

inmate's Central File shall be reviewed for written directions of the decedent as to the next-of-kin. The deceased inmate's property shall be shipped to the next-of-kin as designated on the SOMS – Notification in Case of Death, Serious Injury, or Serious Illness, at the inmate's expense. If funds are not available in the inmate's trust account, the property shall be shipped to the person designated on the SOMS – Notification in Case of Inmate Death, Serious Injury, or Serious Illness only after contact and willingness to receive property is established.

(b) If no willing recipient can be identified or previously mailed property is returned as undeliverable, all tangible property shall be placed in storage for a period of one year. Intangible property shall be maintained for a period of three years. If no claim is made on the property after expiration of time frames, final disposition shall be in accordance with PC Sections 5062 and 5063.

54030.17 Revisions

The Deputy Director, DAI, shall ensure the contents of this Article are current.

54030.18 References

PC §§ 2085, 2600, 2601, 5054, 5058, 5061, 5062, 5063.

CCR (15) (3) §§ 3002, 3006, 3010, 3011, 3044, 3064, 3092, 3101, 3102, 3151, 3152, 3161, 3164, 3175(l), and (m), 3190, 3191, 3193, 3287, 3331(e), 3343(g).
In re Rodney Alcalá (1990) 222 Cal.App.3d 345

Revision History

Revised: December 30, 2005

Revised: March 16, 2020

ARTICLE 44 — PRISON RAPE ELIMINATION POLICY

Revised May 19, 2020

54040.1 Policy

The California Department of Corrections and Rehabilitation (CDCR) is committed to providing a safe, humane, secure environment, free from offender on offender sexual violence, staff sexual misconduct, and sexual harassment. This will be accomplished by maintaining a program to address education/prevention, detection, response, investigation, and tracking of these behaviors and to address successful community re-entry of the offender. CDCR shall maintain a zero tolerance for sexual violence, staff sexual misconduct and sexual harassment in its institutions, community correctional facilities, conservation camps, and for all offenders under its jurisdiction. All sexual violence, staff sexual misconduct, and sexual harassment is strictly prohibited. This policy applies to all offenders and persons employed by the CDCR, including volunteers and independent contractors assigned to an institution, community correctional facility, conservation camp, or parole.

Retaliatory measures against employees or offenders who report incidents of sexual violence, staff sexual misconduct or sexual harassment as well as retaliatory measures against those who cooperate with investigations shall not be tolerated and shall result in disciplinary action and/or criminal prosecution. Retaliatory measures include, but are not limited to, coercion, threats of punishment, or any other activities intended to discourage or prevent a staff or offenders from reporting the incident(s) or cooperating with investigation of an incident(s).

54040.2 Purpose

The purpose of this policy is to ensure compliance with Public Law 108-79, the Prison Rape Elimination Act of 2003 (PREA), California Assembly Bill 550 (Chapter 303, Statutes of 2005), the Sexual Abuse in Detention Elimination Act, and 28 Code of Federal Regulations, Part 115, National Standards to Prevent, Detect, and Respond to Prison Rape. It will provide guidelines for the prevention, detection, response, investigation, and tracking of sexual violence, staff sexual misconduct and sexual harassment against CDCR offenders. A further purpose of this policy is to provide guidelines for the successful community re-entry of offenders.

Lastly, this policy informs staff of their responsibility and liability as specified in the law.

54040.3 Definitions

Aggressor

A person who attempts to commit, or commits sexual violence, staff sexual misconduct or sexual harassment.

Bisexual

A person who is sexually attracted to both sexes.

Coercion

A threat, however communicated, to commit an offense; to inflict bodily injury in the future on the person threatened or another, to accuse a person of any offense, to harm the credit or business reputation of any person, to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

Cross-Gender

Of the opposite biological sex. Example: Male Custody Staff patting down female inmates is cross-gender searching.

Gay

A person who is attracted to people of the same gender.

Gender Expression

A person's expression of his/her gender identity, including appearance, dress, mannerisms, speech, and social interactions.

Gender Identity

Distinct from sexual orientation and refers to a person's internal, deeply felt sense of being male or female.

Gender Non-conforming

Gender characteristics and/or behaviors that do not conform to those typically associated with a person's biological sex.

Intersex

An individual born with external genitalia, internal reproductive organs, chromosome patterns, and/or endocrine systems that do not seem to fit typical definitions of male or female.

Lesbian

A female person who is attracted to people of the same gender.

LGBTI

An acronym that refers to sexual minorities, including lesbian, gay, bisexual, transgender and intersex.

Locally Designated Investigator (LDI)

The Investigative Services Unit Investigator or other designated institutional staff who have been trained to conduct investigations into allegations of sexual violence and/or staff sexual misconduct.

"Need to Know" basis

When the information is relevant and necessary in the ordinary performance of that employee or contractor's official duties.

Non-consensual

Not giving permission for or consent to an action being taken by another person.

Offender

Any inmate, ward, parolee, or other person currently under the jurisdiction of the CDCR.

PREA Compliance Manager (PCM)

Institutional employee with sufficient time and authority to coordinate the institutions efforts to comply with the CDCR Prison Rape Elimination Policy.

PREA Coordinator

Agency wide Coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all institutions.

Rape

Refer to PC Section 261.

Sexual Violence (committed by offenders) will Encompass:

Abusive Sexual Contact

Contact of any person without his or her consent, or by coercion, or contact of a person who is unable to consent or refuse AND intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.

