attachment.
  3. Comprehensive PREA Training
    - a. Within 10 days of arrival, inmates and CCAP probationers/parolees will receive a comprehensive PREA training; see Attachment 2b, *Preventing Sexual Abuse & Sexual Assault - Trainer Outline (Comprehensive)*. (5-ACI-3D-09)
    - b. The inmate or CCAP probationer/parolee will: (§115.33[b], §115.233[a])
      - i. Watch the video *PREA: What You Need to Know*
      - ii. Sign the *Preventing Sexual Abuse and Assault Training Acknowledgement 038\_F4 (Spanish 038\_F4S)* to document receiving the *Preventing Sexual Abuse and Sexual Assault Training (Comprehensive)*. (§115.33[e], §115.233[d])
    - c. Staff will upload the signed *Preventing Sexual Abuse and Assault Training Acknowledgement 038\_F4 (Spanish 038\_F4S)* in VACORIS as a *Special Entry* note to document inmate or CCAP probationer/parolee completion of the required training.
      - i. Staff must upload the signed *Preventing Sexual Abuse and Assault Training Acknowledgement* on the same day that the inmate or CCAP probationer/parolee completes the comprehensive training.
      - ii. Once uploaded, staff do not need to retain the original *Preventing Sexual Abuse and Assault Training Acknowledgement*.
  4. PREA Training at Transfer (§115.33[c], §115.233[b])
    - a. Staff will give each inmate received from another DOC institution a copy of the *Zero Tolerance for Sexual Abuse and Sexual Harassment* which includes the sexual assault/emotional support hotline number; see Attachment 1E, Attachment 1H (Hearing Impaired), or Attachment 1S (Spanish)
    - b. If the signed *Preventing Sexual Abuse and Assault Training Acknowledgement 038\_F4 (Spanish 038\_F4S)* is not available in VACORIS, staff must provide the inmate with the comprehensive PREA training as described for an inmate and CCAP probationer/parolee newly received into the DOC.
  5. It is mandatory that all inmates and CCAP probationers/parolees attend both the intake and the comprehensive PREA training. Staff, in institutions, will submit a disciplinary offense report for Disciplinary Offense Code 200, *Refusing to work or refusing to attend school or other program assignments mandated by procedure or by law, or failure to perform work or program assignment as instructed* for any inmate who refuses to attend; see Operating Procedure 861.1, *Offender Discipline, Institutions*.
  6. In addition to providing inmates and CCAP probationers/parolees with education and training on preventing sexual abuse and assault, staff will ensure that key information is continuously and readily available or visible to inmates and CCAP probationers/parolees through posters, orientation manuals, or other written formats. (§115.33[f], §115.233[e])
- B. Disabled and LEP Inmates and CCAP Probationers/Parolees (§115.16, §115.216)
1. Staff must take appropriate steps to ensure that inmates and CCAP probationers/parolees with a



disability have an equal opportunity to participate in or benefit from all aspects of the DOC's efforts to prevent, detect, and respond to sexual abuse and sexual harassment.

- a. Inmate and CCAP probationer/parolee disabilities include but are not limited to deaf or hard of hearing, blind or have low vision, and inmates and CCAP probationers/parolees with intellectual, psychiatric, or speech disabilities or limited reading skills.
  - b. Staff will arrange for inmates and CCAP probationers/parolees to receive training and materials using auxiliary aids and services so that the inmate or CCAP probationer/parolee understands the information; see Operating Procedure 801.3, *Managing Offenders with Disabilities*. (§115.33[d], §115.233[c])
  - c. Staff will provide inmates and CCAP probationers/parolees with access to interpreters who can effectively, accurately, and impartially interpret, both receptively and expressively, using any specialized vocabulary, when necessary, to ensure effective communication with inmates and CCAP probationers/parolees who are deaf or hard of hearing.
  - d. Staff should utilize Video Remote Interpreting (VRI) to communicate effectively with deaf inmates and CCAP probationers/parolees when American Sign Language interpreters are not available on-site.
  - e. Staff will provide written materials in formats or through methods that ensure effective communication with inmates and CCAP probationers/parolees with disabilities, including those who have intellectual disabilities, limited reading skills, and who are blind or have low vision.
  - f. Staff are not required to take any action that they 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, *Nondiscrimination on the Basis of Disability in State and Local Government Services, Duties*.
2. Staff must take reasonable steps to ensure LEP inmates and LEP CCAP probationers/parolees are afforded meaningful access to all aspects of the DOC's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to include providing interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
    - a. Staff must arrange for LEP inmates and CCAP probationers/parolees to receive training and materials in their primary language so that the inmate and CCAP probationer/parolee understands the information; see Operating Procedure 801.7, *Language Services for Limited English Proficiency*. (§115.33[d], §115.233[c])
    - b. Staff cannot rely on inmate and CCAP probationer/parolee interpreters, readers, or other types of inmate and CCAP probationer/parolee assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's or CCAP probationer's/parolee's safety, the performance of first-response duties, or the investigation of the inmate's or CCAP probationer's/parolee's allegations.
  3. Staff should consult with their PREA Compliance Manager and Regional PREA Analyst, as necessary, to obtain information on available resources to provide equal opportunity and meaningful access to inmates and CCAP probationers/parolees with disabilities and inmates and CCAP probationers/parolees who are LEP.

