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| POLICY OF STATE OF DELAWARE DEPARTMENT OF CORRECTION | POLICY NUMBER 8.60 | PAGE NUMBER 1 of 11 |
| | RELATED STANDARDS: ACA: 4-4406, 4-4371, 4-4133 NCCHC: P-B-04, P-B-05 | |
| CHAPTER: 8 Administration | SUBJECT: Prison Rape Elimination Act | |
| APPROVED BY THE COMMISSIONER:  2/7/14 | | |
| EFFECTIVE DATE: TUE 02/11/14 | | |
| APPROVED FOR PUBLIC RELEASE | | |

- I. **AUTHORITY:** Prison Rape Elimination Act of 2003; 28 CFR Part 115
- II. **PURPOSE:** To establish and maintain a program of education, prevention, detection, investigation, perpetrator punishment, victim treatment and support and data collection related to sexual abuse in compliance with the Prison Rape Elimination Act (PREA).
- III. **APPLICABILITY:** All Department of Correction employees, contractors, volunteers, student interns and persons or organizations conducting business with the Department and all offenders under the custody or supervision of the Department of Correction.
- IV. **DEFINITIONS:**
- A. **Sexual relations in detention facility (11 Delaware Code, Chapter 5 §1259):**
A person is guilty of sexual relations in a detention facility when, being an employee working at a detention facility, a contractor or employee of a contractor at a detention facility, or a volunteer at a detention facility, the person engages in consensual sexual intercourse or sexual penetration with a person in custody on the premises of a detention facility. Violation of this section shall be a class G felony.
- B. **Prison Rape Elimination Act (PREA):** Federal law to address sexual violence in prisons, jails, and other correctional facilities. Under PREA, the National Prison Rape Elimination Commission was created with the responsibility for establishing standards for the prevention, detection, response, and monitoring of sexual abuse and violence within correctional systems.
- C. **PREA Coordinator:** DOC employee responsible for the over-site of PREA standards, compliance with standards, training, data collection and inspection.
- D. **PREA Compliance Manager:** BOP facility employee responsible at the institutional level with sufficient time and authority to coordinate the facility's efforts to comply with DOC policy and the PREA standards.
- E. **PREA Standards (PS):** Written rules that require all correctional facilities to comply with minimum acceptable benchmarks in order to reduce and eliminate the incidence of prison rape. These standards are directed toward the states by the federal government, as published in 28 CFR Part 115.
- F. **Sexual abuse:** Sexual abuse includes –

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| <p style="text-align: center;">POLICY OF</p> <p style="text-align: center;">STATE OF DELAWARE</p> <p style="text-align: center;">DEPARTMENT OF CORRECTION</p> | <p style="text-align: center;">POLICY NUMBER</p> <p style="text-align: center;">8.60</p> | <p style="text-align: center;">PAGE NUMBER</p> <p style="text-align: center;">2 of 11</p> |
| | <p>RELATED STANDARDS:</p> <p>ACA: 4-4406, 4-4371, 4-4133</p> <p>NCCHC: P-B-04, P-B-05</p> | |
| <p>CHAPTER: 8 Administration</p> | <p>SUBJECT:</p> <p>Prison Rape Elimination Act</p> | |

1. Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and
2. Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.
3. Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:
 4. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 5. Contact between the mouth and the penis, vulva, or anus;
 6. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
 7. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.
8. Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:
 9. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 10. Contact between the mouth and the penis, vulva, or anus;
 11. Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
 12. Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
 13. Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

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| <p style="text-align: center;">POLICY OF</p> <p style="text-align: center;">STATE OF DELAWARE</p> <p style="text-align: center;">DEPARTMENT OF CORRECTION</p> | <p>POLICY NUMBER</p> <p>8.60</p> | <p>PAGE NUMBER</p> <p>3 of 11</p> |
| | <p>RELATED STANDARDS:</p> <p>ACA: 4-4406, 4-4371, 4-4133</p> <p>NCCHC: P-B-04, P-B-05</p> | |
| <p>CHAPTER: 8 Administration</p> | <p>SUBJECT:</p> <p>Prison Rape Elimination Act</p> | |

14. Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in this section;
 15. Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident.
 16. Any voyeurism by a staff member, contractor, or volunteer.
- G. **Voyeurism:** an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.
- H. **Sexual Harassment:** Sexual harassment includes
1. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and
 2. Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident 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.
- I. **Offender:** All persons under the custody or authority of the Department of Correction.
- J. **Intersex:** Means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sexual development.
- K. **Gender non-conforming:** Means a person whose appearance or manner does not conform to traditional societal general expectations.
- L. **Transgender:** Means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.
- M. **Memorandum of Understanding (MOU):** Document used to define a relationship between departments, agencies or other entities to ensure continuity of operations where there are shared resources or workflows on anticipated outcomes.
- N. **Victim Advocate:** Individual from an outside agency in which the Department has established a MOU for the purposes of providing emotional support and related information and resources to those individuals affected by sexual abuse.

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| <p style="text-align: center;">POLICY OF</p> <p style="text-align: center;">STATE OF DELAWARE</p> <p style="text-align: center;">DEPARTMENT OF CORRECTION</p> | <p>POLICY NUMBER</p> <p>8.60</p> | <p>PAGE NUMBER</p> <p>4 of 11</p> |
| | <p>RELATED STANDARDS:</p> <p>ACA: 4-4406, 4-4371, 4-4133</p> <p>NCCHC: P-B-04, P-B-05</p> | |
| <p>CHAPTER: 8 Administration</p> | <p>SUBJECT:</p> <p>Prison Rape Elimination Act</p> | |

V. POLICY:

- A. It is the policy of the Department of Correction that all employees, contractors, volunteers and interns are responsible for the prevention, detection and reporting of prison rape and sexual activity. Anyone who fails to report offender on offender sexual abuse, or staff sexual abuse of any kind is subject to discipline, up to and including termination.
- B. The Bureau Chiefs shall be responsible for developing Bureau level policies and procedures to implement this Department policy and the PREA standards. Such policies will include Food Service and Maintenance employees that work in institutions where applicable.
- C. The Bureaus and facilities may use specific language from the PREA standards in developing their procedures as necessary.

1. Prevention Planning

- a. There is Zero-Tolerance for any type of sexual abuse between offenders or staff.
- b. A state-wide PREA Coordinator, and facility PREA Compliance Managers will be established.
- c. Yearly, the Department will assess, determine, and document where changes should be made to either the staffing plan, or deployment of cameras.
- d. Where the Department houses offenders under eighteen years old, the youthful offender will not be placed in an area where they shall have sight, sound or physical contact with any adult offender.
- e. Each Bureau will establish procedures that prohibits staff from conducting cross gender strip searches, body cavity searches, and cross gender pat searches of female offenders except in exigent circumstances, or where performed by medical staff. Where exigent circumstances exist, and a search is performed, the facility PREA Compliance Manager shall maintain a log documenting such searches.
- f. The Department will not physically examine a cross gender or intersex offender for the sole purposes of determining gender. Where necessary, medical staff will assist in determining the offenders genital status.
- g. The Department will ensure that offenders with disabilities have an equal opportunity to benefit from its efforts to prevent, detect, and respond to all forms of sexual abuse.
- h. The Department will not hire a staff member, contract with a vendor, or permit access to a volunteer, who may have contact with offenders , and who has engaged in sexual abuse of anyone in the community or inside a facility.
- i. The Department will conduct pre-employment background checks of applicants, vendors, and volunteers and will conduct criminal history checks at a minimum of every five years.

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|---|---|--|
| POLICY OF STATE OF DELAWARE DEPARTMENT OF CORRECTION | POLICY NUMBER 8.60 | PAGE NUMBER 5 of 11 |
| | RELATED STANDARDS: ACA: 4-4406, 4-4371, 4-4133 NCCHC: P-B-04, P-B-05 | |
| CHAPTER: 8 Administration | SUBJECT: Prison Rape Elimination Act | |

- j. When building a new facility, upgrading existing facilities, or when purchasing and deploying new video monitoring equipment, the Department will consider what effect these upgrades and purchase will have on its ability to protect offenders from sexual abuse.