Nonconsensual Sex Acts

Contact of any person without his or her consent, or by coercion, or contact of a person who is unable to consent or refuse AND contact between the penis and vagina or the penis and the anus including penetration, however slight; or contact between the mouth and the penis, vagina, or anus or penetration of the anal or genital opening of another person by the hand, finger, or other object.

Sexual Assault Response Team (SART)

A coordinated interdisciplinary team of law enforcement, prosecution, contract medical, and advocacy experts collaborating to meet the forensic needs of the criminal justice system, and the medical and emotional needs of the victim of sexual violence or staff sexual misconduct.

In the CDCR, unless an institution has been previously authorized for contracted on-site SART exams, they will utilize the resources available via contract at the local community hospital for SART examination of the victim and offender-suspect.

Sexual Assault Nurse Examiner (SANE)

A nurse who has received specialized training to conduct sexual assault evidentiary exams. SANE's are trained in the medical, psychological, and forensic examination of sexual assault victims.

Sexual Harassment by an Offender (towards an offender)

Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by an offender toward another offender.

Staff Sexual Harassment (towards an offender)

Repeated verbal comments or gestures of a sexual nature to an offender by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Staff Sexual Misconduct

Any threatened, coerced, attempted, or completed sexual contact, assault or battery between staff and offenders.

Any sexual misconduct by staff directed toward an offender, as defined in California Code of Regulations (CCR), Title 15, Section 3401.5 and Penal Code (PC) Section 289.6. The legal concept of “consent” does not exist between staff and offenders; any sexual behavior between them constitutes sexual misconduct and shall subject the staff member to disciplinary action and/or to prosecution under the law.

Staff

Any person employed by the CDCR, including employees, volunteers, and independent contractors assigned to an institution, community correctional facility, conservation camp, parole, or headquarters. Employee refers to those individuals who are appointed through civil services employment laws and assigned to a CDCR institution.

Transgender

Means a person whose gender identity is different from the person’s assigned sex at birth.

Transgender Man

A person whose birth sex was female but who understands oneself to be, and desires to live life as a male.

Transgender Woman

A person whose birth sex was male but who understands oneself to be, and desires to live life as a female.

Victim

For purposes of this policy, a victim is an offender who has been subjected to inmate sexual violence, staff sexual misconduct, or sexual harassment.

Victim Advocate

An individual typically employed by a Rape Crisis Center whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by an approved counseling center. The Victim Advocate will be summoned to assist the alleged victim of an in-custody sexual assault including rape, sodomy, oral copulation, or forcible acts of sexual penetration for the SANE exam and interview process. The victim advocate will also be summoned for in-custody abusive sexual contact allegations when appropriate. In cases where an outside Victim Advocate is not available, a designated employee will be summoned, if available; an employee who has been certified by a rape crisis center as trained in counseling of sexual assault victims and who either:

- (1) A psychiatrist, psychologist, licensed clinical social worker, psychiatric mental health registered nurse, staff person with a master’s degree in counseling, or others listed in Evidence Code Section 1010; or
- (2) Has the 40 hours of specialized training listed in Evidence Code Section 1035.2 and is supervised by a staff member in subsection (1) above.

If a designated employee is utilized as a Victim Advocate proof of required training must be on file in their personnel or IST file.

Victim Support Person

Any person of the alleged victim’s choosing which could include another offender, personal friend, or family member including registered domestic partner.

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 Peace Office Selection and Employee Development (POSED).

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 POSED 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 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 and security, modesty screens shall be placed strategically in areas that prevent incidental viewing.

Per 28 CFR, Standard §115.42, upon request, transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

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 that the security check was conducted.

Staff is prohibited from alerting other staff members that these security rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

54040.4.1 Communication and Pronoun Usage with Transgender Inmates

The language used by staff toward inmates helps to create a culture of safety and respect and can impact the emotional well-being of inmates, including transgender inmates.

When communicating with a transgender inmate, there are acceptable methods for addressing the transgender inmate. These are:

- Use of gender-neutral language which means referring to them by the legal last name such as “inmate Jones” or “inmate Smith” or simply by the term “inmate”.
- Use of the preferred pronoun, if staff is aware of the preference of the inmate. These pronouns would be “she” and “her” for a transgender woman and “he” and “him” for a transgender man.

The type of prohibited discriminatory, harassing, or retaliatory behavior which may be found to constitute a violation of CDCR’s PREA policy includes, but is not limited to:

- Bullying or abusive conduct, including repeated infliction of verbal abuse and use of derogatory remarks, insults, and epithets.
- Repeatedly calling a transgender inmate by the wrong pronouns or name, after the transgender inmate has provided notice of his or her gender identity to staff.

54040.5 Searches

Institutions shall document all cross-gender strip searches and cross-gender visual body cavity searches in accordance with DOM Section 52050.16.5, and shall document all cross-gender pat-down searches of female inmates in accordance with DOM Section 52050.16.4 utilizing the Notice of Unusual Occurrence (NOU). Completed NOU forms shall be reviewed by the supervisor and routed to the institutional PCM to retain for audit purposes. If the search is incidental to an emergency or crime that constitutes a CDCR Form 837, Crime Incident Report, the search shall also be documented within the incident report.

54040.6 Offender Housing

Offenders at high risk for sexual victimization, as identified on the PREA Screening Form, 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. If retention is continued beyond 30 days, staff shall ensure compliance with DOM Section 54040.14.1, PREA Victims-Non-Disciplinary Segregation.

