




Executive Directive



Title: Investigating Sex Related Offenses	Executive Directive Number: IIU.110.0011
Related MD Statute/Regulations: Correctional Services Article, §§2-103 and 10-701, Annotated Code of Maryland; Prison Rape Elimination Act of 2003 (P.L. 108-79)	Supersedes: IIU.020.0001 Dated July 26, 2007
Related Standards: ACA 4-4207, 4-4281, 4-4281-3, 4-4281-7 and 4-4281-8. PREA Standards 115.21, 115.22, 115.34, 115.64, 115.67, and 115.71 — 73	Responsible Authority:  Director - Internal Investigative Unit
Related MCCS Standards: N/A	Effective Date: April 1, 2014 Number of Pages: 11


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.01 Purpose.

This directive establishes policy and procedures for Department of Public Safety and Correctional Services (Department) investigators conducting an investigation of an allegation of misconduct that involves a sex related offense.

.02 Scope.

This directive applies to Department personnel assigned to conduct an investigation of an allegation of misconduct that involves a sex related offense.

.03 Policy.

- A. The Department shall promptly, thoroughly, and objectively investigate each allegation of employee or inmate misconduct involving a sex related offense according to a uniform protocol based on recognized investigative practices that maximize evidence collection to support effective administrative dispositions and, if appropriate, criminal prosecution of the identified perpetrator.
- B. Department personnel assigned to conduct an investigation of alleged employee or inmate misconduct involving a sex related offense shall be trained in techniques related to conducting investigations of sex related offenses in the correctional setting.
- C. Department personnel assigned to conduct an investigation of alleged employee or inmate misconduct involving a sex related offense shall perform investigative activities professionally with due consideration for the emotional state of the victim resulting from the physical and emotional trauma and personal embarrassment resulting from the sex related offense.

.04 Definitions.

- A. In this directive, the following terms have the meanings indicated.
- B. Terms Defined.

- (1) Employee.
 - (a) “Employee” means an individual assigned to or employed by the Department in a full-time, part-time, temporary, or contractual position.
 - (b) “Employee” includes:
 - (i) A volunteer; and
 - (ii) An intern.
- (2) “Exigent circumstances” means a set of temporary and unforeseen conditions that require immediate action in order to combat a threat to the security or order at a facility.
- (3) “Inmate” means an individual who is actively or constructively detained or confined in a Department correctional facility or otherwise under the care or supervision of the Department.
- (4) “Investigator” means a Department employee permanently assigned to, or assigned to assist, the IIU with the responsibilities specified under Correctional Services Article, §10-701(a)(3), Annotated Code of Maryland.
- (5) “Licensed health care professional” means an individual who by virtue of education, credentials, and experience is permitted by law to practice medicine and, within the scope of that authorization, may evaluate and prescribe care for an individual identified to have a medical or mental health condition.
- (6) Retaliation.
 - (a) “Retaliation” means an act of vengeance, covert or overt action, or threat of action, taken against an individual because the individual:
 - (i) Filed a complaint of a sex related offense;
 - (ii) Took action to stop or prevent a sex related offense;
 - (iii) Investigated a sex related offense;
 - (iv) Took remedial action or applied penalties in response to a substantiated complaint of a sex related offense;
 - (v) Opposed any form of a sex related offense; or
 - (vi) Testified, assisted, or participated in an investigation, proceeding, or hearing concerning an alleged sex related offense.
 - (b) “Retaliation” may include, but is not limited to any unreasonable or unjustified:
 - (i) Adverse employment action, including discipline;

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- (ii) Changes in work or program assignments;
 - (iii) Transfers or placements; or
 - (iv) Denial of privileges or services.
- (c) “Retaliation” does not include reasonable and justified administrative, disciplinary, or other action intended to stop or prevent misconduct, protect an individual filing a complaint or victimized by misconduct, or resolve a complaint.
- (7) Sexual Abuse.
- (a) “Sexual abuse” of an inmate by an employee includes the following acts performed with or without consent by the inmate:
- (i) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 - (ii) Contact between the mouth and the penis, vulva, or anus;
 - (iii) Contact between the mouth and any body part where the employee has the intent to abuse, arouse, or gratify sexual desire;
 - (iv) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the employee has the intent to abuse, arouse, or gratify sexual desire;
 - (v) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the employee has the intent to abuse, arouse, or gratify sexual desire;
 - (vi) Any attempt, threat, or request by an employee to engage in the activities described in §§.04B(9)(a)-(e) of this directive;
 - (vii) Any display by an employee of the employee’s uncovered genitalia, buttocks, or breast in the presence of an inmate; and
 - (viii) Voyeurism by an employee.
- (b) “Sexual abuse” of an inmate by an inmate includes the following acts if the victim inmate does not consent, is coerced into the act by overt or implied threats of violence, or is unable to consent or refuse:
- (i) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 - (ii) Contact between the mouth and the penis, vulva, or anus;
 - (iii) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and