### C. Staff, Volunteer, Intern Training

#### 1. Staff Training

- a. All staff are trained on the prevention, detection, response, reporting, investigation, and disciplinary sanctions related to sexual abuse/assault/misconduct/harassment; see Operating Procedure 350.2, *Training and Development*.
- b. Staff training includes but is not limited to:
  - i. Prevention strategies



- ii. Recognizing indicators of inappropriate relationships
  - iii. First responder duties
  - iv. Dynamics of sexual abuse/harassment in confinement
  - v. Professional searches
  - vi. Professional interactions with Lesbian, Gay, Bisexual, Transgender/Transsexual, and Intersex (LGBTI) inmates and probationer/parolees
  - vii. Use of gender neutral language and pronouns when interacting with inmates and CCAP probationers/parolees
  - viii. Duty to report any knowledge or allegations or incidents of sexual abuse, sexual assault, sexual harassment, and sexual misconduct
- c. Staff by complying with DOC training and applicable operating procedures, maintaining an awareness of their environment, detecting incidents of sexual abuse or behavior that may lead to abuse, and being responsive to inmate and CCAP probationer/parolee reporting assist in the prevention of sexually abusive behavior.

## 2. Contractors, Volunteers, and Interns

- a. All DOC contractors, volunteers, and interns who have or could have physical, visual, or auditory contact with inmates and CCAP probationers/parolees are trained on their responsibilities to prevent, detect, monitor, and report allegations and incidents of inmate and CCAP probationer/parolee sexual abuse and sexual harassment . (§115.32[a], §115.232[a])
- b. The level and type of training provided to contractors, volunteers, and interns is based on the services provided and the level of contact they have with the inmates and CCAP probationers/parolees. (§115.32[b], §115.232[b])
  - i. At minimum, staff will notify contractors, volunteers, and interns of the DOC's Zero Tolerance Policy regarding sexual abuse and sexual harassment and will inform them on how to report such incidents.
  - ii. Staff will give each contractor, volunteer, and intern a copy of Attachment 4, *A Guide to Maintaining Appropriate Boundaries with Inmates or CCAP Probationers/Parolees for Contractors and Volunteers of the Virginia Department of Corrections*.
  - iii. Contractors, volunteers, and interns are required to sign Attachment 6, *Prison Rape Elimination Act (PREA) Training Acknowledgement*.
- c. Additional guidance on contractor, volunteer, and intern training can be found in Operating Procedure 027.1, *Volunteer Program and Internship Program* and Operating Procedure 102.6, *Staff Orientation*.

## 3. Background Investigations

Staff will perform a Virginia Criminal Information Network (VCIN) on all current and prospective staff, contractors, volunteers, and interns in accordance with Operating Procedure 102.3, *Background Investigation Program*.

## D. Inmate and CCAP Probationer/Parolee Screening and Use of Screening Information

- 1. Staff, utilizing the results of the *Classification Assessment* and available inmate and CCAP probationer/parolee records, will screen all inmates and CCAP probationers/parolees for potential vulnerabilities or tendencies to act out with sexually aggressive or other violent behavior, at intake, transfer, and as needed; see Operating Procedure 810.1, *Inmate Reception and Classification*, Operating Procedure 810.2, *Transferred Inmate Receiving and Orientation*, and Operating Procedure 940.4, *Community Corrections Alternative Program*.
- 2. Staff will use information from the *Classification Assessment* to determine appropriate housing, bed, work, education, and program assignments with the goal of keeping separate those inmates or CCAP probationers/parolees at high risk of being sexually victimized from those at high risk of being sexually abusive. (§115.42[a], §115.242[a])

- a. Staff will make an individualized determination on how to ensure the safety of each inmate or CCAP probationer/parolee. (§115.42[b], §115.242[b])
  - b. When deciding whether to assign a transgender or intersex inmate or CCAP probationer/parolee to a male or female facility and when making other housing and programming assignments, staff will take into consideration whether an assignment would ensure the inmate's or CCAP probationer's/parolee's health and safety, and whether the assignment would present management or security problems. (§115.42[c], §115.242[c])
    - i. A transgender or intersex inmate's or CCAP probationer's/parolee's own views with respect to their own safety will be given serious consideration. (§115.42[e], §115.242[d])
    - ii. Lesbian, gay, bisexual, transgender, or intersex inmates and CCAP probationers/parolees will not be placed in a dedicated facility, housing unit, or wing based solely on their identification or status. (§115.42[g], §115.242[f])
    - iii. Transgender and intersex inmates and CCAP probationers/parolees must be given the opportunity to shower separately from others. (§115.42[f], §115.242[e])
    - iv. The Gender Dysphoria Committee will make all specialized decisions when providing inmates and CCAP probationers/parolees who are transgender, intersex or diagnosed with Gender Dysphoria with specific individual accommodations.
3. Staff, in institutions, must reassess each transgender and intersex inmate's housing and programming assignments at least twice each year to review any threats to safety the inmate experienced. (§115.42[d])
- a. The Institutional Program Manager (IPM) or designated staff at institutions without an IPM will print the *Facility Offender Alert* custom report from VACORIS in January and July to ensure staff complete the six month housing and programs reassessment for all transgender and intersex inmates.
  - b. The staff member must meet with the inmate to discuss their housing and program needs and verify their current assignments are still appropriate.
  - c. The staff member will place a note in VACORIS stating the "six month housing and program assignment reassessment completed" and documenting any necessary changes made to the inmate's housing and programs.
  - d. The IPM or designated staff member will refer the inmate to a Mental Health Clinician for follow-up, as needed.
  - e. Staff must complete all reassessments the last day of January and July.