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 PREA Screening Form, 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 a PREA Screening Form will be updated as necessary. Offenders will not be disciplined for refusing to answer, or not disclosing complete information related to mental, physical, or developmental disabilities, their sexual orientation, sexual victimization or perception of vulnerability.

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.

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.

Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, and program assignments, or as otherwise required by Federal, State, or local law. 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.

An inmate’s risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate’s risk of sexual victimization or abusiveness.

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.

Mental Health Referrals

Post-SANE (Sexual Assault Nurse Examiner) Forensic Medical Examination- Mental Health Emergent Referral:

Inmates reporting sexual assault and who were referred to a contracted SANE forensic medical examination, even if the inmate refused the examination, shall be referred for an emergency mental health evaluation. The Mental Health Emergent Referral shall be completed utilizing the CDCR Form 128 MH5: Mental Health Referral Chrono, requesting a PREA Emergency mental health contact. If this Referral is made after hours the on-call clinician shall be contacted to respond to the institution. The emergent referral must be completed by mental health within **four (4)** hours of the inmate victims return to the facility following the SANE forensic medical examination or their refusal to participate in the SANE examination.

The abuser must also receive a referral to mental health per the Substantiated, Perpetrator, protocol below.

Substantiated, Perpetrator:

Mental health shall conduct a mental health evaluation of all known inmate-on-inmate abusers within sixty (60) calendar days of the facility having learned of such abuse history. Investigative staff shall ensure the inmate abuser is referred to mental health as soon as an allegation of inmate-on-inmate sexual abuse has been substantiated and/or knowledge of previous inmate-on-

inmate sexual abuse arises, which has not previously been addressed utilizing the CDCR Form 128 MH5: Mental Health Referral Chrono, to request a PREA Perpetrator Routine mental health contact. The mental health evaluation shall be conducted as a face-to-face contact in a confidential environment. The clinician shall determine if a Suicide Risk and Self-Harm Evaluation (SRASHE) is clinically indicated, as well as what, if any, additional follow-up care is deemed appropriate for the referred inmate.

Initial Custody Intake or Subsequent Screening Information Regarding Prior Sexual Victimization and/or Prior Perpetration of Sexual Abuse:

If it is reported by an inmate during the initial custody intake screening or at any other occasion during their confinement within the CDCR; that they have 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 offered a follow-up meeting with mental health staff. If the inmate accepts the offer to meet with mental health, custodial staff shall ensure the inmate is referred to mental health by utilizing the CDCR 128 MH5: Mental Health Referral Chrono to request a PREA Routine mental health contact. This referral shall be completed by mental health staff by conducting a face-to-face contact with the inmate in a confidential environment within fourteen (14) calendar days of the referral.

54040.7.1 Notification via Inmate Appeals or Form 22 Process

Any employee receiving notice of alleged staff sexual misconduct via a completed CDCR appeal form, or CDCR Form 602HC, Inmate/Parolee Health Care Appeal shall immediately notify the institution head, unit supervisor, or highest-ranking official on duty as required by CCR, Title 15.

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 appeals forms.

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.

54040.7.3 Notification via Third Party Reporting of Sexual Violence or Sexual Harassment Against an Offender

When a third party, on behalf of an inmate, makes an allegation of sexual violence or sexual harassment against an offender, that allegation or complaint shall be submitted in writing to a custody supervisor. The Custody Supervisor shall forward the documented third party report of the allegation to the Locally

Designated Investigator (LDI) for investigation and determination of the appropriate disposition.

Complaints determined to involve offenders from other agencies or institutions shall be forwarded to the proper hiring authority through the chain of command for appropriate response. Any allegation believed by staff to constitute an emergency shall be reported immediately to a supervisor. See examples listed in previous section.

The allegation will be investigated and documented on a Confidential Memorandum or CDC Form 128-B, General Chrono utilizing standard investigatory procedures, as outlined in DOM, Chapter 5, Article 44, Section 54040.12. If warranted the suspect may be subject to administrative/criminal proceedings per DOM, Chapter 5, Article 44, Section 54040.11.

Completion of a CDCR 837, Crime Incident Report is required on third party reports and anonymous reports only if the allegation is substantiated.

54040.7.4 Notification from/to Other Confinement Facilities

Upon receiving an allegation that an offender was the victim of sexual violence or staff sexual misconduct while confined at another institution/confinement facility, the hiring authority where the allegation was received shall notify the hiring authority of the institution or appropriate office of the agency where the alleged sexual violence or staff sexual misconduct occurred. This initial notification shall be made via telephone contact or electronic mail and will be followed up with a written summary of the alleged victim's statements. Such initial notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation. The institution or facility where the alleged sexual violence or staff sexual misconduct is reported will be responsible to complete the SSV-IA form.

The Hiring Authority or agency office receiving notification that an incident occurred at their institution, shall assign and ensure that the allegation is investigated and reported in accordance with DOM Section 54040.12. The Hiring Authority shall be responsible to conduct an Institutional PREA Review Committee. Upon completion, a copy of all documentation related to the allegation shall be returned to the institution where the alleged incident was reported for tracking and audit purposes.

