



Department of Corrections and Rehabilitation
NOTICE OF CHANGE
TO DEPARTMENT OPERATIONS MANUAL

Chapter 5, Article 44 (PREA), and
Article 53 (Inmate/Parolee Appeals)

Transmittal Letter Number:

16-10

Revision Date:

September 28, 2016

The purpose of this Notice of Change to the Department Operations Manual (DOM) is to announce additional revisions to Chapter 5, Articles 44 and 53 to ensure compliance with federal regulations implementing the Federal Prison Rape Elimination Act (PREA) of 2003 and the Federal Department of Justice's final rule adopting national standards for PREA in 2012.

This final rule adopted additional national standards which require further action by the states to achieve compliance and ensure funding received from the Department of Justice is not jeopardized.

The Department issued a revised DOM policy regarding PREA in 2015 based upon these National Standards. However; based on recent audit findings, the Department determined further revisions were needed for clarity and training needs. These revisions further enhance the California Department of Corrections and Rehabilitation (CDCR) Rehabilitation reform efforts and support a safe work/living environment for offenders and staff. The CDCR is committed to providing a safe, humane, secure environment free from sexual misconduct and shall maintain a zero tolerance for sexual misconduct in its institutions, community correctional facilities, conservation camps, and for all offenders under its jurisdiction. All sexual misconduct is strictly prohibited.

Please direct any inquiries concerning this Bulletin to Matthew Rustad, Division of Adult Institutions, at (916) 324-0788.

Original signed by

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Attachments

ARTICLE 44 — PRISON RAPE ELIMINATION POLICY

Revised September 28, 2016

DOM Section 54040.1 through 54040.3 remains unchanged.

DOM Section 54040.4 is amended to read:

54040.4 Education and Prevention

Staff Training

All staff, including employees, volunteers, and contractors, shall receive instruction related to the prevention, detection, response, and investigation of offender sexual violence, staff sexual misconduct, and sexual harassment. This training will be conducted during new employee orientation, annual training, and will be included in the curriculum of the Correctional Training Academy. The training will be gender specific based on the offender population at the assigned institution. Participation in the training will be documented on a CDCR 844, Training Participation Sign-in Sheet.

Employees shall also be trained in how to conduct cross-gender pat-down searches, transgender pat-down searches, and unclothed body cavity searches. When conducting these types of searches, employees shall ensure that these searches are conducted in a professional, respectful manner, and in the least intrusive manner possible consistent with security needs. Searches shall be conducted in accordance with policy, procedure and training as per CCR, Title 15, Section 3287(b).

Institutions shall train all staff on how to communicate professionally with inmates, including inmates who identify themselves as Lesbian, Gay, Bi-Sexual, Transgender, Intersex, and Gender Non – Conforming in accordance with Inmate/Staff Relations Training, on file with the Office of Training and Professional Development (OTPD).

Specialized training may be offered to employees who volunteer to act as victims' advocates. This training includes certification by a rape crisis center as trained in the counseling of sexual assault victims. For any employee volunteer who is not a psychiatrist, psychologist, licensed clinical social worker, psychiatric mental health RN, staff person with a master's degree in counseling, or other's listed in Evidence Code section 1010, this specialized training also includes the 40 hours of specialized training listed in Evidence Code 1035.2. Only employees who voluntarily agree to act as a victim advocate shall be utilized in that capacity. Employees who volunteer will be subjected to background clearance to ensure no prior history of violence.

All employees who are assigned to investigate sexual violence and/or staff sexual misconduct will receive specialized training per PC Section 13516 (c). The curriculum utilized in the class must be OTPD approved. The Hiring Authority or PREA Compliance Manager (PCM) shall ensure employees investigating incidents of sexual violence and/or staff sexual misconduct are properly trained.

Offender Education

Verbal and written information shall be provided to offenders which will address:

- Prevention/Intervention.
- Reporting.
- Treatment and Counseling.

Initial offender orientation on PREA will be provided to the offender population in reception centers (RC) via either written or a multi-media presentation on a weekly basis in both English and Spanish.

Approved PREA posters which contain departmental policy and the sexual violence, staff sexual misconduct, and sexual harassment reporting telephone numbers shall be posted in designated locations throughout the institution and parole offices. At a minimum, these areas shall include all housing units, medical clinics, law libraries, visiting rooms, program offices, and offender work areas.

The PREA Brochure entitled "Sexual Violence Awareness" and the PREA booklet entitled "Sexual Abuse/Assault – Prevention and Intervention" will be distributed during initial

processing in RC institutions. Both the brochure and booklet shall be available through Receiving and Release or the correctional counselors at each institution, and the information will also be included in each institution's offender orientation handbook.

Appropriate provisions shall be made to ensure effective communication for offenders not fluent in English, those with low literacy levels, and those with disabilities.

Institutions may consider the use of offender peer educators to enhance the offender population's knowledge and understanding of PREA and sexually transmitted diseases.

PREA offender education shall be documented on a CDC Form 128-B, General Chrono. The offender shall be asked to sign the CDC Form 128-B indicating they received the training. Refusal to sign will be noted by staff on the CDC Form 128-B. The CDC Form 128-B shall be forwarded to Inmate Records for appropriate scanning into the Electronic Records Management System (ERMS).