#### E. Management of Sexual Aggressors

1. Any inmate or CCAP probationer/parolee designated as a High Risk Sexual Aggressor (HRSA) will be referred to a Mental Health Clinician for assessment and follow-up; see Operating Procedure 730.2, *Mental Health and Wellness Services: Screening, Assessment, and Classification*.
  - a. A Mental Health Clinician will follow-up annually with each inmate and CCAP probationer/parolee designated as a HRSA to monitor and assess their current level of functioning, risks, and needs.
  - b. A Mental Health Clinician will reassess an inmate's or CCAP probationer's/parolee's risk level when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that impacts the inmate's or CCAP probationer's/parolee's risk of sexual abusiveness.
  - c. The Mental Health Clinician will meet with the inmate or CCAP probationer/parolee upon their 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 not less than one 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; see Operating Procedure 735.1, *Sex Offender and Crimes against Minors Registry*.



3. Staff should provide inmates convicted of sexual assault the opportunity to participate in sex offender treatment programs, consistent with resource availability and facility security considerations; see Operating Procedure 735.2, *Sex Offender Treatment Services (Institutions)*.)

### III. Detection and Reporting

#### A. Inmate and CCAP Probationer/Parolee Responsibilities

1. Inmates and CCAP probationers/parolees can report sexual abuse and sexual harassment, inmate and CCAP probationer/parolee retaliation for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents to any staff member including chaplains, medical, mental health or counseling staff, security staff, or administrators. (5-ACI-3D-15, §115.51[a], §115.251[a])
  - a. Any inmate or CCAP probationer/parolee who is sexually assaulted should immediately notify staff that the sexual assault occurred.
  - b. Any inmate or CCAP probationer/parolee who observes, is involved in, or has any knowledge or suspicion of a sexual assault or an unauthorized relationship should immediately notify staff.
  - c. Inmates and CCAP probationers/parolees will not be required to report sexual assault to the immediate point-of-contact line officer only; an inmate or CCAP probationer/parolee may report a sexual assault to any staff member using any available method to include: (§115.51[a], §115.251[a])
    - i. Verbally in person to a staff member or through another third party who can assist the inmate or CCAP probationer/parolee in filing requests for administrative remedies
    - ii. Verbally through the inmate and CCAP probationer/parolee telephone system sexual assault hotline number #55
    - iii. Written using a *Facility Request* 801\_F3 or other type of written document; see Operating Procedure 801.6, *Inmate and CCAP Probationer/Parolee Services*.
      - (a) Inmates can submit a written report through the Offender Grievance Procedure using the *Written Complaint* 866\_F3, *Regular Grievance* 866\_F1, or *Emergency Grievance* 866\_F4; see Operating Procedure 866.1, *Offender Grievance Procedure*.
      - (b) CCAP probationers/parolees can submit a written report through the complaint process; see *Offender Complaints, Community Corrections*.
  - d. There is no time limit on when an inmate or CCAP probationer/parolee may submit a *Complaint*, *Written Complaint*, or *Regular Grievance*, regarding an allegation of sexual abuse; see Operating Procedure 866.1, *Offender Grievance Procedure* and Operating Procedure 866.2, *Offender Complaints, Community Corrections*. (§115.52[b], §115.252[b])
2. Third parties including other inmates, CCAP probationers/parolees, staff members, family members, attorneys, and outside advocates are permitted to assist an inmate and CCAP probationer/parolee in filing their request for an administrative remedy relating to allegations of sexual abuse. (5-ACI-3D-15; §115.52[e], §115.54, §115.252[e], §115.254)
  - a. Third parties are also permitted to file such requests on behalf of an inmate or CCAP probationer/parolee.
    - i. If a third party files such a request on behalf of an inmate or CCAP probationer/parolee, the alleged victim must agree to have the request filed on their behalf, as a condition of processing the request. The alleged victim will also be required to pursue personally any subsequent steps in the administrative remedy process.
    - ii. If the inmate or CCAP probationer/parolee declines to have the request processed on their behalf, staff must document the inmate's or CCAP probationer's/parolee's decision.
  - b. The DOC public web site provides contact information on how to report sexual abuse and sexual harassment on behalf of an inmate or CCAP probationer/parolee. (§115.54, §115.254)
3. Inmates and CCAP probationers/parolees can choose to report sexual abuse and sexual harassment to

an advocate with the Action Alliance, a non-DOC organization, who is able to receive, and immediately forward inmate and CCAP probationer/parolee reports of sexual abuse and sexual harassment to the DOC while allowing the inmate or CCAP probationer/parolee to remain anonymous upon request. (§115.51[b], §115.251[b])

a. Inmates and CCAP probationers/parolees can contact an advocate with Action Alliance through the inmate and CCAP probationer/parolee telephone system, sexual assault hotline Number #55, Option 2. These calls are confidential and DOC does not have access to the recordings.

b. Inmates and CCAP probationers/parolees can anonymously report sexual abuse and sexual harassment by writing directly to the Action Alliance at P.O. Box 17115, Richmond, Virginia 23226.