54040.8 Response

It is the expectation that all staff shall maintain professional behavior when interacting with an alleged victim of sexual violence or staff sexual misconduct and display sensitivity to the potential emotional impact of the situation. All staff are reminded that this is a very serious situation. Incident-specific information shall be treated as confidential, and disclosure made only to employees who have a "need to know" and to other persons and entities as permitted or required by law.

Initial Contact

Upon the initial contact with an employee, that employee will take the alleged victim to a private secure location. The Initial Contact Guide has been developed to assist employees in completing the tasks associated with initial contact.

The employee shall request the victim does not:

- Shower;
- Remove clothing without custody supervision;
- Use the restroom facilities and/or;
- Consume any liquids.

When receiving an allegation from an offender of sexual violence or staff sexual misconduct that occurred in a detention facility while the offender was a minor, it will be the responsibility of the Watch Commander to notify the appropriate agencies.

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 Locally Designated Investigator (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 Sections 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 processed following local protocols.

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 Sections 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; however, an allegation inquiry must be initiated, in accordance with DOM Chapter 3, Article 22. Therefore, the Regional Administrator will ensure an appropriate DAPO staff member is assigned to conduct an inquiry until sufficient information is obtained to warrant an OIA investigation, or the information collected refutes the allegations. 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.

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.

54040.8.2 Victim Advocate and Victim Support Person

Victims of alleged sexual violence or staff sexual misconduct have the right under PC 264.2, PC 679.04, and/or 28 CFR, Standard §115.21 to a Victim Advocate and Victim Support Person for both forensic medical examination (where evidentiary or medically appropriate) and for the investigatory interview.

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.

The victim has the right to have a victim advocate present and a victim support person of the victim's choosing (see PC Sections 679.04 and PC 264.2 and/or 28 CFR, Standard §115.21) at the forensic medical 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

Victims of alleged sexual violence or staff sexual misconduct, have the right to have a victim advocate and a victim support person of the victim's choosing (see PC Sections 679.04 and 264.2 and/or 28 CFR, Standard §115.21) present at any investigatory interview, 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.

Victim Advocates for Emotional Support Services

The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available. This information is available to the inmate population in the PREA Brochure entitled "Sexual Violence Awareness" and the PREA booklet entitled "Sexual Abuse/Assault – Prevention and Intervention". It should also be included in each institution's offender orientation handbook. For persons detained solely for civil immigration purposes, information for the appropriate immigrant services agency shall be provided by staff.

The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.

54040.8.3 Medical Services Responsibilities

California Correctional Health Care Services (CCHS) medical staff will provide indicated emergency medical response.

The assigned Registered Nurse will initiate the CDC Form 7252, Request for Authorization of Temporary Removal for Medical Treatment and have it delivered to the Watch Office or designated area to expedite the transportation process. To the extent possible, staff in the Triage and Treatment Area (TTA) will maintain physical separation and visual separation between the victim and suspect(s).

CCHCS medical staff will conduct follow-up testing for sexually transmitted infections/diseases, HIV, Hepatitis B and/or C, and pregnancy (if appropriate) as indicated. As required in Penal Code Section 2638, immediate HIV/AIDS, and sexually transmitted infections prophylactic measures will be provided. In addition, information regarding sexually transmitted infections, HIV and pregnancy options, will be discussed with the victim and suspect.

Licensed health care staff shall determine and identify any injuries sustained by the alleged victim and suspect, assess and identify if they are urgent/emergent, and provide immediate emergency medical care to the alleged victim and suspects. The injuries sustained by the alleged victim and suspect shall be documented on a CDCR Form 7219, Medical Report of Injury or Occurrence and CDCR Form 837-C for use in the inmate disciplinary process and provide to custody. The Chief Medical Executive, or designee shall review the medical documentation of the incident.

54040.8.4 Transportation Responsibilities

The transportation sergeant or designated sergeant shall maintain Sexual Assault/Battery Transportation Kits in a plastic storage bin. This kit will consist of:

- One clean jumpsuit;
- Two pieces of "examination table" type paper (approx. 18" x 36" each);
- Two Evidence Collection Envelopes;
- Two Evidence Collection Paper Bags; and
- Two pairs of latex gloves and other required personal protective equipment (PPE).

A Transportation Checklist has been developed to identify the duties to be completed related to the transportation of Sexual Assault victims and suspects.

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.

54040.10 Return to Triage and Treatment Area/Receiving & Release

Upon the return of the victim from the SART/SANE Exam, the offender will be assessed following Inmate Medical Services Policies and Procedures (IMSP&P). The TTA Registered Nurse will also complete a request for an emergent

Suicide	Risk
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 and Self-Harm Evaluation (SRASHE). Mental health staff will evaluate the victim within four hours of referral. Until that time, the offender shall be placed under

constant and direct supervision to ensure he/she does not attempt to hurt him/herself or someone else.

Staff are reminded to be aware of warning signs of post-trauma mental health problems. These behaviors would typically be a change from their usual behavior prior to the alleged assault. No single behavior listed below indicates mental health problems, but if several or more are present you should make a referral to or consult with the mental health program.