Preventative Measures

Each institution shall enable offenders to shower, perform bodily functions, and change clothing without non-medical staff of the opposite biological sex viewing their breast, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Except in circumstances where there would be an impact to safety & security, modesty screens shall be placed strategically in areas that prevent incidental viewing.

In order to minimize cross gender exposure, staff of the opposite biological sex shall announce their presence when entering the housing unit. This announcement is required at the beginning of each shift and/or when the status quo within the housing unit changes.

This policy shall be included in each institution's orientation handbook. This will allow the inmate to take into consideration that staff of the opposite gender may be present when performing bodily and bathing functions.

Security Rounds

A custody supervisor assigned to each facility or unit shall conduct weekly unscheduled security checks to identify and deter sexual violence, staff sexual misconduct and sexual harassment of any kind. These security checks shall be documented in the Unit Log Book in red pen. The Unit Log Book shall indicate the date, time, and location the security check was conducted.

DOM Section 54040.5 remains unchanged.

DOM Section 54040.6 is amended to read:

54040.6 Offender Housing

Offenders at high risk for sexual victimization, as identified on the electronic Initial Housing Review, shall not be placed in segregated housing unless an assessment of all available alternatives has been completed, and a determination has been made that there is no available alternative means of separation from likely abusers.

Offenders at high risk for sexual victimization shall have a housing assessment completed immediately or within 24 hours of placement into segregated housing. If temporary segregation is required, the inmate shall be issued an Administrative Segregation Placement Notice, explaining the reason for segregation is the need to complete a housing assessment based on the high risk for sexual victimization. If a determination is made at the conclusion of the assessment that there are no available alternative means of separation from likely abusers, the inmate will be retained in segregated housing and issued an Administrative Segregation Placement Notice, explaining the reason for retention. The assigned counseling staff shall schedule the offender for appearance before the Institution Classification Committee for discussion of his/her housing needs. The offender's retention in segregation should not ordinarily exceed 30 days.

Single Cell Status

The process of review and evaluation for single cell status shall be initiated during RC processing as part of initial screening. This process will include completion of the electronic Initial Housing Review, which includes questions related to sexual violence and victimization.

Upon the offender's arrival at his/her assigned institution, this information will again be assessed and an Initial Housing Review will be updated as necessary. Offenders will not be disciplined for refusing to answer, or not disclosing complete information related to their sexual orientation or sexual violence history.

The offender shall be referred to a classification committee for determination of single cell status in accordance with CCR Section 3377.1(c), based on documented evidence that the offender may not be safely housed in a double cell or dormitory situation. An offender's need for single cell status shall be reviewed as part of initial/annual classification, or any time an offender is referred for transfer or placement consideration.

DOM Section 54040.7 is amended to read:

54040.7 Detection, Notification and Reporting

Offenders may report violations of this policy to any staff member verbally or in writing, utilizing the Inmate Appeals Process, through the sexual assault hotline, or through a third party. The department shall not rely on offender interpreters, offender readers, or other types of offender assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the offender's safety, the performance of first-response duties, or the investigation of the offender's allegations.

CDCR employees have a responsibility to protect the offenders in their custody. All staff are responsible for reporting immediately and confidentially to the appropriate supervisor any information that indicates an offender is being, or has been the victim of sexual violence, staff sexual misconduct, or sexual harassment. In addition to reporting, employees have a responsibility to assist the offender and refer him/her to medical/mental health for evaluation. Staff shall ensure the reporting of information is done as soon as possible and in a confidential manner. A CDCR Form 837, Crime Incident Report, shall be submitted for each allegation of Sexual Violence against an offender by an offender in compliance with DOM Section 51030.3, except as described in DOM Section 54040.7.3.

An offender may report sexual violence, staff sexual misconduct, or sexual harassment that occurs under the jurisdiction of the CDCR to any staff member. If the staff who receives the report is non-custody, he/she shall immediately notify his/her supervisor and the Watch Commander. Each employee who observes the incident or is provided a report by the victim must complete required reports.

An offender may also report sexual violence, staff sexual misconduct, or sexual harassment that occurs under the jurisdiction of the CDCR, to the Ombudsman for Sexual Abuse in Detention Elimination in the Office of the Inspector General. In addition, offenders being retained solely for civil immigration may contact consular officials or officials at the Department of Homeland Security.

Staff are reminded that victims of sexual violence, staff sexual misconduct, or sexual harassment may be seriously traumatized physically and/or mentally. Staff are expected to be sensitive to the offender during their interactions with him/her.

Screening for Appropriate Placement

Based on information that the offender has been a victim of sexual violence or victimization, the custody supervisor conducting the initial screening shall discuss housing alternatives with the offender in a private location. The custody supervisor shall not automatically place the offender into administrative segregation. Consideration shall be given to housing this offender with another offender who has compatible housing needs. If single cell status is appropriate, the custody supervisor may designate the offender for single cell housing pending a classification review.

Per the Department's Mental Health Services Delivery System (MHSDS), all offenders shall receive a mental health screening within the required timeframe after arrival at an institution.

Any staff member, with significant concern that an offender may be subject to sexual victimization, shall immediately notify a custody supervisor who will refer that offender for a

mental health evaluation per existing policy regarding mental health referrals. This referral will be completed using the CDCR Form 128-MH5, Mental Health Referral Chrono.