4. Any inmate or CCAP probationer/parolee who makes a report of inmate or CCAP probationer/parolee-on-inmate or CCAP probationer/parolee sexual violence or staff sexual misconduct or harassment that is determined to be false may be charged with a disciplinary offense if it is determined in consultation with the Regional PREA Analyst that the report was made in bad faith; see Operating Procedure 861.1, *Offender Discipline, Institutions* and Operating Procedure 940.4, *Community Corrections Alternative Program*. (§115.78[f], §115.278[f])

a. Staff will not charge inmates and CCAP probationers/parolees for reports of sexual abuse made in good faith, based upon a reasonable belief that the alleged conduct occurred.

b. Even if an investigation does not establish sufficient evidence to substantiate the allegation, reports of sexual abuse made in good faith will not constitute falsely reporting an incident or lying.

#### B. Staff, Contractor, Volunteer, and Intern Responsibilities

1. When a staff member, contractor, volunteer, or intern learns that an inmate or CCAP probationer/parolee is subject to a substantial risk of imminent sexual abuse, the individual must notify their supervisor or the Shift Commander so that immediate action can be taken to protect the inmate or CCAP probationer/parolee. (§115.62, §115.262)

2. Staff must accept all verbal and written reports made anonymously and from third parties alleging sexual assault and are required to promptly document verbal reports on an *Internal Incident Report* with PREA checked in the description field; see Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*. (§115.51[c], §115.251[c])

3. Staff, Contractor, Volunteer, and Intern Duty to Report

a. Staff, contractors, volunteers, and interns must immediately report to their supervisor, or the Shift Commander any knowledge, suspicion, or information on the following incidents: (§115.61[a], §115.261[a])

i. Any incident of sexual abuse or sexual harassment that occurred in a facility, whether or not the facility is part of the DOC

ii. Any incident of retaliation against staff, inmates, and CCAP probationers/parolees who reported sexual abuse or sexual harassment

iii. Any incident of staff neglect or violation of responsibilities that may have contributed to the sexual abuse, sexual harassment, or retaliation

b. Staff, when applicable, must submit an *Incident Report*; see Operating Procedure 038.1 *Reporting Serious or Unusual Incidents*.

c. If the alleged victim is under the age of 18, aged, incapacitated, or is an inmate or CCAP probationer/parolee receiving services from a Licensed DOC Mental Health Program, the Facility Unit Head, or Administrative Duty Officer in their absence, is required to report immediately any alleged abuse to the local Department of Social Services. (§115.61[d], §115.261[d])

d. Apart from reporting to designated supervisors or officials, staff must 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])

- e. Staff, contractors, volunteers, and interns can privately report the sexual abuse and sexual harassment of inmates and CCAP probationers/parolees through the established reporting hotline at 855-602-7001. (§115.51[d], §115.251[d])
4. Staff, contractors, volunteers, and interns must report to the supervisor, Organizational Unit Head, or Shift Commander any suspicion or knowledge of other staff, contractor, volunteer, or intern fraternization with inmates and CCAP probationers/parolees; see Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*.
5. Staff, contractor, volunteers, and interns who receive an allegation that an inmate or CCAP probationer/parolee was sexually abused while confined at another facility, must notify the Facility Unit Head.
  - a. The Facility Unit Head will notify the head of the facility or appropriate office of the agency where the alleged abuse occurred. (§115.63[a], §115.263[a])
  - b. The Facility Unit Head must notify the head of the facility as soon as possible, but no later than 72 hours after receiving the allegation and will document that the notification was provided. (§115.63[b], §115.63[c], §115.263[b] §115.263[c])
  - c. The facility head or agency office that receives the notification is responsible for ensuring that the allegation is investigated in accordance with the requirements of the *Prison Rape Elimination Act National Standards*. (§115.63[d], §115.263[d])