- Sleep problems
- Agitation or restlessness (for example, pacing in the cell or housing unit)
- Suspiciousness or heightened vigilance – may have an exaggerated startled response
- Withdrawal from customary activities and friends
- Loss of appetite
- May stand and stare blankly
- Hyperactivity
- New ritualistic or highly repetitive behavior
- Crying or tearfulness
- Fear of others
- Marked change in personality
- No longer wants to engage in activities
- Self-injurious or suicidal behavior
- May be heard putting themselves down or be very critical of themselves
- Bizarre or unusual behavior or outbursts
- Fear of venturing beyond "security blanket" areas
- Newly developed clinginess on friends or custody staff
- May display impulsiveness or violence toward others (new behavior)

Upon the victim's return to the institution TTA or designated medical location, the custody supervisor will arrange housing for the victim. All housing options should be considered, including input from the victim regarding his/her housing preference, a bed move, a transfer to a sister institution and safety concerns. Consideration should also be given to housing the victim with another offender with compatible housing needs.

Mental Health Responsibilities:

Within four (4) hours of the inmates return to the facility, following the SANE forensic medical examination or refusal of the SANE examination, mental health staff must complete a face-to-face emergency mental health evaluation in a confidential location. The mental health evaluation shall include a (SRASHE), determination of the patient's mental health treatment and monitoring needs, along with arrangements made for any necessary mental health follow-up services. If appropriate, the victim shall be given educational materials to provide information related to the mental health conditions, which may result after being subjected to sexual violence and/or staff sexual misconduct. As clinically indicated, victims shall be monitored for signs and symptoms of self-harm, suicidality, post-traumatic stress disorder, depression, and other mental health issues which may arise secondary to sexual abuse. Mental health staff shall document the evaluation on a PREA note in the Electronic Health Record System (EHRS). Specific responsibilities of mental health staff shall be consistent with statewide IMS P&P, MHSOS Program Guide (2009), and supplemented by local operating procedures.

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.

Upon initial contact with the suspect, the employee shall make every effort to ensure the suspect does not:

- Shower;
- Remove clothing without custody supervision;
- Use the restroom facilities and/or;
- Consume any liquids.

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 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.

54040.12 Investigation

All allegations of sexual violence, staff sexual misconduct, and sexual harassment shall be investigated and the findings documented in writing. No standard higher than the preponderance of the evidence is to be used when determining whether allegations of sexual abuse or sexual harassment are sustained. 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 investigator will include an effort to determine whether staff actions or failures to act contributed to the abuse. The Confidential Memorandum will include: 1) a description of the physical and testimonial evidence; 2) the reasoning behind credibility assessments; and 3) the investigative facts and findings. 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 investigative 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.

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.

54040.12.2 Investigation of Sexual Violence or Staff Sexual Misconduct – Greater Than 72 Hours Post-Incident

If the alleged incident is reported or discovered more than seventy-two (72) hours after the occurrence, in addition to the applicable provisions discussed in this article, the custody supervisor shall secure the reported crime scene (if feasible) and the alleged inmate suspect (if they 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 abuse occurred within a time period that allows for the collection of physical evidence, by which the inmate victim's and inmate suspect's participation in a forensic examination would provide additional evidence. If the examination is indicated the victim may refuse the SART/SANE forensic medical examination and the refusal should be video recorded. In cases where a SART/SANE forensic medical examination is not offered, or is refused, institutional medical staff shall then offer to 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 infections/sexually transmitted diseases and/or pregnancy testing, as appropriate. As required in Penal Code Section 2638 (part of AB 550), immediate HIV/AIDS, and sexually transmitted infections prophylactic measures will be provided. Medical staff shall also offer the victim a follow up meeting with Mental Health and document the referral and/or refusal.

54040.12.3 Reporting to Outside Agencies

Written allegations of sexual misconduct by a patient against licensed health care staff shall be reported to the relevant licensing body by the hiring authority or designee within 15 days. All terminations for violations of agency sexual misconduct or harassment policies, or resignations by employees that would have been terminated if not for their resignation, shall be reported to any relevant licensing body by the hiring authority or designee.

54040.12.4 Reporting to Outside Agencies for Contractors

Any contractor or volunteer who engages in staff sexual misconduct shall be prohibited from contact with offenders and shall be reported to relevant licensing bodies by the hiring authority or designee.

54040.12.5 Reporting to Offenders

Staff on Offender

Following an offender's allegation that a staff member has committed sexual misconduct against an offender, the alleged victim shall be informed as to whether the allegation has been substantiated, unsubstantiated, or unfounded. The PCM or designee shall inform the offender (unless the allegation has been determined to be unfounded) whenever the alleged abuser has been:

- the staff member is no longer posted within the inmate's unit;
- the staff member is no longer employed at facility;
- indicted on the alleged sexual misconduct; or
- convicted of the alleged sexual misconduct.

Offender on Offender

Following an investigation into an offender's allegation that he or she suffered from sexual violence by another offender, institution shall inform the alleged victim if the allegation has been substantiated, unsubstantiated or unfounded. The institution shall also inform the alleged victim whenever the alleged abuser has been:

- indicted on the alleged sexual violence; or
- convicted of the charge.

The agency's obligation to report/inform the offender of changes shall terminate if the offender is released from the agency's custody.

As a reminder, investigative staff shall ensure the inmate abuser is referred to mental health as soon as an allegation of inmate-on-inmate sexual abuse has been substantiated and/or knowledge of previous inmate-on-inmate sexual abuse arises, which has not previously been addressed utilizing the CDCR

Form 128 MH5, Mental Health Referral Chrono, to request a PREA Perpetrator Routine mental health contact.

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.

54040.14 Classification Process

In cases of alleged sexual violence, staff sexual misconduct or sexual harassment, a determination shall be made for all victim(s) and offender suspect(s) if placement in an ASU is warranted, for reasons outlined in CCR Section 3335 and the reason shall be documented on the Classification Committee Chrono. Following ASU placement, an administrative review shall occur in accordance with CCR Section 3337.