Referral for Mental Health Screening

If it is reported by an offender during the initial intake screening or at any other time during his/her confinement within CDCR, that he/she has experienced prior sexual victimization or previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is referred to mental health utilizing the CDCR Form 128-MH5, Mental Health Referral Chrono.

DOM Section 54050.7.1 remains unchanged.

DOM Section 54040.7.2 is amended to read:

54040.7.2 Notification via Third Party Reporting of Misconduct Against an Employee, Contractor, or Volunteer

When a third party, on behalf of an inmate, makes an allegation of staff sexual misconduct or sexual harassment against a departmental employee, contractor, or volunteer, that allegation or complaint shall be submitted in writing to the Hiring Authority of the area in which the individual is assigned. Complaints against departmental employees should be filed in accordance with CCR 3391. The term “third party” includes inmates, family members, attorneys, or outside advocates. Inmates will file complaints against staff utilizing the CDCR Form 602.

Complaints determined to involve personnel from other agencies or institutions shall be forwarded to the proper Hiring Authority through the chain of command for appropriate response.

When a third party files such a complaint on behalf of an offender, a supervisory employee shall take the alleged victim to a private setting to discuss the complaint and assess immediate housing needs.

Third Party reports of staff sexual misconduct or staff sexual harassment shall be forwarded to the Hiring Authority. The Hiring Authority shall forward the documented third party report of the allegation to a Locally Designated Investigator (LDI). The LDI will conduct inquiry work until sufficient information is obtained to warrant an Office of Internal Investigations (OIA) investigation, or the information collected refutes the allegation, as determined by the Hiring Authority. The inquiry and/or investigative information will be thoroughly documented on a Confidential Memorandum. The Confidential Memorandum shall be maintained with the investigatory file. Standard investigatory procedures will be utilized and the complaint will be logged on the CDCR Form 2140, Internal Affairs Allegation Log.

Any allegation of staff sexual misconduct or staff sexual harassment believed to constitute an emergency shall be reported immediately to a supervisor. The supervisor shall notify the Watch Commander who shall immediately notify the Hiring Authority. Notification to the OIA, Regional Office, Special Agent in Charge (SAC) or OIA Administrative Officer of the Day (AOD) shall also be made when immediate investigative action is necessary. In the event of such an emergency, staff shall follow-up with a written report within one (1) day of learning the information. Examples that constitute an emergency are as follows:

- Possible loss of life or serious bodily injury;
- Serious breach of facility security;
- Further aggravation of a potentially dangerous situation;
- Activities which seriously compromise or jeopardize an investigation;
- An illegal activity which may occur imminently.

DOM Sections 54040.7.3 through 54040.8 remain unchanged.

DOM Section 54040.8.1 is amended to read:

54040.8.1 Custody Supervisor Responsibilities

The custody supervisor has significant responsibility in this policy, and a Custody Supervisor Checklist has been developed to assist in identifying the duties to be completed.

If the victim alleges staff sexual misconduct, the Hiring Authority will be immediately notified via the Watch Commander. The Hiring Authority will assign a LDI to conduct inquiry work until sufficient information is obtained to warrant an OIA investigation, or the information collected refutes the allegations, as determined by the Hiring Authority. The inquiry and/or investigative information will be thoroughly documented on a Confidential Memorandum. The Confidential Memorandum shall be maintained with the investigatory file. The complaint will be investigated utilizing standard investigatory procedures. Upon conclusion of the investigation, the alleged victim will be provided written notification of the findings as described in DOM Section 54040.12.5.

Any allegation of staff sexual misconduct or staff sexual harassment believed by staff to constitute an emergency shall be reported immediately to a supervisor. Notification to the OIA, Regional Office, SAC or OIA AOD shall also be made when immediate investigative action is necessary. In the event of such an emergency, staff shall follow-up with a written report within one (1) day of learning the information. Examples that constitute an emergency are as follows:

- Possible loss of life or serious bodily injury;
- Serious breach of facility security;
- Further aggravation of a potentially dangerous situation;
- Activities which seriously compromise or jeopardize an investigation;
- An illegal activity which may occur imminently.

The custody supervisor must tell the victim that his/her name will become a matter of public record unless he/she requests that it not become a matter of public record, per PC Section 293 (a). The victim should be provided the Victim of Sex Crimes form to complete to either request or waive confidentiality of his/her name. If the victim chooses to have his/her name remain confidential, any written report concerning these offenses must indicate that the victim requested confidentiality of his/her name per PC Section 293(a). If the victim has requested confidentiality, the victim's name and address may not be released except to specified persons or as authorized by law.

Please refer to DOM Section 54040.12.1 and 54040.12.2 for information related to the inmate being transported for a forensic examination.

The custody supervisor shall assign a custody escort to the victim who shall remain with the victim for the entire exam process, whenever possible. Gender preference should be considered when assigning a custody escort to the victim. The custody escort will ensure effective communication (i.e., complexity of the issues, language barriers, and literacy).

A Watch Commander Notifications Checklist has been developed to identify the tasks to be completed.

When the call is made to request the ambulance, it is critical to inform the dispatcher that the injured offender is the victim of sexual assault/battery. At the time the victim is sent to the outside hospital or on-site location, the Watch Commander is required to contact the Rape Crisis Center to request a Victim Advocate be dispatched. If one is not available, designated, trained staff from the facility will be dispatched or called in to act as the Victim Advocate as defined in Section 54040.3.