2. Responsive Planning

- a. The Department will follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence in criminal and administrative investigations.
- b. The Department will utilize Sexual Assault Nurse Examiners (SANE's) or Sexual Assault Forensic Examiners (SAFE's) whenever possible, and when the investigation indicates retrievable evidence may be available.
- c. The Department will strive to maintain a working relationship, through an established MOU, with an outside rape crisis, or rape advocacy agency to provide rape crisis services. When requested, and where applicable, the Department shall help coordinate contact with an advocate at the hospital, or upon return to a facility.
- d. The Department shall conduct an administrative and/or criminal investigation for each allegation of sexual abuse.
- e. If an allegation indicates criminal behavior, the Department shall refer the case to the exclusive jurisdiction to investigate allegations of rape as outlined in 11 Del. Code Ch. 83, § 8302.

3. Training and Education

- a. The Department shall train all employees, vendors, volunteers, and others, who may have contact with offenders, on:
 - i. The Department's zero-tolerance policy
 - ii. How to fulfill their obligations under this PREA policy
 - iii. The offender's right to be free from sexual abuse
 - iv. The offender's and staff's right to be free of retaliation for making reports of sexual abuse
 - v. The dynamics of sexual abuse in confinement
 - vi. The common reactions of sexual abuse victims
 - vii. How to detect and respond to signs of sexual abuse
 - viii. How to avoid inappropriate relationships with offenders
 - ix. How to communicate effectively with all offenders, including those that are lesbian, gay, bisexual, transgender, intersex, or gender non-conforming

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| <p style="text-align: center;">POLICY OF</p> <p style="text-align: center;">STATE OF DELAWARE</p> <p style="text-align: center;">DEPARTMENT OF CORRECTION</p> | <p>POLICY NUMBER</p> <p>8.60</p> | <p>PAGE NUMBER</p> <p>6 of 11</p> |
| | <p>RELATED STANDARDS:</p> <p>ACA: 4-4406, 4-4371, 4-4133</p> <p>NCCHC: P-B-04, P-B-05</p> | |
| <p>CHAPTER: 8 Administration</p> | <p>SUBJECT:</p> <p>Prison Rape Elimination Act</p> | |

- b. Training will be tailored to the sex of the offender at the facility where staff is assigned. However, the training will be inclusive of both male and female characteristics, as it relates to trauma and history of sexual abuse. This training will provide all staff with a knowledge base to be able to work at either a male or female facility.
 - c. All staff will receive training at the time of hire, or during their academy training. Refresher training must be completed every year.
 - d. The Employee Development Center will be responsible to conduct and track this training department wide.
 - e. For vendors, volunteers, and others that are not sworn personnel, the level and type of training will be consistent with the amount of interaction and contact there will be with offenders.
 - f. The Department will ensure that all staff responsible for conducting administrative investigations receives specialized training related to PREA.
 - g. The Employee Development Center will ensure specialized training for staff conducting investigations and those providing medical and mental health services is available. They will track completion of this training.
 - h. The facility where an offender is housed will be responsible to provide each offender with information on the Department's Zero Tolerance policy for sexual abuse at intake. Within 30 days of intake, the Department will provide a more comprehensive education to offenders on their rights to be free from sexual abuse, how to report abuse, Department policies on reporting abuse, and to their right to be free from retaliation for reporting abuse.
 - i. The Department's grievance protocol will be made available to each offender along with the offender handbook.
- 4. Screening for Risk of Victimization and Abusiveness**
- a. All offenders will be screened during intake, and upon transfer to another facility, for their risk of being sexually abused, or being abusive toward other offenders. This screening should occur within 24 hours, but no longer than 72 hours after arrival.
 - b. The Department's Sexual Victimization/Abusiveness Quickscreen tool will be utilized.
 - c. Within 30 days of the offender's arrival at the facility, the offender will be reassessed using the Department's more detailed Sexual Victimization/Abusiveness screening tool.
 - d. Further assessment shall be done every two years, or when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information