- (iv) Any other intentional touching, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.
- (8) “Sex related offense”:
- (a) Means any behavior or act:
 - (i) Of a sexual nature by an employee directed toward an inmate;
 - (ii) Of a sexual nature by an employee directed toward an inmate’s personal contact or associate who believes the employee exercises influence or authority over the inmate; or
 - (iii) That is of a derogatory or offensive sexual nature by an inmate directed toward another inmate.
 - (b) May include, but is not limited to:
 - (i) A sexual crime identified under Criminal Law Article, §§3-301 — 312, 3-314, and 3-324, Annotated Code of Maryland;
 - (ii) Kissing, hugging, and hand-holding for the sexual arousal or gratification of an individual, or for the abuse of either party;
 - (iii) Sexual abuse;
 - (iv) Indecent exposure;
 - (v) Voyeurism;
 - (vi) Sexual harassment;
 - (vii) Request for a sexual favor;
 - (viii) A solicitation or attempt to commit any of the acts listed under §§.04B(8)(b)(i) – (vii) of this directive;
 - (ix) Action or the lack of action on the part of an employee that contributed to an incident involving a sex related offense; and
 - (x) Retaliation.
 - (c) Does not include contact with an inmate made by an employee in the course of the proper performance of an official duty such as a medical examination or an authorized and properly conducted security-related pat down or strip search.

(9) Sexual Favor.

- (a) “Sexual favor” between an employee and an inmate means an agreement to participate in sexual misconduct that is obtained by threat or promise (any type of coercion) of what is believed to be special or different treatment affecting an inmate’s safety supervision status, work status, program involvement, or other privilege.
- (b) “Sexual favor” between an inmate and another inmate means an agreement to participate in inmate on inmate sexual conduct that is obtained by threat or promise of what is believed to be special or different treatment.

(10) “Sexual harassment” includes repeated verbal comments or gestures of a sexual nature to an inmate by an employee, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(11) Victim Advocate.

- (a) “Victim advocate” means a representative of a rape crisis center that provides confidential intervention and related assistance to victims of sex related offenses.
- (b) “Victim advocate” may include:
 - (i) A representative of a community based organization that is qualified to provide services described under .04B(11)(a) of this directive; or
 - (ii) A Department employee who is qualified to provide services described under .04B(11)(a) of this directive.
- (c) “Victim advocate” does not include a representative of another criminal justice agency that is qualified to provide services described under .04B(11)(a) of this directive.

(12) “Voyeurism”:

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

.05 Responsibility.

- A. An employee who observes or has knowledge of an incident, regardless of the source of the information, involving a sex related offense that occurs on Department property or in a Department vehicle shall notify the Internal Investigative Unit (IIU) of the incident as soon as possible after the occurrence or the employee first becomes aware of the incident.

B. A sex related offense may involve an:

- (1) Employee with another employee;
- (2) Employee and an inmate;
- (3) Employee and an inmate's personal contact;
- (4) Employee and a visitor;
- (5) Inmate and an employee;
- (6) Inmate and another inmate; or
- (7) Inmate and visitor.