Crime Scene Preservation

The custody supervisor shall ensure that a perimeter has been established and an officer has been posted to keep persons out of the crime scene area. The custody supervisor shall ensure the assigned officer(s) maintain a chronological log of all persons entering the crime scene area and their purpose for entering the crime scene area. ISU staff and/or trained personnel shall process the crime scene including collecting and securing evidence. ISU staff shall photograph/videotape the crime scene and evidence collected, make a diagram of the crime scene, and collect/package all evidence.

Evidence

Care must be taken to ensure that any potential evidence is identified, preserved, and collected. Examples of evidence include, but are not limited to any clothing worn by the victim and suspect, hair or clothing fibers, dried or moist secretions, semen, blood or saliva stains, stained articles of clothing, blankets, or other foreign materials on the body of the victim or suspect, fingernail scrapings, and any other trace evidence (including the rape examination kit).

Based on when/where the incident occurred, a designated evidence officer will be requested to collect evidence that may be destroyed if not preserved. The designated evidence officer and any other employee who collects evidence will process it according to institutional procedure.

All DNA related evidence taken from the body of the victim or suspect (i.e., fingernail scrapings, body fluid, hair, etc.) must be collected by the Sexual Assault Nurse Examiner (SANE), this individual is located at the SART location, in accordance with State of California, Office of Emergency Services Reporting Instructions. Refer to the institutions local MOU or DOM Supplement regarding processing of the clothing that the victim and suspect wore at the time of the incident. All other evidence such as clothing (from his/her bed area) and bedding will be collected per institutional procedure.

Once the SANE has finished collecting the evidence, it will be returned to the custody escort to transport back to the institution where it will be secured in an evidence locker and logged appropriately, maintaining the chain of custody.

Parole or other Community Based Housing Incidents

If a parolee reports sexual violence by another parolee, local law enforcement will be contacted.

If an inmate in a community based housing/re-entry program reports sexual violence by another inmate in the community based housing/re-entry program, appropriate custody staff will be contacted. An inmate in a community based housing/re-entry program may require transportation for a forensic medical exam at a local hospital in accordance with time frames established in DOM Section 54040.12.1 and 54040.12.2. If the suspect is identified, a separate transport may be required in accordance with DOM Section 54040.11.

If any person reports staff sexual misconduct or staff sexual harassment by a Division of Adult Parole Operations (DAPO) staff member, the employee to whom the report was made shall contact his/her supervisor and document the allegation on a CDCR Form 1617, Memorandum. The employee shall document the person's identifying information, contact information, and any information the person provides about the incident on the CDCR Form 1617, and submit the CDCR Form 1617 to the supervisor. The supervisor shall contact the Regional Administrator who shall notify the Office of Internal Affairs in accordance with Chapter 3, Article 22. If the alleged incident occurred outside the confinement, as a CDCR inmate, of a CDCR institution, the incident does not meet the criteria for PREA because the offender is not currently incarcerated; therefore, the allegation should be referred to local law enforcement and the Office of Internal Affairs.

If a parolee makes an allegation to a DAPO staff member that a PREA incident occurred while he/she was an inmate in a CDCR institution, the employee to whom the report was made shall contact his/her supervisor and document the allegation on a CDCR Form 1617. The supervisor will contact the Regional Administrator. The Regional Administrator shall notify the Hiring Authority of the institution where the alleged incident occurred within 72 hours, as described in DOM 54040.7.4. Upon conclusion of the investigation, the alleged victim will be provided written notification of the findings as described in DOM Section 54040.12.5.

If an incident of sexual violence or staff sexual misconduct is reported at a contract facility responsible for housing CDCR offenders, the contracted employee shall initiate the Initial Contact Guide.

DOM Section 54040.8.2 is amended to read:

54040.8.2 Victim Advocate and Victim Support Person

Victims of the crimes listed below have the right under PC 264.2 and PC 679.04 to a Victim Advocate and Victim Support Person for both the medical examination and the investigatory interview:

- PC Section 261 Rape.
- PC Section 261.5 Unlawful sexual intercourse with person under 18.
- PC Section 262 Rape of spouse.
- PC Section 286 Sodomy.
- PC Section 288a Oral copulation.
- PC Section 289 Forcible acts of sexual penetration.

Victim Advocate and Victim Support person for Medical Examination

In incidents where an offender has alleged sexual violence or staff sexual misconduct, the watch commander or designee shall immediately notify the local Rape Crisis Center whenever a victim of a sexual violence or staff sexual misconduct, is treated at the local SART location and/or transported to an outside hospital for any forensic examination.

Per PC Section 264.2, the victim of the crimes listed above has the right to have a victim advocate present and a victim support person of the victim's choosing at the examination. In most cases, the victim advocate will be from the local rape crisis center. The victim support person may be excluded from the examination if the watch commander/designee or medical provider determines that the presence of the victim support person would be detrimental to the purpose of the examination or poses a threat to the safety and security of the institution or outside hospital. If a victim support person is excluded, the watch commander/designee or medical provider who made the decision shall document the reason (i.e., if time for the support person to attend would result in a significant delay and/or the person requested would present a risk to the safety/security of the institution) on the CDCR Form 837 if the allegation is against another offender or on a confidential memorandum if the allegation is against staff.