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| <p style="text-align: center;">POLICY OF</p> <p style="text-align: center;">STATE OF DELAWARE</p> <p style="text-align: center;">DEPARTMENT OF CORRECTION</p> | <p style="text-align: center;">POLICY NUMBER</p> <p style="text-align: center;">8.60</p> | <p style="text-align: center;">PAGE NUMBER</p> <p style="text-align: center;">7 of 11</p> |
| | <p>RELATED STANDARDS:</p> <p>ACA: 4-4406, 4-4371, 4-4133</p> <p>NCCHC: P-B-04, P-B-05</p> | |
| <p>CHAPTER: 8 Administration</p> | <p>SUBJECT:</p> <p>Prison Rape Elimination Act</p> | |

- that bears on the offenders risk of sexual victimization or abusiveness.
- e. The results of these screenings will be confidential, and will only be used by staff to assist in the placement and protection of offenders from abuse.
 - f. The information from the risk screening will be used to inform housing, bed, work, education and program assignments.
 - g. Placement and programming assignments for transgender, intersex, and gender non-conforming offenders will be reassessed at least twice each year to review any threats to safety experienced by the offender.
 - h. A transgender, intersex, or gender non-conforming offender's own views with respect to his or her own safety shall be given consideration.
 - i. Transgender and intersex offenders will be given the opportunity to shower separately from other offenders.
 - j. Offenders at a high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers.
 - k. Offenders placed in segregation to protect them from victimization shall have access to programs, privileges, education, and work opportunities to the extent possible.
 - l. Offenders assigned to involuntary segregated housing shall only assigned to this housing until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed 30 days.
 - m. The Department shall clearly document when an offender is placed in involuntary segregated housing, the basis of the concern for the housing placement, and the reason no alternative means can be arranged.
 - n. The Department shall review an involuntary segregation every 30 days to determine if there is a need for separation from the general population.
- 5. Reporting**
- a. The Department will provide a method for offenders to report sexual abuse to an entity that is not part of the agency. This entity will forward offender reports of sexual abuse to agency officials, allowing the offender to remain anonymous upon request.
 - b. Offenders detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

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| <p style="text-align: center;">POLICY OF</p> <p style="text-align: center;">STATE OF DELAWARE</p> <p style="text-align: center;">DEPARTMENT OF CORRECTION</p> | <p style="text-align: center;">POLICY NUMBER</p> <p style="text-align: center;">8.60</p> | <p style="text-align: center;">PAGE NUMBER</p> <p style="text-align: center;">8 of 11</p> |
| | <p>RELATED STANDARDS:</p> <p>ACA: 4-4406, 4-4371, 4-4133</p> <p>NCCHC: P-B-04, P-B-05</p> | |
| <p>CHAPTER: 8 Administration</p> | <p>SUBJECT:</p> <p>Prison Rape Elimination Act</p> | |