Consideration during Institution Classification Committee (ICC) must be given to:

- Completion of Departmental Disciplinary Process.
- Yard assignment while in ASU.
- Single or double cell status.
- Referral to the District Attorney for Criminal Prosecution.
- Housing including a consideration of alternate General Population Facilities, Sensitive Needs Yard placement, Out-of-State placement (requires Departmental Review Board (DRB) approval), or Indeterminate SHU (DRB approval).

54040.14.1 PREA Victims Non-Disciplinary Segregation

PREA victims being removed from general population may be placed on non-disciplinary segregation status, in accordance with CCR Section 3335(b) and shall be assessed for any ongoing safety concerns. The assessment shall be documented on the inmates CDC Form 114-A, Inmate Isolation Segregation Record.

The assigned custody supervisor will be responsible for reviewing the circumstances of the incident and documenting his/her observations on a CDC Form 128-B, General Chrono. The assigned custody supervisor will attend the initial ICC and will make a recommendation regarding the need for continued housing on this status. ICC will consider the supervisor's input and make the final decision on retention or release from non-disciplinary segregation status.

A custody supervisor is required to conduct assessments every thirty days from the date the inmate is initially placed on non-disciplinary segregation status. These assessments will be documented on the CDC Form 114-A. When the assigned custody supervisor determines the inmate's non-disciplinary segregation status is no longer needed, he/she shall submit a CDC Form 128-B requesting the inmate be seen by ICC for housing review.

54040.14.2 Transgender Biannual Reassessment for Safety in Placement and Programming

On a bi-annual basis, Division of Adult Institutions (DAI) staff will send each PREA Compliance Manager (PCM) a list of identified transgender and intersex inmates, as known to the Department. This list will reflect the

institution's respective inmates, along with the month of the inmate's next scheduled annual classification review.

If an inmate is due to be seen for his/her annual classification review during the identified review period (August through January or February through July), the assigned caseworker will ask the inmate about any threats they have received during the pre-committee interview. In addition to interviewing the inmate, the assigned caseworker shall review the inmate's case factors in SOMS and ERMS for any additional information, which may indicate the inmate, has any placement or programming concerns. After the annual review is completed, the assigned caseworker will document his/her actions, as they relate to the PREA Biannual Assessment, in the Classification Committee Chrono.

If the inmate is not scheduled to be seen for his/her annual classification review during the identified review period (August through January or February through July), the assigned caseworker shall conduct a Transgender Biannual Assessment-PREA and complete a pre-formatted CDC Form 128-B, General Chrono. This form includes information to be asked of the inmate during a face-to-face interview to assess any threats to their safety. In addition to interviewing the inmate, the assigned caseworker shall review the inmate's case factors in SOMS and ERMS for any additional information, which may indicate the inmate, has any placement or programming concerns.

If, during the interview for either the annual review or the Transgender Biannual Assessment-PREA, the inmate discloses threats to safety, the assigned caseworker shall immediately notify a Custody Supervisor. Any information related to a PREA allegation shall be documented and forwarded to the institution's Locally Designated Investigator according to the DOM, Article 44, Prison Rape Elimination Policy.

The PCM shall coordinate with the Classification and Parole Representative to ensure the assessments are completed. The PCM shall maintain a copy of the biannual list with the dates the annual classification reviews or the PREA Biannual Assessments were completed. The PCM will forward a copy of this list to the PREA Captain in the Division of Adult Institutions within five days of completion of the review period.

54040.15 Disciplinary Process

Upon completion of the investigative process, the existing disciplinary process, which includes referral for criminal prosecution and classification determinations, shall be followed.

If the allegation of sexual violence warrants a disciplinary/criminal charge, a CDCR Form 115, Rules Violation Report shall be initiated. The offender who is charged will be entitled to all provisions of CCR Section 3320 regarding hearing procedures and time limitations and CCR Section 3316, Referral for Criminal Prosecution.

54040.15.1 Alleged Victim – False Allegations

Following the investigation into sexual violence or staff sexual misconduct, if it is determined that the allegations made were not in good faith or based upon a reasonable belief that the alleged conduct occurred, the offender making the allegations may be subject to disciplinary action. A charge of "making a false report of a crime," a Division "E" offense, is appropriate only if evidence received indicates the offender knowingly made a false report. An allegation deemed unsubstantiated or unfounded based on lack of evidence, does not constitute false reporting.

54040.16 Referral of Completed Cases for Independent Review

Designated staff in CDCR headquarters shall provide the Sexual Abuse in Detention Elimination Ombudsperson with copies of all completed Survey of Sexual Violence Incident – Adult (SSV-IA) forms. Inmate appeals forms, Ward Grievances, sexual assault investigation reports, and other data related to allegations of sexual assault will be made available to the Office of the Sexual Abuse in Detention Elimination Ombudsperson upon request.

54040.17 Institutional PREA Review Committee

Revised September 9, 2022

(a) 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 Code of Federal Regulations (CFR), tit. 28, Prison Rape Elimination Act (PREA) National Standards.

(b) 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 allegations that have been determined to be unfounded.

(c) The PREA Compliance Manager (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.

(d) The PCM shall normally schedule these PREA incidents for review by the Institutional PREA Review Committee (IPRC) within 30 days of the conclusion of the investigation or within 60 days of the date of discovery, whichever is sooner.

