KENTUCKY CORRECTIONS Policies and Procedures	Policy Number 14.7	Total Pages 12
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Authority/References 42 U.S.C. §§ 15601 through 15609 ACA 4-4281-1 through 4-4281-8, 4-4406, 28 CFR §115.5, 28 CFR §115.6, 28 CFR § 115.11, 28 CFR § 115.15-16, 28 CFR § 115.21-22, 28 CFR § 115.31-35, 28 CFR § 115.41-42, 28 CFR § 51-52, 28 CFR § 115.61-64, CFR § 115.67, 28 CFR § 115.71-73, 28 CFR § 78, 28 CFR § 115.81-83, 28 CFR § 115.86, 28 CFR § 115.89	Subject **SEXUAL ABUSE PREVENTION AND INTERVENTION PROGRAMS**	

I. DEFINITIONS

"Contractor" means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency as established in 28 C.F.R. § 115.5.

"Exigent circumstances" means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility as established in 28 C.F.R. § 115.5.

"Gender nonconforming" means a person whose appearance or manner does not conform to traditional societal gender expectations as established in 28 C.F.R. § 115.5.

"Intersex" means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female as established in 28 C.F.R. § 115.5.

"Offender" means any person: (1) confined in a correctional institution; or (2) under the probation or parole supervision of the Department of Corrections, including any person on inactive supervision who has not received a final discharge.

"Sexual abuse" means:
A. The behavior described by KRS 510.120 (1) (C); or
B. As established in 28 C.F.R. § 115.6:
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.

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;

1. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
2. Contact between the mouth and the penis, vulva or anus;
3. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument; and
4. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual abuse of an inmate, 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;

1. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
2. Contact between the mouth and the penis, vulva or anus;
3. 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;
4. 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;
5. 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;
6. Any attempt, threat or request by a staff member, contractor or volunteer to engage in the activities described in paragraphs (1) through (5) of this definition;
7. 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, and
8. Voyeurism by a staff member, contractor or volunteer.

"Sexual contact" means any touching or physical contact of the sexual or other intimate parts of a person, including the genitalia, anus, groin, breasts, inner thighs or buttocks, either directly or through clothing, that is unrelated to official duties or done for the purpose of arousing or gratifying the sexual desire of any person or humiliating, harassing or degrading any person.

"Sexual harassment" means 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, as established in 28 C.F.R. § 115.6.

"Sexual offense" means any behavior or act of a sexual nature directed toward an offender by a staff member, visitor or other offender. This includes completed, attempted, threatened or requested acts including sexual abuse, sexual harassment, voyeurism, sexual contact, conduct of a sexual nature or implication, obscenity and unreasonable invasion of privacy. Sexual offense also includes conversations or correspondence, which suggest a romantic or sexual relationship between an offender and a staff member.

"Staff member" for purposes of this policy only, means full-time, part-time and interim employees, interns, students, volunteers, and contractors doing business on a recurring basis with the Department of Corrections.

"Substantiated" means an allegation that was investigated and determined to have occurred as established in 28 C.F.R. § 115.5.

"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 as established in 28 C.F.R. § 115.5.

"Unfounded" means an allegation that was investigated and determined not to have occurred as established in 28 C.F.R. § 115.5.

"Unsubstantiated" means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred as established in 28 C.F.R. § 115.6.

"Volunteer" means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the department, as established in 28 C.F.R. § 115.5

"Voyeurism" means:
A. The behavior described by KRS 531.090; or
B. 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, as established in 28 C.F.R. § 115.6

II. POLICY and PROCEDURE

A. This policy applies to all offenders, full time employees, part-time employees, interim employees, interns, students, volunteers, and contractors doing business with Corrections.

B. Any sexual act, sexual contact or sexual offense between an offender and a staff member, visitor or other offender shall be prohibited. No offender either incarcerated or under the supervision of the Department of Corrections, can give consent to any sexual relationship with a staff member. Any acts as defined in this policy that are conducted outside of the staff member's normal duties shall be considered a violation of this policy. The Department of Corrections has zero tolerance toward all forms of sexual abuse and sexual harassment.