- c. Any allegation of sexual abuse made via the Department’s offender grievance system, shall immediately be investigated as a report of sexual abuse. There will be no time limit placed upon when such a report can be submitted. The investigation will continue without delay until the report is determined as substantiated, unsubstantiated, or unfounded.
 - d. The Department will seek to provide offenders with access to an outside victim advocate for emotional support services by giving offenders mailing addresses and telephone numbers of local, state, or national victim advocacy or rape crisis organizations.
 - e. The Department will work to enable reasonable communication between offenders and these organizations in as confidential a manner as possible.
 - f. The Department will work to establish a MOU with an advocacy agency.
 - g. The Department will accept and forward third party reports of sexual abuse for investigation.
 - h. The Department will place information on its website as to how third parties may report sexual abuse on behalf of an offender.
 - i. Internal Affairs (IA) must keep a log of all calls to the IA PREA hotline. A copy of this log will be provided to the facility PREA Compliance Manager each month.
- 6. Official Response Following an Offender Report**
- a. The Department shall require all staff to report immediately any knowledge, suspicion, or information regarding an incident of sexual abuse that occurred in a facility.
 - b. The Department shall require all staff to report immediately any retaliation against staff or offenders that may report such an incident of sexual abuse.
 - c. Apart from reporting to designated supervisors at the facility, staff shall not reveal any information related to a report of sexual abuse other than to the extent necessary to investigate the incident, treat the victim, and safely house the victim and aggressor.
 - d. For offenders under the age of 18, who are a victim of sexual abuse, the facility will report the allegation to the Department of Services for Children, Youth and Families.
 - e. If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take actions that could destroy physical evidence, and then notify security staff.
 - f. There will be a written plan (Sexual Abuse Response Plan) to coordinate actions taken in response to an incident of sexual abuse. (See attachments A and B.)

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| <p style="text-align: center;">POLICY OF</p> <p style="text-align: center;">STATE OF DELAWARE</p> <p style="text-align: center;">DEPARTMENT OF CORRECTION</p> | <p>POLICY NUMBER</p> <p>8.60</p> | <p>PAGE NUMBER</p> <p>9 of 11</p> |
| | <p>RELATED STANDARDS:</p> <p>ACA: 4-4406, 4-4371, 4-4133</p> <p>NCCHC: P-B-04, P-B-05</p> | |
| <p>CHAPTER: 8 Administration</p> | <p>SUBJECT:</p> <p>Prison Rape Elimination Act</p> | |

- g. A copy of all PREA reports will be given to the facility PREA Compliance Manager.
- h. The Department will monitor the victim, any third party offender who reports an allegation of sexual assault, and/or any staff member who reports a case of sexual abuse for 90 days after initiation of an investigation.

7. Investigations

- a. Administrative investigations of sexual abuse shall be conducted promptly and thoroughly, and shall be followed through until a determination of substantiated, unsubstantiated, or unfounded can be made. All investigations will be documented in standardized reporting format utilizing the DACS incident and investigation applications, the Law Enforcement Investigative Support System (LEISS/DELJIS), and/or in a word document approved by the DDOC administration. Reports will include a description of the physical and testimonial evidence gathered, and the reasoning behind credibility assessments.
- b. Where allegations are referred for criminal investigation to the Delaware State Police, the Department shall ensure that the cases are referred promptly, and that a designated staff representative follows the case until it is determined to be substantiated, unsubstantiated, or unfounded. The victim will be notified in writing that a case has been closed as substantiated, unsubstantiated, or unfounded. A designated DDOC staff member, at the facility where the victim is housed, will notify the victim of the progress in any case where an arrest is made or prosecution against the perpetrator is pending. The victim will be notified in writing when the case moves from one step of the criminal adjudication process to the next.
- c. The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as an offender or staff.
- d. An alleged victim shall not be required to submit to a polygraph examination as a condition of proceeding with the investigation of an allegation.
- e. The departure of the alleged abuser or victim from employment or control of the facility or Department shall not provide a basis for terminating an investigation.
- f. The Department standard for determining whether an allegation of sexual abuse is substantiated shall be no higher than a preponderance of the evidence.
- g. The Department's obligation to report to the alleged victim shall terminate if the offender is released from the Department's custody.

8. Discipline

- a. Staff shall be subject to disciplinary sanctions up to and including termination

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|---|---|---|
| POLICY OF STATE OF DELAWARE DEPARTMENT OF CORRECTION | POLICY NUMBER 8.60 | PAGE NUMBER 10 of 11 |
| | RELATED STANDARDS: ACA: 4-4406, 4-4371, 4-4133 NCCHC: P-B-04, P-B-05 | |
| CHAPTER: 8 Administration | SUBJECT: Prison Rape Elimination Act | |

for substantiated cases of sexual abuse.