A Memorandum of Understanding (MOU) between the Institution and Local Rape Crisis Center (Victim Advocate) shall be established to ensure that both agencies understand their roles and responsibilities when responding to sexual violence or staff sexual misconduct.

Victim Advocate and Victim Support Person for Investigatory Process

Per PC Section 679.04, victims of the crimes listed previously in this article, have the right to have a victim advocate and a victim support person of the victim's choosing present at any interview by law enforcement, the district attorney, or defense attorneys.

If the investigator or the district attorney determines that the presence of the victim support person would be detrimental to the interview, the victim support person may be excluded from the interview. The victim must be notified verbally or in writing of this right by the attending investigator or the district attorney prior to the interview. Reasons for exclusion of the victim support person are the same as identified previously in the medical examination process and shall be documented as required above.

DOM Sections 54040.8.3 through 54040.8.4 remain unchanged.

DOM Section 54040.9 is amended to read:

54040.9 Forensic Medical Examination

In accordance with DOM Sections 54040.12.1 and 54040.12.2, the victim will be taken to the designated outside hospital, or on-site location, where SART Contract Staff will complete the forensic exam. The SANE shall provide the required Forensic Medical Examination, per the Office of Emergency Services, as well as the appropriate Forensic Medical Report: Acute (<72 hours) Adult/Adolescent Sexual Assault Examination, the Forensic Medical Report: Non-Acute (>72 hours) Child/Adolescent Sexual Abuse Examination, or the Forensic Medical Report:

Sexual Assault Suspect Examination. These examinations will consist of an explanation of the process, the offender's signature on consent forms (some offenders will require assistance to explain the consent forms prior to signing them), discussion of the incident and when/how it occurred, and a detailed physical examination that will include evidence collection and photographs. As required in Penal Code section 2638 (part of AB 550), immediate HIV/AIDS prophylactic measures will be provided. In addition, information regarding sexually transmitted infections, HIV and pregnancy options, will be discussed with the victim and/or suspect. Testing for sexually transmitted infections, HIV, and pregnancy (if appropriate) will be offered.

DOM Section 54040.10 remains unchanged.

DOM Section 54040.11 is amended to read:

54040.11 Suspect Processing

Offender on Offender

To the extent possible, all staff will ensure that there is no physical, verbal, or visual contact between the victim and suspect. The suspect will be escorted to the TTA or designated medical location for medical screening and then to the SART location as necessary. The suspect must consent to the forensic examination or custody staff will take steps necessary to obtain a search warrant or will follow procedures outlined in a Memorandum of Understanding (MOU) with the local District Attorney's Office. The custody supervisor will contact ISU, or the local District Attorney's Office—for assistance in obtaining a search warrant. Steps identified earlier in this article for collection of evidence, transportation, and physical examination of the alleged victim shall be the same for the suspect.

Upon completion of the forensic medical examination, the suspect will be re-housed in the Administrative Segregation Unit (ASU). The custody supervisor shall complete the required forms for ASU placement.

ISU staff or the LDI will provide a Miranda warning and interview the suspect to obtain his/her account of the incident. The custody supervisor will complete a referral to mental health for a mental health evaluation and assessment of treatment needs.

Staff on Offender

Immediate efforts shall be made to eliminate sight and sound contact between the victim and the staff member. Suspects are afforded due process; therefore, when a staff member is identified as a suspect, and before processing, contact with the Hiring Authority and OIA should be made. The Hiring Authority or designee shall determine if the employee should be placed on administrative time off consistent with departmental policy during the course of the investigation.

DOM Section 54040.12 is amended to read:

54040.12 Investigation

All allegations of sexual violence, staff sexual misconduct, and sexual harassment shall be investigated and the findings documented in writing. In addition, all allegations require completion of the Survey of Sexual Violence (SSV-IA) form. Except in limited circumstances or exigent circumstances, investigators shall not rely solely on inmate interpreters, readers, or other types of inmate assistance during a sexual violence, staff sexual misconduct, or sexual harassment investigation.

The departure of the alleged suspect or victim from the employment or control of CDCR shall not provide a basis for terminating an investigation.

Staff on Offender

Allegations of staff on offender sexual misconduct or staff sexual harassment will be immediately reported to the Hiring Authority via the Watch Commander. The Hiring Authority will assign an LDI to conduct an inquiry until sufficient information is obtained to warrant an OIA investigation, or the information collected refutes the allegations, as determined by the Hiring Authority. The inquiry and/or investigative information will be thoroughly documented

on a Confidential Memorandum. The Confidential Memorandum shall be maintained with the investigatory file. The complaint will be investigated utilizing standard investigatory procedures. Upon conclusion of the investigation, the alleged victim will be provided written notification of the findings as described in DOM Section 54040.12.5.

Any allegation of staff sexual misconduct or staff sexual harassment believed by staff to constitute an emergency shall be reported immediately to a supervisor. Notification to the OIA, Regional Office, SAC or OIA AOD shall also be made when immediate investigative action is necessary. In the event of such an emergency, staff shall follow-up with a written report within one (1) day of learning the information. Examples that constitute an emergency are as follows:

- Possible loss of life or serious bodily injury;
- Serious breach of facility security;
- Further aggravation of a potentially dangerous situation;
- Activities which seriously compromise or jeopardize an investigation;
- An illegal activity which may occur imminently.