(e) A subsequent IPRC shall be completed whenever an initial IPRC was conducted prior to the completion of the investigation. A subsequent IPRC shall also be completed when the initial IPRC was unable to provide a thorough review, or if requested by the Hiring Authority.

(f) It shall be the responsibility of the IPRC to conduct the incident review for all allegations, which are alleged to have occurred at the institution, including those that were received from an institution or facility in accordance with Department Operations Manual (DOM) section 54040.7.4.

(g) Institutional PREA Review Committee

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

(2) The IPRC shall meet to review 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 or within 30 days of the conclusion of the investigation. All PREA investigations shall have an IPRC conducted within 30 days of the date of closure of the investigation, even if the case had been reviewed initially upon 60 days of the date of discovery. The IPRC shall ensure the report of its findings and recommendation is completed within 30 days of the conclusion of the investigation.

(3) The IPRC shall normally be comprised of the following staff:

(A) Hiring Authority or designee, as chairperson and final decision maker.

(B) PREA Compliance Manager.

(C) At least one other manager.

(D) In-Service Training Manager.

(E) Health Care Clinician.

(F) Mental Health Clinician.

(G) Incident Commander or Investigative Services Unit Supervisor.

(4) The IPRC shall:

(A) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse.

(B) 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.

(C) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse.

(D) If the staffing plan was not complied with, this fact shall be documented during this review and addressed in the corrective action plan.

(E) Assess the adequacy of staffing levels in that area during different shifts.

(F) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff.

(G) Prepare a report of its findings and any recommendations for improvement.

(H) Determine a plan to correct findings and document in the report.

(I) Document implementation of the Action Plan or reasons for not doing so.

(J) Submit the report to the Hiring Authority for final review.

(h) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so. The final report shall 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 cannot be addressed through their existing budget (i.e., staffing).

(i) Departmental PREA Coordinator

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

(2) On an annual basis:

(A) The departmental PREA Coordinator shall forward to each institution, a data collection tool, which shall be utilized by the institutional PCM to summarize information gathered through the Institutional PREA Committee.

(B) The institution shall complete the data collection tool and return it to the Departmental PREA Coordinator.

(C) The Departmental PREA Coordinator shall review the information contained on the data collection tool.

(D) The Departmental PREA Coordinator shall prepare an annual report of the findings and corrective actions for each facility, as well as the agency as a whole.

(E) The report shall be routed through the chain of command to the Agency Secretary for review and approval.

(F) Once approved by the Secretary, the annual report shall be forwarded to the Office of Public and Employee Communication for placement on the CDCR Website.

(j) Records Retention

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

54040.17.1 Annual Review of Staffing Plan

Whenever necessary, but no less frequently than once each year, in consultation with the PREA Coordinator, the institutional PCM and the Program Support Unit shall assess, determine, and document whether adjustments are needed to: (1) The staffing plan; (2) The facility's deployment of video monitoring systems and other monitoring technologies; and (3) The resources assigned to ensure adherence to the staffing plan.

54040.18 Institutional Staffing Plan

CDCR shall ensure that each facility it operates develops, documents and makes its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and where applicable, video monitoring to protect offenders against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration: (1) Generally accepted detention and correctional practices; (2) Any judicial findings of inadequacy; (3) Any findings of inadequacy from Federal investigative agencies; (4) Any findings of inadequacy from internal or external oversight bodies; (5) All components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated); (6) The composition of the inmate population; (7) The number and placement of supervisory staff; (8) Institution programs occurring on a particular shift; (9) Any applicable State or local laws, regulations, or standards; (10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and (11) Any other relevant factors. In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the staffing plan through the Telestaff Program and Daily Activities Report. The Watch Commander is responsible for reporting and justifying all deviations from the approved staffing plan.

54040.19 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 Rape Crisis Intervention Centers, as the need arises.

54040.20 Tracking – Data Collection and Monitoring

The PCM or the Parole Employee Relations Officer shall report investigations into allegations of sexual violence and staff sexual misconduct on the monthly update of the Yearly Tracking Report (YTR), including whether the perpetrator was a staff member or offender, disposition and current status. This information shall be reported to the Department's PREA Coordinator by the fifth day of every month. Additionally, the ISU Lieutenant or Locally Designated Investigator shall be responsible for completing the Survey of Sexual Violence-Incident Adult (SSV-IA). The SSV-IA will be submitted to the Department PREA Coordinator no later than two business days from the date of the allegation. This information shall also be provided (via copy of the CDCR Form 837, Crime Incident Report) to the Offender Information Systems Branch (OISB) for compilation and tracking.

The OIA shall maintain records of investigations into allegations of staff/offender sexual misconduct, and will report by case number, the type of sexual misconduct, subcategory (male staff with female offender, female staff with male offender, etc.); whether the allegations were sustained; and whether a DA referral was made.

The CDCR shall aggregate the incident-based data at least annually. The data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Federal Department of Justice. CDCR shall maintain, review, and collect data as needed from all available documents including incident reports, investigation files, and PREA incident reviews. CDCR shall also obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates. Upon request, the agency shall provide all such data from the previous calendar year to the federal Department of Justice no later than June 30.

Reports shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual violence and staff sexual misconduct. The report shall be approved by the CDCR Secretary and made readily available to the public through the CDCR website. Specific material may be redacted from the reports when publication would present a clear and specific threat to the safety and security of a facility; however, the report must indicate the nature of the material redacted.