C. Training

1. Training shall be tailored to be gender specific to the facility of each staff member. As required by 28 C.F.R. § 115.31, all employees shall receive training annually in the following:

   a. The Department's zero-tolerance policy for sexual abuse and sexual harassment.
   b. Their responsibilities of sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures.
   c. Offenders' right to be free from sexual abuse and sexual harassment.
   d. The right of offenders and employees to be free from retaliation for reporting sexual abuse and sexual harassment.
   e. The dynamics of sexual abuse and sexual harassment in confinement.
   f. The common reactions of sexual abuse and sexual harassment victims.
   g. How to detect and respond to signs of threatened and actual sexual abuse.
   h. How to avoid inappropriate relationships with offenders.
   i. How to communicate effectively and professionally with an offender, including lesbian, gay, bisexual, transgender, intersex or gender nonconforming offenders.
   j. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

2. As required by 28 C.F.R. § 115.31, all Volunteers and Contractors who have contact with offenders shall be trained on the following:

   a. The Department's policy of zero-tolerance regarding sexual abuse and sexual harassment and how to report such incidents.
   b. Their responsibilities under the department's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.

3. All employees who conduct Sexual Abuse investigations shall receive specialized training in conducting an investigation in a confinement setting. The training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings and the criteria and evidence required to substantiate a case for administrative action or prosecution referral as required by 28 C.F.R. § 115.34.

4. As required by 28 C.F.R. § 115.35, all full and part-time medical and mental health care practitioners who work regularly in the facility shall receive specialized training on the following:

   a. How to detect and assess signs of sexual abuse and sexual harassment.
   b. How to preserve physical evidence of sexual abuse.
   c. How to respond effectively and professionally to victims of sexual abuse and sexual harassment.
   d. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

5. Staff members completing the training listed in C (1) and (2) shall sign a document acknowledging that they understand the training they have received. All training documentation shall be maintained in accordance with the provisions of CPP 4.2

D. Offender Education

1. During orientation at the Assessment and Classification Center and at each institution, an offender shall receive oral and written information about the department's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment as required by 28 C.F.R. § 115.33(a). In addition, each facility shall educate each offender about:

   a. Prevention of sexual abuse.
   b. Self-protection from being abused.
   c. Receiving treatment and counseling.

2. Within 30 days of intake, comprehensive education shall be provided to offenders either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents and regarding policies and procedures for responding to such incidents as required by 28 C.F.R. § 115.33(b).

3. Each facility shall provide offender education in formats accessible to all offenders, including those who are limited English proficient, deaf, visually impaired or otherwise disabled, and for offenders who have limited reading skills as required by 28 C.F.R. § 115.33(d). Use of offender interpreters for assistance in offender education on aspects of the department's efforts to prevent, detect and respond to sexual abuse and sexual harassment shall be prohibited except in circumstances where extended delays in obtaining an effective interpreter could compromise the offender's safety.
4. Each facility shall maintain documentation of participation in offender education.
5. Each facility shall ensure that key information is continuously and readily available or visible to offenders.

E. General Provisions

1. Offenders shall be provided facilities that enable them to shower, perform bodily functions and change clothing without staff of the opposite gender viewing their breasts, buttocks or genitalia except in exigent circumstances or when such viewing is incidental due to routine cell checks.
2. All offenders who have been victims of sexual abuse in any correctional facility shall be offered medical and mental health evaluations and as deemed appropriate, any necessary treatment related to the sexual abuse, to include timely and comprehensive information about lawful pregnancy-related medical services and be offered testing for sexually transmitted infections as deemed appropriate by the medical practitioner.
3. Mental health practitioners shall attempt to conduct an evaluation on all known offender-on-offender perpetrators within 60 days of learning of such abuse and provide treatment as deemed appropriate.
4. Current and previous victims of sexual abuse shall receive any medical and mental health services related to the sexual abuse at no cost to the offender.
5. If an offender has pending disciplinary sanctions for an alleged offender on offender sexual abuse, consideration shall be given to whether the offender's mental disabilities or mental illness contributed to his or her behavior when determining what level of sanction, if any, will be imposed.

F. Offender Risk Assessment

1. An offender shall be assessed during intake screening within 24 hours of arrival at the Assessment and Classification Center and upon each transfer to a facility. Each screening shall include a review of any history of sexual abuse-victimization or sexually predatory behavior. Housing concerns shall be documented on the screening form.

2. Within 30 days of arrival to each facility, the offender's risk level shall be reassessed based upon any additional information received since the intake screening. A reassessment may occur at any time when warranted.