#### IV. Response

- A. Each Facility Unit Head or designee will develop a written plan to coordinate the actions taken staff by first responders, medical practitioners, Mental Health Clinicians, investigators, and facility leadership in response to a sexual abuse incident; see *Sexual Assault Response Checklist* 038\_F6. (§115.65, §115.265)
- B. Staff Responsibilities
  1. Upon learning of an allegation that an inmate or CCAP probationer/parolee was sexually assaulted or abused, the first security staff member to respond to the report will be required to: (§115.64[a], §115.264[a])
    - a. Separate the alleged victim and abuser to ensure the victim's safety. (§115.82[b], §115.282[b])
    - b. Notify the Shift Commander; preserve and protect the crime scene until appropriate steps can be taken to collect any evidence.
    - c. Request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, showering, brushing teeth, changing clothes, urinating, defecating, drinking, or eating, when the abuse occurred within a time period that still allows for the collection of physical evidence.
    - d. Ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, showering, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating, when the abuse occurred within a time period that still allows for the collection of physical evidence.
  2. If the first staff responder is not a security staff member, the non-security responder will notify the Shift Commander, ensure the victims safety, and request that the alleged victim not take any actions that could destroy physical evidence such as showering, eating, brushing teeth, or drinking until after evidence collection. (§115.64[b], §115.82[b], §115.264[b], §115.282[b])
  3. The Shift Commander will take action immediately or verify that action has been taken to protect all physical evidence and the safety and welfare of the inmate or CCAP probationer/parolee; see Attachment 5, *Sexual Assault Victim Search/Evidence Collection Protocol*. The Shift Commander will:
    - a. Ensure staff escort the victim immediately to the facility's medical unit area for examination,



treatment, and evaluation; see *Standard Treatment Guidelines* and Operating Procedure 720.7, *Emergency Medical Equipment and Care*

- i. If there are no qualified medical practitioners or Mental Health Clinicians on duty at the time a report of sexual assault or sexual abuse is made, the Shift Commander must immediately notify the facilities' designated Medical Authority and Mental Health Clinician. (§115.82[b], §115.282[b])
  - ii. If there is indication of a recent sexual assault, the Shift Commander will ensure staff transport the victim to the local hospital for further treatment, examination, documentation, collection of a forensic evidence recovery kit (PERK), and testing for sexually transmitted diseases.
    - (a) With the victim's consent, the examination will include the collection of evidence from the victim, using a kit approved by the appropriate authority (PERK recommended).
    - (b) Although it is recommended that a PERK be used within 120 hours, a PERK should be used beyond that time when there is possibility of evidence remaining.
  - iii. Administrative staff must be careful not to impede an inmate's or CCAP probationers/parolees access to health care when needed.
- b. Notify the Facility Unit Head, Administrative Duty Officer, PREA Compliance Manager, and the Investigator, immediately.
  - c. Contact the Special Investigation Unit (SIU), immediately; see Operating Procedure 030.4, *Special Investigations Unit*. A SIU Special Agent will ensure protocol is followed to investigate the sexual assault, abuse or misconduct.
  - d. Complete an *Incident Report* marked PREA and confidential for all recent sexual assaults occurring within the previous 120 hours.
  - e. Notify the Operations and Logistics Unit (OLU); notification to OLU will only include the statement "Alleged recent sexual assault at (facility name)."
    - i. If an *Incident Report* has been completed, the OLU should be provided with the *IR Number* from VACORIS.
    - ii. No additional information will be reported.
  - f. Notify the PREA/ADA Supervisor or Regional PREA Analyst.
  - g. Notify the Mental Health Clinician for counseling and mental health service needs.
  - h. Ensure follow up medical treatment and mental health service needs are arranged.
4. The Investigator or Shift Commander in the absence of the Investigator will:
- a. Immediately question the victim to determine where and when the sexual assault occurred, the suspect(s) involved, and if facts warrant further investigation.
  - b. Ensure photographs are taken to document any physical evidence such as torn clothing, bruises, abrasions, etc.
  - c. Take necessary, appropriate action to preserve the physical and testimonial evidence until it is released to the responding SIU Agent.
  - d. Interview the victim upon their return from the hospital emergency room for protective custody needs.
5. While all available information must be gathered and confirmed, staff must not delay a medical assessment and physical evidence collection pending any investigation of the incident.
6. In order to protect any inmate or CCAP probationer/parolee involved, the Shift Commander may administratively reassign the victim and/or abuser temporarily to alternate housing; see Operating Procedure 425.4, *Management of Bed and Cell Assignments (Restricted)* and Operating Procedure 940.4, *Community Corrections Alternative Program*.

## V. PREA Investigations

- A. An administrative or criminal investigation, conducted as required by applicable PREA standards, must



be completed and documented for all allegations of sexual abuse and sexual harassment. (5-ACI-3D-11; §115.22[a], §115.71[k], §115.222,[a], §115.271[k])