C. When the IIU duty officer is notified of an incident involving an alleged sex related offense, the IIU duty officer shall:

- (1) If the incident is actively occurring ensure:
 - (a) Immediate action is taken to stop the misconduct;
 - (b) The victim is protected from further harm;
 - (c) Appropriate medical attention is provided; and
 - (d) The managing official or unit head is notified of the incident;
- (2) If the proximity of the occurrence to the reporting supports, ensure that:
 - (a) The perpetrator is detained;
 - (b) Witnesses are identified;
 - (c) The scene is protected to preserve evidence;
 - (d) The victim is advised against actions that would destroy evidence that may be present on the victim's body or clothing; and
 - (e) The managing official or unit head is notified of the incident;
- (3) Comply with IIU procedures for receiving and documenting a complaint of alleged misconduct regardless of the source of the complaint;
- (4) Ensure the managing official, or a designee, is advised to arrange for a victim advocate to be available to the victim;

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- (5) Assign an investigator to conduct and report the findings of an investigation of the incident according to IIU procedures; and
- (6) If the alleged incident did not occur on Department property or in a Department vehicle:
 - (a) Notify the official with authority over the location where the incident occurred; and
 - (b) Document that notification on the appropriate IIU log.

D. An investigator assigned to investigate an incident involving a sex related offense shall:

- (1) Ensure that appropriate actions identified under §§.05C(1) and (2) of this directive have been taken and, if not, ensure that incomplete requirements are completed;
- (2) When the possibility for recovery of physical evidence from the victim exists or otherwise is medically appropriate, coordinate with appropriate Department facility staff to arrange for the victim to undergo a forensic medical examination that is performed by a:
 - (a) A Sexual Assault Forensics Examiner (SAFE);
 - (b) Sexual Assault Nurse Examiner (SANE); or
 - (c) If documented attempts to obtain the services of a SAFE or SANE are unsuccessful, a licensed health care professional who has been trained to perform medical forensic examinations of sexual abuse victims;
- (3) If the victim requests, coordinate with the managing official, or a designee, to arrange for a victim advocate to accompany the victim to provide support for the victim through the medical forensics examination and investigatory interviews;
- (4) If possible, preserve the scene of the incident and items that may be used as evidence;
- (5) If not already identified, initiate action to identify the alleged perpetrator;
- (6) Conduct post-incident investigative actions to complete a comprehensive investigation of the incident that intends to:
 - (a) Identify the perpetrator;
 - (b) Determine if employee action or lack of action contributed to the occurrence; and
 - (c) Collect and preserve evidence to effectively support an administrative and, if appropriate, criminal proceedings; and
- (7) Document all aspects of the investigation in a comprehensive investigative report that:
 - (a) Thoroughly describes, physical, testimonial, and documentary evidence;
 - (b) Explains the reasoning behind credibility assessments;

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- (c) Includes facts and findings; and
- (d) When appropriate, has related documents attached; and
- (e) Is maintained according to an established retention schedule, which requires that the report is maintained as long as the employee is employed by the Department or the inmate is under the authority of the Department plus five years.

E. Credibility of a Victim, Witness, or Suspect.

- (1) Credibility of a victim, witness, or suspect shall be determined on an individual basis, regardless of the individual's status, for example employee or inmate.
- (2) A victim may not be required to take a polygraph or other truth telling test to determine to proceed with an investigation of an incident involving a sex related offense.

F. An investigation under this directive may not be terminated based on victim or suspect departure from Department employment or custody.

G. Victim Interview - Initial.

- (1) The investigator shall determine the victim's ability to participate in an initial interview considering:
 - (a) The severity of the assault;
 - (b) Physical injury;
 - (c) Emotional state of mind;
 - (d) Immediate necessity to identify the assailant;
 - (e) The inability to apprehend the assailant if the interview is delayed,
 - (f) If requested by the victim, the availability of:
 - (i) Family;
 - (ii) Friends;
 - (iii) Clergy;
 - (iv) Victim advocate; or
 - (v) Others individuals who may assist the victim;
 - (g) The availability of an investigator of the same sex as the victim; and
 - (h) Other factors that may inhibit the victim's ability to effectively communicate information about the incident.