3. When an assessment indicates an offender has experienced victimization or previously been a perpetrator, staff shall ensure the offender has been offered a follow-up for counseling and monitoring with the appropriate medical or mental health professional within 14 days of the assessment.

4. The dissemination of information related to and resulting from the assessment shall be controlled and limited to staff necessary to inform treatment plans and make security and management decisions regarding housing, beds, work, education and program assignments.

5. Medical and mental health professionals shall obtain informed consent from the offender prior to reporting information related to a prior sexual victimization that did not occur in a facility.

6. Offenders shall not be disciplined for refusal or nondisclosure of complete information in response to questions asked pursuant to 28 CFR § 115.41 paragraphs (d)(1), (d)(7), (d)(8), or (d)(9).

7. Placement decisions regarding transgender, intersex, lesbian, gay and bisexual offenders shall be made in accordance with 28 CFR § 115.42.

8. Each facility shall provide allegations and dispositions of sexual offenses on a monthly report. All case records associated with claims of sexual offenses, including incident reports, investigation reports, offender information, case disposition, and medical and counseling evaluation findings and recommendations for post-release treatment or counseling, shall be retained in accordance with the records retention schedule.

9. No standard higher than a preponderance of the evidence shall be imposed in determining whether allegations of sexual abuse or sexual harassment are substantiated for administrative investigations as required by 28 C.F.R. § 115.72.

G. Initial Reporting and Staff First Responder Duties

1. An offender may report a sexual offense to any staff member. If at any time it is learned that an offender is subject to a substantial risk of imminent sexual abuse, immediate action shall be taken to protect the offender.

2. Staff members shall immediately report all knowledge, suspicions or information of an incident of a sexual offense within a Kentucky or other correctional facility. They shall report any retaliation against someone who has reported such an incident. They shall also report any knowledge of staff who neglect to report the above incidents.

3. Upon learning that an offender was sexually abused, the staff member shall immediately ensure the safety of the alleged victim while reporting the information to the shift supervisor. The shift supervisor shall ensure the following steps have been taken:

    a. The separation of the alleged victim and perpetrator either through the placement of one or both offenders in segregation or some other effective means.
    b. Secure and protect any crime scene to keep potential evidence in place for examination and investigation. If the crime scene cannot be secured, the crime scene shall be photographed or videotaped and the evidence, if any, collected and placed in a paper bag with a chain of evidence form attached. The evidence shall be logged and placed in the evidence locker.
    c. Notifications made to Warden or other designated facility leadership.
    d. The only persons permitted to enter a secured crime scene shall be Kentucky State Police, the assigned investigator or medical staff as needed.
    e. A log shall be maintained of anyone entering the crime scene and at what time he entered and exited. Anyone entering the crime scene shall be videotaped as additional documentation.
    f. The area shall remain secured as a crime scene until verification of a completed investigation and released by the investigating authority.

4. If the incident occurred within the previous 48 hours the alleged victim and alleged perpetrator shall not take any actions that could destroy physical evidence which includes: washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.

5. The Medical Department shall promptly make arrangements for the alleged victim to be transported to an outside facility for an examination that may include: collection of forensic evidence, testing for sexually transmitted diseases, prophylactic treatment, follow-up and mental health assessment.

    a. In preparation of transporting the inmate to the hospital's emergency room, the offender shall be provided and instructed to

undress over a clean sheet, in order to collect any potential forensic evidence that may fall from the offender's person. The sheet along with the offender's clothing shall be collected as evidence and placed in a paper bag with an appropriate chain of evidence form attached.

b. In coordination with the hospital, the Medical Department shall request the forensic medical examination be performed by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) or other qualified medical practitioner. The efforts to provide SAFEs or SANEs shall be documented. The examination shall be at no cost to the offender.

c. Medical care and forensic medical examinations are separate and different procedures. Offenders shall have a right to refuse either. Alleged victims may be encouraged, but shall not be forced to consent to a forensic medical examination. However, offenders may refuse consent to the forensic medical examination and still consent to and receive medical care.

6. The alleged victim shall be offered victim advocate services. If requested the advocate service shall be contacted and given the appropriate information.

7. The alleged offender perpetrator shall be placed in a dry cell to preserve forensic evidence. The offender shall be strip-searched and issued a paper gown. All possessions shall be taken. An offender placed in a dry cell, per this policy, shall not remain in this status longer than sixteen hours.