Offender on Offender

All sexual violence allegations to include sexual assaults, attempted sexual assaults, and sexual battery committed by offenders, as well as allegations of sexual harassment committed by offenders shall be investigated by the LDI. These staff designated by the Hiring Authority will be responsible for completion of the investigation and will follow standard investigatory procedures. The LDI or Custody Supervisor may utilize the Sexual Assault/Battery Interview Guidelines when questioning the alleged victim regarding the specific facts of the allegation. The ISU Lieutenant or LDI shall be responsible for completing the SSV-IA.

Credibility of an alleged victim, suspect, or witness must be determined based on sound facts and evidence rather than an individual's status.

Pursuant to PC Section 293(b), the Victims of Sex Crimes form must be attached to all criminal reports relating to offenses listed in Government Code section 6254(f), which in adult prisons are: PC Sections 220, 261, 261.5, 262, 264, 264.1, 266(c), 273(a), 273(d), 273.5, 286, 288, 288(a), 289, 422.6, 422.7, 422.75, and 646.9.

DOM Section 54040.12.1 is amended to read:

54040.12.1 Investigation of Sexual Violence or Staff Sexual Misconduct – less than 72 hours post incident

If the alleged incident is reported or discovered less than 72 hours after the occurrence, in addition to the provisions discussed in DOM Section 54040.8, the custody supervisor shall secure the alleged crime scene (if feasible) and secure the alleged inmate suspect (if he/she can be identified) for potential forensic processing. The custody supervisor shall determine the need to transport the inmate for a forensic exam as follows:

- Sexual Harassment Incidents: The victim/suspect will not be transported for a forensic exam.
- Abusive Sexual Contact Incidents: The SART/SANE shall be consulted to make a determination as to whether the inmate victim/inmate suspect should be taken for a forensic examination. The inmate victim may refuse the forensic examination and the refusal should be video recorded.
- Nonconsensual Sex Acts: The inmate victim/inmate suspect shall be transported for a forensic examination. The inmate victim may refuse the forensic examination and the refusal should be video recorded.
- Staff Sexual Misconduct: The inmate victim shall be transported for a forensic examination when the allegation includes behavior identified in CCR 3401.5(a)(3)(A) through 3401.5(a)(3)(D). The inmate victim may refuse the forensic examination and the refusal should be video recorded.

DOM Section 54040.12.2 is amended to read:

54040.12.2 Investigation of Sexual Violence or Staff Sexual Misconduct – more than 72 hours post incident

If the alleged incident is reported or discovered more than 72 hours after the occurrence, in addition to the applicable provisions discussed in this article, the custody supervisor shall secure the alleged crime scene (if feasible) and secure the alleged inmate suspect (if he/she can be identified) for potential forensic processing. The victim may be questioned using the Sexual Assault/Battery Interview Guidelines. The SART/SANE nurse shall be consulted to make a determination as to whether the inmate victim/inmate suspect is to be taken for a forensic examination. The victim may refuse the forensic examination and the refusal should be video recorded. In addition, the victim should be asked if he/she retained any evidence of the incident (i.e., soiled clothing/bedding, etc.). If so, these items shall be gathered by the ISU evidence officer and processed per the institutional evidence collection procedures. Medical staff shall conduct an examination of the victim and alleged inmate suspect to determine the presence or absence of physical trauma, and perform follow-up testing for sexually transmitted diseases and pregnancy testing, as appropriate. Medical staff shall also refer the victim and inmate suspect to Mental Health for evaluation/counseling.

DOM Sections 54040.12.3 through 54040.12.5 remain unchanged.

DOM Section 54040.13 is amended to read:

54040.13 Allegation Follow-up

For at least 90 days following a report of sexual violence or staff sexual misconduct, the institutional PCM shall monitor the conduct and treatment of inmates or employees who reported the sexual violence or staff sexual misconduct and of the victim to ensure there are no changes that may suggest retaliation. The PCM may delegate these monitoring functions to staff assigned to the Investigative Services Unit or to a supervisory staff member and has the discretion to assign this monitoring in other circumstances: If the reported conduct is sexual harassment, when a volunteer or independent contractor made the report of sexual violence, staff sexual misconduct, or sexual harassment, or if any person fears retaliation for cooperating with an investigation. The assigned supervisor shall notify the institutional PCM of any such changes. The PCM shall act promptly (in accordance with DOM Article 14, section 31140.22) to remedy any such retaliation and ensure a CDCR Form 2304 or 2305, Protection Against Retaliation, is initiated. Items to be monitored on the CDCR Form 2304 or 2305 include: periodic inmate status checks, inmate disciplinary reports, housing or program changes, or negative performance reviews or reassignments of staff. The monitoring shall continue beyond 90 days if the initial monitoring indicates a continuing need. The PCM shall ensure all Protection Against Retaliation forms are maintained as required in the Records Retention Schedule.

The obligation to monitor shall terminate if the investigation determines that the allegation is unfounded or proven false.

When the inmate is transferred to another institution within the 90 day monitoring period, the CDCR Form 2304 shall be forwarded to the receiving institution. The PCM/designee at the sending institution shall make contact with the PCM/designee at the receiving institution to provide an overview of the case, noting the remaining monitoring timeframes. Upon completion of the monitoring period, the PCM/designee at the receiving institution shall return the completed CDCR Form 2304 to the PCM/designee at the sending institution for retention in the file and audit purposes.