- b. Where sexual is substantiated during an administrative investigation, the Department shall report this information to the Delaware State Police for possible prosecution.
- c. When a case of sexual assault is substantiated against a vendor or volunteer, the Department shall bar that individual from further contact with offenders, and shall refer the case to the Delaware State Police for possible prosecution.
- d. Offenders shall be subject to disciplinary sanctions following an administrative finding that the offender engaged in offender-on-offender sexual abuse, or following a criminal finding of guilt for offender-on-offender sexual abuse.
- e. The Department prohibits all sexual activity between offenders and may discipline offenders for such activity. Sexual activity is only a PREA related incident when it is unwanted, coerced, or forced.

9. Medical and Mental Care

- a. If the intake or 30 day security screenings, or medical intake or subsequent mental health screenings indicate that an offender has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the offender is offered a follow-up meeting with a medical or mental health practitioner within fourteen (14) days of that screening.
- b. If the intake or 30 day security screenings, or medical intake or subsequent mental health screenings indicate that an offender has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the offender is offered a follow-up meeting with a mental health practitioner within fourteen (14) days of that screening.
- c. Victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment and consistent with BCHS Policy B-05.

10. Data Collection and Review

- a. The Department shall conduct a sexual abuse Critical Incident Review (CIR) at the conclusion of every sexual abuse investigation. This review will be done for substantiated, unsubstantiated, and unfounded cases.
- b. The CIR will be initiated within 30 days of completion of the investigation, and will be completed within 90 days, absent exigent circumstances.
- c. The review team shall include the facility Warden or Deputy Warden, the facility PREA Compliance Manager, a facility or internal affairs investigator, medical/mental health administrators, the state-wide PREA Coordinator, and

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| <p style="text-align: center;">POLICY OF</p> <p style="text-align: center;">STATE OF DELAWARE</p> <p style="text-align: center;">DEPARTMENT OF CORRECTION</p> | <p style="text-align: center;">POLICY NUMBER</p> <p style="text-align: center;">8.60</p> | <p style="text-align: center;">PAGE NUMBER</p> <p style="text-align: center;">11 of 11</p> |
| <p>CHAPTER: 8 Administration</p> | <p>RELATED STANDARDS: ACA: 4-4406, 4-4371, 4-4133 NCCHC: P-B-04, P-B-05</p> | |
| <p>APPROVED BY THE COMMISSIONER:</p> | | |
| <p>EFFECTIVE DATE:</p> | | |
| <p>APPROVED FOR PUBLIC RELEASE</p> | | |

other staff deemed appropriate by the facility. The Bureau Chief will have final review of the CIR report.

- d. Substantiated and Unsubstantiated cases will be reviewed on site at the facility where the incident occurred. Unfounded cases will be reviewed by the same review team, but may be reviewed remotely by electronic means.
- e. The Department shall collect accurate, uniform data for every allegation of sexual abuse using a standardized instrument and set of definitions. This will be automatically generated in the Delaware Automated Correctional System (DACS) upon completion of PREA Incident Reports.
- f. From DACS, the Department shall be able to obtain aggregated data as needed, and shall provide this information yearly to the United States Department of Justice.
- g. The Department shall review the aggregated data in order to assess and improve the effectiveness of its sexual abuse response plans, and this policy.
- h. An annual report of its findings and corrective actions for each facility, and the Department as a whole, will be prepared.
- i. This report will 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 abuse.
- j. The report shall be approved by the Commissioner of Correction, and will be available on the Department's website annually.
- k. No personal identifiers will be made publically available. Specific material that would present a clear threat to the safety and security of a facility will be redacted.

11. Audits

- a. During the three-year period starting August 20, 2013, and during each three-year period thereafter, the Department shall ensure that each facility is audited at least once.
- b. The United States Department of Justice will issue an audit instrument that will provide guidance on the conduct, and contents of the audit.
- c. The Department shall bear the burden of demonstrating compliance with the PREA Standards.