1. If the alleged abuser is staff, the Facility Unit Head or designee must reassign the staff member to a post with no direct contact with the alleged victim, suspend the staff member or place the staff member on pre-disciplinary leave with pay based on the circumstances or situation, pending completion of the investigation; see Operating Procedure 135.2, *Rules of Conduct Governing Employees Relationships with Offenders*.
2. Upon receipt of an allegation of sexual abuse or sexual harassment, investigative staff will have 30 days to complete an administrative investigation into the allegation.
  - a. The Investigator or another staff member who received the required specialized training for sexual abuse investigations will conduct the initial investigation.
  - b. If the Investigator or trained staff member determine the investigation will not be completed within 30 days, they must contact the Regional PREA Analyst to discuss an extension.
  - c. When the Regional PREA Analyst determines that an extension is needed, the Investigator or trained staff member must provide periodic updates at an interval deemed appropriate by the Regional PREA Analyst.
  - d. If a determination is made that the sexual abuse allegation will be handled by SIU, the Investigator or trained staff member will notify the Regional PREA Analyst.
3. Unless the Investigator quickly and definitively determines that the allegation is unfounded, allegations of sexual abuse or sexual harassment must be referred to SIU for investigation. The Investigator will document all such referrals. (§115.22[b], §115.222[b])
  - a. SIU Special Agents conduct all investigations into criminal behavior, procedural or administrative violations, and staff misconduct affecting the operations of the DOC; see Operating Procedure 030.4, *Special Investigations Unit*.
  - b. The Chief of SIU or designee will review the nature of the allegations received and determine if an SIU investigation is warranted.
  - c. During the investigation, staff will cooperate with SIU and the Investigator must make every effort to remain informed about the progress of the investigation. (§115.71[l], §115.271[l])
  - d. PREA Unit staff will assist SIU staff in determining the disposition of an allegation for criminal investigations.
4. Investigative staff will follow Operating Procedure 030.4, *Special Investigations Unit*. (§115.22[d], §115.222[d])
  - a. All evidence collected at the facility and at the hospital, PERK, evidence collection, etc., must be handled in accordance with Operating Procedure 030.1, *Evidence Collection and Preservation*.
  - b. Investigations must be documented and recorded as required in Operating Procedure 030.4, *Special Investigations Unit*.
5. Upon completion of the investigation, investigative staff must complete and submit a *PREA Investigative Report* 038\_F9 to the facility PREA Compliance Manager who will review the *Investigative Report* and ensure that each required component of the *Investigative Report* is addressed.
  - a. The *Investigative Report* must include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and any investigative facts and findings. (§115.71[f(2)], §115.271[f(2)])
  - b. 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 the *PREA Investigative Report Checklist* to the Facility Unit Head, Regional PREA Analyst, PREA/ADA Supervisor, and PREA Hotline Coordinator within seven working days.

B. Reporting to Inmates and CCAP Probationers/Parolees





1. Following an investigation into an inmate's or CCAP probationer's/parolee's allegation that they suffered sexual abuse or sexual harassment in a DOC facility, the PREA Compliance Manager or Investigator must inform the inmate or CCAP probationer/parolee whether the allegation was determined to be substantiated, unsubstantiated, or unfounded; see Attachment 3, *Response to PREA Allegation - Sample Letters*. (§115.73[a], §115.273[a])
  - a. Following the allegation that a staff member committed the sexual abuse, the PREA Compliance Manager or Investigator must subsequently inform the inmate or CCAP probationer/parolee when: (§115.73[c], §115.273[c])
    - i. The allegation is determined to be unfounded.
    - ii. The allegation is determined to be unsubstantiated.
    - iii. The staff member is no longer posted in the inmate's or CCAP probationer's/parolee's unit.
    - iv. The staff member is no longer employed at the facility.
    - v. The DOC learns the staff member was indicted on a charge related to sexual abuse within the facility.
    - vi. The DOC learns the staff member was convicted on a charge related to sexual abuse within the facility.
  - b. Following the allegation that another inmate or CCAP probationer/parolee committed the sexual abuse, the PREA Compliance Manager or Investigator must subsequently inform the alleged victim when: (§115.73[d], §115.273[d])
    - i. The allegation has been determined to be unfounded.
    - ii. The allegation has been determined to be unsubstantiated.
    - iii. The DOC learns the alleged abuser was indicted on a charge related to sexual abuse within the facility.
    - iv. The DOC learns that the alleged abuser was convicted on a charge related to sexual abuse within the facility.
  - c. The PREA Compliance Manager or Investigator must document all such notifications and attempted notifications and will send the notifications to the inmate or CCAP probationer/parolee in the same manner as legal correspondence; see Operating Procedure 803.1, *Inmate and Probationer/Parolee Correspondence* for legal mail requirements. (§115.73[e], §115.273[e])
  - d. Any obligation to report under this standard terminates if the inmate or CCAP probationer/parolee is released from a DOC facility. (§115.73[f], §115.273[f])

## VI. Victim Advocate/Emotional Support

- A. DOC staff will attempt to make available to the victim a victim advocate from a rape crisis center. (§115.21[d], §115.221[d])
  1. If a rape crisis center is not available to provide victim advocate services, staff must make available the services of a qualified staff member of the DOC or a qualified staff member from a community-based organization. (§115.21[d], §115.221[d])
  2. As requested by the victim, a victim advocate, qualified staff member, or qualified community-based organization staff member will accompany and support the victim through the forensic medical examination process and investigatory interviews and will provide emotional support, crisis intervention, information, and referrals. (§115.21[e], §115.221[e])
  3. The qualified staff member or community-based organization staff member must be an individual who has been screened for appropriateness to serve in this role and who has received education concerning sexual assault and forensic examination issues in general. (§115.21[h], §115.221[h])
- B. Inmate and CCAP Probationer/Parolee Access to Free Outside Confidential Support Services
  1. The DOC maintains a Memorandum of Understanding (MOU) with a community service provider to provide inmates and CCAP probationers/parolees with access to free confidential emotional support

services related to sexual abuse. A copy of this MOU is available from the PREA/ADA Supervisor. (§115.53[c], §115.253[c])