- (2) If the victim is able to participate in an initial interview, the investigator shall conduct the interview focusing on:
 - (a) Obtaining:
 - (i) Basic information about the incident to aid in future interviews;
 - (ii) Information that will identify and locate the alleged perpetrator; and
 - (iii) Information concerning witnesses.
 - (b) Explaining:
 - (i) The investigative process;
 - (ii) The importance of cooperation;
 - (iii) Avenues for assistance, support, and personal protection available to the victim and witness;
 - (iv) That there will be additional contact from the investigator to provide updates on the investigation and obtain additional information concerning the incident; and
 - (v) The importance of preserving evidence that may be on the victim's person and personal items; and
 - (c) Accurately answering questions from the victim.
- (3) If appropriate, the investigator shall coordinate with facility medical and custody staff to arrange for the victim to be examined by a licensed health care professional to:
 - (a) Evaluate and treat physical or emotional illness or injury suffered as a result of the incident; and
 - (b) Obtain physical evidence from the victim using a "rape kit" available at the medical facility.
- (4) If requested by the victim, the investigator shall permit a victim advocate to be present during the interview with the victim.

H. Follow-up Investigative Activities.

- (1) When conducting an investigation of an incident involving a sex related offense an investigator shall:
 - (a) Provide updates to the victim concerning progress of the investigation;
 - (b) Conduct additional interviews to verify and expand on information originally provided or discuss new information developed during the investigation;

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- (c) Determine if an individual has been the target of retaliation and if so investigate the circumstances of the retaliation; and
 - (d) Provide information concerning victim rights.
- (2) Upon concluding an investigation involving an inmate as a victim of a sex related offense and based on a preponderance of evidence, the investigator shall advise the victim inmate if the investigation resulted in the incident being determined to be:
- (a) Substantiated meaning an allegation that was investigated and determined to have occurred;
 - (b) Unsubstantiated meaning an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred; or
 - (c) Unfounded meaning an allegation was investigated and determined to not have occurred.
- (3) The investigator shall document victim notification under §.05H(2) of this directive in the investigative report recording:
- (a) The name of the individual who notified the victim;
 - (b) The date, time, and location that the victim was notified; and
 - (c) How the victim was notified.
- (4) The investigator shall complete a Department Internal Investigative Unit “PREA” (Prison Rape Elimination Act) form and a United States Department of Justice “Survey of Sexual Violence”- Incident form.
- (5) If appropriate, the investigator shall work with a managing official, or a designee, to ensure:
- (a) The victim and assailant are separated during continued confinement;
 - (b) Appropriate disciplinary action is taken against:
 - (i) An inmate for violation of inmate rules; or
 - (ii) An employee for a violation of policy or procedure;
 - (c) If the incident involved an employee committing a sex related offense on an inmate and the incident was substantiated or unsubstantiated arrange for the inmate to be advised of the following conditions involving the employee:
 - (i) The employee is not assigned to the inmate’s housing unit;
 - (ii) The employee is no longer employed at the inmate’s facility;
 - (iii) If known, that the employee was indicted on a charged with a sex related offense occurring at the facility;

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- (iv) If known, that the employee was convicted of a charge related to a sex related offense occurring at the facility;
 - (d) If the incident involved an inmate committing a sex related offense on another inmate arrange for the victim inmate to be advised of the following conditions involving the perpetrator:
 - (i) If known, that the perpetrator was indicted on a charge related to a sex related offense occurring at the facility; and
 - (ii) If known, that the perpetrator was convicted of a charge related to a sex related offense occurring at the facility;
 - (e) Written confirmation is received from the managing official, or a designee, and maintained in the investigative file that documents notifications made under §.05H(5)(c) or (d) of this directive to include:
 - (i) Date and time of the notification;
 - (ii) The printed name and signature of the inmate notified; and
 - (iii) The printed name and signature of the individual making the notification.
 - (f) The victim reporting requirements under §§.05H(5)(c) and (d) of this directive shall terminate at the time the victim inmate is released from Department custody.
 - (g) Retaliation is not taking place against a victim or other individual related to the incident involving a sex related offense; and
 - (h) The incident is reviewed and, if possible, appropriate action is taken to prevent similar occurrences.
- (6) If appropriate, work with the prosecutor to develop the case for criminal prosecution.

.06 Attachment(s).

There are no attachments to this directive.

.07 History.

- A. This directive replaces Internal Investigative Unit Directive IIU.020.0001 issued July 26, 2007 by continuing applicable provisions in an Executive Directive format and updating and expanding content consistent with federal law and regulation.
- B. This directive supersedes provisions of any other prior existing Department communication with which it may be in conflict.

.07 Operations Distribution.

A

S — Security Chief and Facility staff assigned to conduct administrative investigations.