8. An Extraordinary Occurrence Report (EOR) and section one of the Sexual Offense Allegation Reporting Form shall be completed and forwarded to the appropriate facility and central office staff.

9. Notifications for the purpose of an investigation shall be immediately made to the designated facility investigator. In addition, all allegations of sexual abuse that involve potentially criminal behavior shall be referred for criminal investigation to the Kentucky State Police.

10. Within 72 hours of receiving an allegation that an offender was sexually abused while confined at another facility, the Warden shall notify the Head of the facility where the alleged incident occurred. The notification shall be documented. All allegations received from other facilities shall be investigated.

H. Investigations

1. Allegations of sexual abuse and sexual harassment shall be promptly, thoroughly and objectively investigated.

2. Sexual abuse investigations shall be conducted by specially trained investigators pursuant to 28 CFR § 115.34.and 28 CFR § 115.71.

3. Investigations shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings as required by 28 C.F.R. § 115.71.

4. Administrative investigations that result in a substantiated case of sexual abuse shall include an effort to determine whether staff actions or failures to act contributed to the abuse as required by 28 C.F.R. § 115.71.

5. The departure of the alleged perpetrator or victim from the employment or control of the facility or department shall not provide a basis for terminating an investigation as required by 28 C.F.R. § 115.71.

6. Following an investigation where the alleged victim has reported the case of sexual abuse, the alleged victim shall be informed and it shall be documented when the:

   a. Allegation has been determined to be substantiated, unsubstantiated or unfounded.
   b. Alleged perpetrator is no longer posted within the offender's unit.
   c. Alleged perpetrator is no longer employed.
   d. Alleged perpetrator has been indicted or convicted on a charge related to sexual abuse.

7. The obligation to inform the alleged victim shall terminate if the offender is released from custody.

I. Sexual Abuse Incident Review

As required by 28 C.F.R. § 115.86, all facilities shall conduct a review ordinarily within 30 days of the conclusion of every sexual abuse investigation unless the allegation was determined to be unfounded. The team shall consist of upper-level management officials with input from line supervisors, investigators, and medical and mental health practitioners. The review team shall:

1. Consider whether the allegation or investigation indicated a need to revise policies or practices to better prevent, detect or respond to sexual abuse.

2. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender or intersex identification, status, or perceived status; gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility.

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

4. Assess the adequacy of staffing levels in that area during different shifts.

5. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff.

6. Prepare a report of its findings, including determinations made from sections 1-5 and any recommendations for improvement and submit the report to the facility head and PREA compliance manager.

7. The facility shall implement the recommendations for improvement or shall document its reasons for not doing so.

J. Confidentiality

All information in a report or investigation of a sexual offense shall be kept confidential except to the extent necessary to report to an appropriate supervisor, adequately investigate, provide treatment, or make security or management decisions. An individual interviewed in the course of resolving the complaint shall be cautioned to treat the information as confidential. Breach of this confidentiality shall be grounds for disciplinary action.

K. Retaliation

Retaliation by or against any party involved in a complaint shall be strictly prohibited. Retaliation in and of itself, shall be grounds for disciplinary action. Each facility shall designate a staff member or department charged with monitoring retaliation. Monitoring shall occur for at least 90 days following an incident of sexual abuse and in cases when monitoring offenders, periodic status checks shall be conducted by the designated staff member. Emotional support services shall be provided as well as appropriate measures taken to protect any individual who expresses a fear of retaliation.

L. False Allegations

An offender may be disciplined for reporting a false allegation of sexual abuse or sexual harassment only where the facility can demonstrate the false allegation was

knowingly made in bad faith. A report made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute a false report or lying even if an investigation does not establish evidence sufficient to substantiate the allegation as required by 28 C.F.R. § 115.78.

M. Sexual Abuse Data Collection

1. Data shall be collected for every allegation of sexual abuse using the Sexual Offense Allegation Reporting Form and set of definitions that contains data necessary to answer all questions from the Survey of Sexual Violence requested annually from the Department of Justice. All data collected shall be securely retained.

2. All data from available incident-based documents related to allegations of sexual abuse shall be collected, reviewed, and maintained as needed.

3. Data shall be obtained from each private facility which contracts for the confinement of Department of Corrections offenders.

4. Aggregated data collected shall be made available to the public annually through the Department of Corrections website.