2. Inmates and CCAP probationers/parolees should contact the PREA Compliance Manager, Unit Manager, or Mental Health staff to request information on accessing outside victim advocates for free emotional support services related to sexual abuse or the inmate and CCAP probationer/parolee may utilize the sexual abuse hotline (#55), option 2. (§115.53[a], §115.253[a])
3. Staff will inform inmates and CCAP probationers/parolees, prior to giving them access to free outside confidential support services, 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])
4. The facility will enable reasonable communication between inmates and CCAP probationers/parolees and these organizations and agencies, in as confidential a manner as possible. (§115.53[a], §115.253[a])

## VII. Protection against Retaliation

- A. All staff, inmates, and CCAP probationers/parolees who report sexual abuse or sexual harassment or who cooperate with sexual abuse or sexual harassment investigations will be protected from retaliation by other staff, inmates, and CCAP probationers/parolees. (§115.67[a], §115.267[a])
  1. Staff, inmates, and CCAP probationers/parolees can report allegations of retaliation through the same methods used for reporting sexual abuse or sexual harassment.
  2. The Investigator or other staff member with specialized training must investigate allegations of retaliation in the same manner as allegations of sexual abuse.
- B. Multiple measures are available to protect staff, inmates, and CCAP probationers/parolees from retaliation; such measures include housing changes or transfers for inmate and CCAP probationer/parolee victims or abusers, removal of alleged staff or inmate and CCAP probationer/parolee abusers from contact with victims, and emotional support services for staff, inmates and CCAP probationers/parolees who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations. (§115.67[b], §115.267[b])
  1. For at least 90 days following a report of sexual abuse, the PREA Compliance Manager or other designated staff member will monitor the conduct and treatment of staff, inmates, and CCAP probationers/parolees who reported sexual abuse or cooperated with a sexual abuse investigation, and of inmates and CCAP probationers/parolees who were reported to have suffered sexual abuse to determine if there are changes that may suggest possible retaliation by staff, inmates, and CCAP probationers/parolees, and will act promptly to remedy any such retaliation. (§115.67[a], §115.67[c], §115.267[a], §115.267[c])
    - a. Items to be monitored include any inmate or CCAP probationer/parolee disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff.
    - b. The PREA Compliance Manager must continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.
  2. In the case of inmates and CCAP probationers/parolees, such monitoring will also include periodic status checks. (§115.67[d], §115.267[d])
  3. If any other individual who cooperates with an investigation expresses a fear of retaliation, the Facility Unit Head must take appropriate measures to protect that individual against retaliation. (§115.67[e], §115.267[e])
  4. The obligation to monitor for retaliation terminates if the investigation determines that the allegation is unfounded. (§115.67[f], §115.267[f])



**VIII. Data Collection, Review and Corrective Action**

- A. DOC staff collects accurate, uniform data on every allegation of sexual abuse at facilities under the direct control of the DOC using a standardized instrument and set of definitions. (§115.87[a], §115.287[a])
1. DOC staff aggregates the incident-based sexual abuse data at least annually. (§115.87[b], §115.287[b])
  2. The incident-based data collected includes, 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 (DOJ). (§115.87[c], §115.287[c])
- B. Data Collection
1. DOC staff maintains, reviews, and collects data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews. (§115.87[d], §115.287[d])
    - a. Staff will conduct a PREA incident review and complete a *PREA Report of Incident Review 038\_F11* for all substantiated and unsubstantiated sexual abuse investigations and substantiated sexual harassment investigations; see Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*. (§115.86[a], §115.286[a])
      - i. A PREA incident review is not required when an allegation of sexual abuse is determined to be unfounded after PREA investigation is completed.
      - ii. A PREA incident review is not required when an allegation of sexual harassment is determined to be unsubstantiated or unfounded.
    - b. Staff must complete all sexual abuse incident reviews within 14 calendar days of completion of the investigation. The PREA Compliance Manager must notify the Regional PREA Analyst when the *PREA Report of Incident Review 038\_F11* will not be completed within 14 calendar days.
    - c. The PREA Compliance Manager will submit the completed *PREA Report of Incident Review 038\_F11* to the Regional Office. Prior to submission to the Regional Office, the *PREA Report of Incident Review* must be forwarded to the Regional PREA Analyst for review and approval.
  2. Incident-based and aggregated data is collected from every private facility with which the DOC contracts for the confinement of inmates and CCAP probationers/parolees. (§115.87[e], §115.287[e])
  3. Upon request, DOC staff will 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])
- C. Data Review for Corrective Action
1. DOC staff reviews collected and aggregated data in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, by: (§115.88[a], §115.288[a])
    - a. Identifying problem areas
    - b. Taking corrective action on an ongoing basis
    - c. Preparing an annual report of its findings and corrective actions for the DOC as a whole and each facility
  2. The annual report will include a comparison of the current year's data and corrective actions with the data and corrective action plans from prior years as well as an assessment of the DOC's progress in addressing sexual abuse. (§115.88[b], §115.288[b])
    - a. The report must be made readily available to the public through the DOC Public website. The PREA/ADA Supervisor and the Director must review and approve the annual report before publically posting it. (§115.88[c], §115.288[c])
    - b. Staff may redact specific material from the annual report, when publication of the redact material would present a clear and specific threat to the safety and security of a facility. If material is redacted, staff must indicate in the report the nature of the redacted material. (§115.88[d],