DOM Section 54040.14 through 54040.17.1 remains unchanged.

DOM Section 54040.17 is amended to read:

54040.17 Institutional PREA Review Committee

The purpose of this Section is to set forth California Department of Corrections and Rehabilitation (CDCR) policy governing the sexual violence and staff sexual misconduct incident review process. The policy has its foundation in CFR, Chapter 28, Prison Rape Elimination Act (PREA) standards.

Per 28 CFR, Standard §115.86, each Hiring Authority is required to conduct an incident review of every sexual violence or staff sexual misconduct allegation, including allegations that have not been substantiated. A review is not required for allegation's that have been determined to be unfounded.

The PCM shall make a good faith effort to reach a judgment on whether staff's actions prior to, during, and subsequent to the reporting of the incident are in compliance with regulations, procedure, and applicable law and determine if follow-up action is necessary.

The PCM shall normally schedule these PREA incidents for review by the Institutional PREA Review Committee (IPRC) within 60 days of the date of discovery.

Institutional PREA Review Committee (IPRC):

The IPRC is a committee of institution staff chaired by the respective Institution Head tasked with reviewing these PREA related incidents except those determined to be unfounded.

The IPRC shall meet to review these PREA incidents on at least a monthly basis, or on a schedule to ensure all cases are reviewed within 60 days of the date of discovery.

The IPRC shall normally be comprised of the following staff:

- Hiring Authority or designee, as chairperson and final decision maker;
- PREA Compliance Manager;
- At least one other manager;
- In-Service Training Manager;
- Health Care Clinician;
- Mental Health Clinician; and
- Incident Commander or Investigative Services Unit Supervisor.

The IPRC shall:

- Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
- Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
- Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
- If the staffing plan was not complied with, this fact shall be documented during this review and addressed in the corrective action plan.
- Assess the adequacy of staffing levels in that area during different shifts;
- Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff;
- Prepare a report of its findings and any recommendations for improvement;
- Determine a plan to correct findings and document in the report;
- Document implementation of the Action Plan or reasons for not doing so, and
- Submit the report to the Hiring Authority for final review.

The final report will be provided to the appropriate Associate Director, upon approval of the Hiring Authority, if the findings require physical plant modification or other fiscal resource needs that can't be addressed through their existing budget (i.e., staffing).

Departmental PREA Coordinator

28 CFR, Standard §115.88, requires the agency to review data collected pursuant to standard §115.87 in order to assess and improve the effectiveness of its sexual violence prevention, detection, and response policies, practices, and training.

On an annual basis:

1. The Departmental PREA Coordinator will forward to each institution, a data collection tool which will be utilized by the institutional PCM to summarize information gathered through the Institutional PREA Committee.
2. The institution will complete the data collection tool and return it to the Departmental PREA Coordinator.
3. The Departmental PREA Coordinator will review the information contained on the data collection tool.
4. The Departmental PREA Coordinator will prepare an annual report of the findings and corrective actions for each facility, as well as the agency as a whole.
5. The report will be routed through the chain of command to the Agency Secretary for review and approval.
6. Once approved by the Secretary, the annual report will be forwarded to the Office of Public and Employee Communication for placement on the CDCR Website.

Records Retention

All case records associated with such reports including incident reports, investigation reports, offender information, case disposition, medical and counseling evaluation findings, recommendations for post-release treatment and/or counseling shall be retained in accordance with the CDCR Records Retention Schedule.

DOM Section 54040.17.1 remains unchanged.

DOM Section 54040.18 is amended to read:

54040.18 Community Services

Institutions shall provide victims of in-custody sexual violence, or staff sexual misconduct with access to mailing addresses and phone numbers of outside rape crisis organizations, victim advocacy groups and immigrant services agencies per 28 CFR, Part 115, Standard 115.53.

This PREA standard requires that inmates be allowed to correspond with staff in the rape crisis center/victim advocate in as confidential manner as possible. To facilitate this correspondence, inmate mail that is being sent to the locally designated rape crisis center will be treated as confidential mail.

- (a) The letter must be addressed to the Rape Crisis Center and may include a specific staff member's name.
- (b) The inmate's full name, department identification number, and the address of the institution shall be included in the return address appearing on the outside of the envelope.
- (c) The word "confidential" shall appear on the face of the envelope. Failure to do this will result in the letter being processed as regular mail or being returned to the inmate if for any reason the mail cannot be processed as regular mail.
- (d) Inmates shall post confidential mail by presenting the mail unsealed to designated staff. In the presence of the inmate, the staff shall remove the contents of the envelope upside down to prevent reading of the contents. Staff shall remove the pages and shake them to ensure there is no prohibited material, consistent with the CCR. If no prohibited material is discovered, the contents shall be returned to the envelope and sealed. Staff shall place their signature, badge number, and date across the sealed area on the back of the envelope. Staff shall then deposit the confidential mail in the appropriate depository.
- (e) If prohibited material is found in the confidential mail, the prohibited material shall be confiscated; however, the letter may be returned to the inmate or mailed following the process outlined above. If the prohibited material indicates a violation of the law or intent to violate the

law, the matter may be referred to the appropriate authorities for possible prosecution. Administrative and/or disciplinary action shall also be taken against all parties involved. Mental Health Services shall be provided as directed under the Mental Health Responsibility section 54040.10.