54040.21 PREA Data Storage and Destruction

CDCR shall ensure that all PREA data collected are securely retained. All aggregated PREA data, from facilities under CDCR's direct control and private facilities with which it contracts, shall be made readily available to the public at least annually through the CDCR website. Before making aggregated PREA data publicly available, all personal identifiers shall be removed. PREA data collected shall be maintained for 10 years after the date of the initial collection.

54040.22 Revisions

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

References

Title 28, Code of Federal Regulations, Part 115, Prison Rape Elimination Act National Standards.

California Assembly Bill 550 (Chapter 303, Statutes of 2005), Sexual Abuse in Detention Elimination Act, PC Section 2635 et seq.

California Penal Code Sections 220, 261, 261.5, 262, 264, 264.1, 264.2, 273(a), 273(d), 273.5, 286, 288, 288(a), 289, 289.5, 289.6, 293(a), 422.6, 422.7, 422.75, 646.9, 646.9, and 679.04.

CCR, Title 15, Division 3, Sections 3005(d)(1), 3007, 3316, 3335, 3337, 3377.1(c), and 3401.5.

Evidence Code 1035.2.

Government Code Section 6254.

Public Law 108-79, Prison Rape Elimination Act of 2003, Title 34 United States Code Section 30301 et seq.

Revision History

Revised: May 15, 2018.

Revised: May 19, 2020.

Revised Section 54040.17: September 9, 2022.

ARTICLE 45 — CARE, TREATMENT, AND SECURITY OF PREGNANT

OFFENDERS

Effective June 9, 2006

54045.1 Policy

The California Department of Corrections and Rehabilitation (CDCR) staff shall ensure a pregnant offender is not placed in restraints by the wrists, ankles, or both during labor, including during transport, delivery, and while in

recovery after giving birth, except as provided in Penal Code Section 5007.7. Health care staff shall provide medical care for the pregnant offender population. Pregnant offenders shall receive, within the second trimester of gestation, a dental examination, periodontal evaluation, and the necessary periodontal treatment in order to maintain periodontal health during the gestation period.

54045.2 Purpose

This policy will ensure the safety of female offenders and the unborn child during pregnancy. It will also ensure medical care concerns are met regarding the pregnant offender population and birth of children at local hospitals and to establish protocols which prevent or treat gingivitis and/or periodontitis during pregnancy.

54045.3 Medical Care – Reception

The pregnant offender's medical care is initiated in Receiving and Release (R&R) when it is determined, by self report or physical appearance that the offender is pregnant, confirmed by physical examination and laboratory test results.

A Registered Nurse (RN) or Medical Technical Assistant (MTA) shall conduct the initial health screening in R&R. The health care staff shall notify the Obstetrical (OB) Coordinator by telephone or written documentation of the offender's name, CDC number, and any pertinent medical information regarding the offender's pregnancy status. The R&R RN shall notify the Supervising Obstetrician if information provided by the offender or from written information indicates that the offender has any medical conditions that place the patient in a high-risk status. The RN shall notify the Supervising Obstetrician, Health Care Manager/Chief Medical Officer (HCM/CMO) or designee if the offender needs to be seen for any urgent/emergent conditions.

A priority ducat for laboratory work to verify the pregnancy will be issued to all suspected pregnant offenders within three (3) business days of arrival at the institution.

A priority ducat for an examination by the OB Physician or OB Nurse Practitioner (NP) will be issued to all pregnant offenders within seven (7) business days of arrival at the institution.

A CDCR form 7410, Comprehensive Accommodation Chrono, for lower bunk and lower tier housing, if housed in a multi-tier housing unit, will be issued to all pregnant offenders.

Pregnant offenders on methadone maintenance shall be recommended for immediate transfer to the California Institution for Women (CIW) through the CMO to CMO transfer process. (Refer to methadone treatment for pregnant offenders later in this Article).

54045.4 Medical Follow-up

Positively identified pregnant offenders shall be provided with the following:

- Within seven (7) business days, the pregnant offender shall be scheduled for her first OB visit wherein a thorough history and examination shall be performed by the Supervising Obstetrician or NP, to determine the term of pregnancy and plan of care. Diagnostic studies shall be ordered based on the information provided in the Hollister Maternal/Newborn Record System forms.
- Pregnant offenders shall be referred for HIV counseling and testing.
- Pregnancy termination counseling regarding pregnancy interruption shall be provided if requested by the offender.
- Pregnant offenders shall receive pregnancy and childbirth education, information pamphlets, and other pertinent material.
- Pregnant offenders shall receive prenatal vitamins, iron, and folic acid.
- Pregnant offenders shall receive two (2) extra cartons of milk, two (2) extra servings of fresh fruit, and two (2) extra servings of fresh vegetables daily. The physician may order additional nutrients as necessary.
- Pregnant offenders shall be issued a CDCR Form 7410 for any medical accommodations or restrictions if indicated.
- Pregnant offenders shall be referred to the dentist on a priority basis for evaluation and treatment of periodontal disease.
- The OB Coordinator shall prepare, in advance, a Request for Authorization of Temporary Removal form for all pregnant offenders within 30 days prior to the delivery date. These forms shall be delivered to the Watch Commander's office. This shall enable custody staff to prepare the offender for transportation to an outside facility in a timely manner.