**§115.288(d)****D. Data Storage, Publication, and Destruction**

1. The Organizational Unit Head must ensure that all case records associated with claims of sexual abuse or sexual harassment are retained for as long as the alleged abuser is incarcerated or employed by the agency, plus five years. Case records will include but is not limited to the following: (5-ACI-3D-16; §115.71[i], §115.271[i])
  - a. *Incident Reports*
  - b. *Investigative Reports*
  - c. *Inmate and CCAP Probationer/Parolee Information*
  - d. *Case Disposition*
  - e. *Medical and Counseling Evaluation Findings*
  - f. *Post-Release Treatment or Counseling Recommendations*
2. Staff must securely retain all data collected on allegations of sexual abuse at DOC facilities. (§115.89[a], §115.289[a])
  - a. Staff will make sexual abuse aggregated data from DOC facilities and contract facilities readily available to the public at least annually through the DOC Public website. (§115.89[b], §115.289[b])
  - b. Before making sexual abuse aggregated data publicly available, staff must remove all personal identifiers. (§115.89[c], §115.289[c])
3. Staff must maintain all sexual abuse data 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])

**REFERENCES**

28 CFR Part 115, *Prison Rape Elimination Act National Standards*

28 CFR 35.164, *Nondiscrimination on the Basis of Disability in State and Local Government Services, Duties*

34 U.S.C., Chapter 303, *Prison Rape Elimination*

34 U.S.C. §30309, *Definitions*

COV §18.2-61, *Rape*

COV §18.2-64.2, *Carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial or post trial offender; penalty*

COV §18.2-67.4, *Sexual battery*

COV §18.2-67.10, *General definitions*

COV §53.1-67.9, *Establishment of community corrections alternative program; supervision upon completion*  
*Standard Treatment Guidelines*

Operating Procedure 027.1, *Volunteer and Internship Program*

Operating Procedure 030.1, *Evidence Collection and Preservation*

Operating Procedure 030.4, *Special Investigations Unit*

Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*

Operating Procedure 102.3, *Background Investigation Program*

Operating Procedure 102.6, *Staff Orientation*

Operating Procedure 135.1, *Standards of Conduct*

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

Operating Procedure 135.3, *Standards of Ethics and Conflict of Interest*



Operating Procedure 260.1, *Procurement of Goods and Services*  
Operating Procedure 350.2, *Training and Development*  
Operating Procedure 425.4, *Management of Bed and Cell Assignments (Restricted)*  
Operating Procedure 720.7, *Emergency Medical Equipment and Care*  
Operating Procedure 730.2, *Mental Health and Wellness Services: Screening, Assessment, and Classification*  
Operating Procedure 735.1, *Sex Offender and Crimes against Minors Registry*  
Operating Procedure 735.2, *Sex Offender Treatment Services (Institutions)*  
Operating Procedure 801.3, *Managing Offenders with Disabilities*  
Operating Procedure 801.6, *Inmate and CCAP Probationer/Parolee Services*  
Operating Procedure 801.7, *Language Services for Limited English Proficiency*  
Operating Procedure 803.1, *Inmate and Probationer/Parolee Correspondence*  
Operating Procedure 810.1, *Inmate Reception and Classification*  
Operating Procedure 810.2, *Transferred Inmate 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*

## **ATTACHMENTS**

Attachment 1E, *Zero Tolerance for Sexual Abuse and Sexual Harassment*  
Attachment 1H, *Zero Tolerance for Sexual Abuse and Sexual Harassment (Hearing Impaired)*  
Attachment 1S, *Zero Tolerance for Sexual Abuse and Sexual Harassment (Spanish)*  
Attachment 2a, *Preventing Sexual Abuse & Sexual Assault - Trainer Outline (Intake)*  
Attachment 2b, *Preventing Sexual Abuse & Sexual Assault - Trainer Outline (Comprehensive)*  
Attachment 3, *Response to PREA Allegation - Sample Letters*  
Attachment 4, *A Guide to Maintaining Appropriate Boundaries with Inmates or CCAP Probationers/Parolees*  
Attachment 5, *Sexual Assault Victim Search/Evidence Collection Protocol*  
Attachment 6, *Prison Rape Elimination Act (PREA) Training Acknowledgement*

## **FORM CITATIONS**

*Preventing Sexual Abuse and Assault Training Acknowledgement* 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  
*Facility Request* 801\_F3  
*Regular Grievance* 866\_F1  
*Written Complaint* 866\_F3  
*Emergency Grievance* 866\_F4