If the victim is a parolee, the victim may be referred to the Parolee Outpatient Clinic, local mental health agencies, and Crisis Intervention Centers, as the need arises.

DOM Section 54040.19 through 54040.20 remains unchanged.

Section 54040.22 is amended to read:

54040.21 Revisions

The Agency Secretary, or designee, shall be responsible for ensuring that the contents of this Article are kept current and accurate.

Section 54040.23 remains unchanged.

ARTICLE 53 — INMATE/PAROLEE APPEALS

DOM Section 54100.1 through 54100.5 remains unchanged.

DOM Section 54100.6 is amended to read:

54100.6 Appeal Preparation

Revised September 28, 2016

The Department shall make its appeal forms readily available to all inmates and parolees, ensuring that those who have difficulty communicating have equal access to the appeal process and the timely assistance necessary to participate in this process including completing or clarifying the appeal. Timely, in this particular instance, means promptly and without deliberate delay, insofar as prevailing organizational resources permit.

The inmate or parolee shall describe the specific issue under appeal, the relief requested, and state all facts known and available to him/her regarding the issue being appealed upon one original copy of the CDCR Form 602, and if needed to clarify the issue or matter in question, one original Inmate/Parolee Appeal Form Attachment (CDCR 602-A), attach all original relevant supporting documents and forward them, in a single mailing, to the appropriate appeals office.

The CDCR Form 602 provides a system of accountability at each level of review. When the appeal material is submitted without a completed and signed CDCR Form 602, the appeals coordinator shall return it to the inmate or parolee with instructions to fill out and sign the CDCR Form 602 (and/or CDCR Form 602-A, if applicable) and resubmit the appeal for processing.

- If originals are not available, copies may be submitted with an explanation and the appeals coordinator shall have the discretion to request that any submitted copy is verified by staff.
- The inmate or parolee is limited to the space provided on the CDCR Form 602 and one CDCR Form 602-A to describe the specific issue and action requested. The appeal content must be printed legibly in ink or typed on the lines provided on the appeal forms in no smaller than a 12-point font. There shall be only one line of text on each line provided on these forms.
- The inmate or parolee shall list all staff member(s) involved and shall describe their involvement in the issue. To assist in the identification of staff, the inmate or parolee shall include the staff member's last name, first initial, title or position (if known) and the date(s) of the staff member's involvement in the issue under appeal. Absent the requested identifying information, the inmate or parolee shall provide any other available information that would assist the appeals coordinator in making a reasonable attempt to identify the staff in question.

- Relevant supporting documents are defined as documents needed to substantiate the allegation(s) made in the appeal, including but not limited to, classification chronos, property inventory sheets, receipts, completed disciplinary reports with supplements, incident reports, notifications of disallowed mail, trust account statements, memoranda, letters, medical records, and/or a written request for interview, item or service (See DOM 54100.8). Only supporting documents necessary to clarify the appeal shall be attached to the appeal.
- The inmate or parolee shall not delay submitting an appeal within established time limits if unable to obtain supporting documents, but shall submit the appeal with all available supporting documents and provide an explanation why any remaining supporting documents are not available.
- Supporting documentation does not include documents that simply restate the matter under appeal, argue its merits or raise new issues not identified in the appeal and stated as such on the relevant original 602 forms. New issues raised in the supporting documents shall not be addressed, and any decision rendered will pertain only to the present appeal issue and requested action(s).
- The inmate or parolee shall not include or attach extraneous physical objects, exhibits, tabs or dividers, including organic materials of any type with their appeal packet or otherwise deface or contaminate submitted forms and attachments. Appeals submitted with hazardous or toxic material that present a threat to the safety and security of staff, inmates, or the institution may subject the appellant to disciplinary action and/or criminal charges commensurate with the specific act.
- For third level appeals, the inmate or parolee shall be responsible for mailing the appeal form and supporting documentation directly to the third level Appeals Chief using their own funds and US mail service, unless the appellant is indigent in which case the third level appeal shall be processed in accordance with the indigent mail provisions (15 CCR §3138). An indigent inmate/parolee shall not, however, be required to divide their appeal into separate mailings to conform to indigent mail weight restrictions.
- Another inmate or parolee, staff member, family member as defined in Section 3000 of the Title 15, or other interested party may assist the inmate or parolee in completing the appeal form. However, the act of providing such assistance does not render or convey upon that individual status as party to the appeal. In addition, assistance is disallowed if the act of providing such would create an unmanageable situation including but not limited to; acting contrary to the principles set forth in 15 CCR §§ 3163 and 3270, allowing one offender to exercise unlawful influence/assume control over another, require an offender to access unauthorized areas or areas which would require an escort, or cause avoidance or non-performance in assigned work and program activities.
- An inmate or parolee shall not submit an appeal on behalf of another person, unless the appeal contains an allegation of sexual violence, staff sexual misconduct, or sexual harassment.
- Inmates or parolees shall not give any form of compensation to other inmates or parolees or receive any form of compensation for assisting in the preparation of another's appeal. The giving or receiving of compensation is considered misconduct and is subject to disciplinary action.
- The appellant shall sign, date, and submit the appropriate appeal document(s) at each level in the appeal review process.
- Unless otherwise provided for in this article, the appeal shall not be accepted at the third level for review without first having been reviewed at second level.

DOM Section 54100.7 through 54100.33 remains unchanged.