

 <p><b>KENTUCKY CORRECTIONS</b> Policies and Procedures</p>	Policy Number	Total Pages
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Authority/References	Subject	
<p>KRS 196.035, 197.020, 510.120, 531.090 101 KAR 2:102; 28 C.F.R. § 115.5, 28 C.F.R. § 115.6, 29 C.F.R. § 1604.11 ACA 4-4281-6, 4-4056; P &amp; P ACA 3C-02, 3E-05</p>	<p><b>STAFF SEXUAL OFFENSES</b></p>	
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	December 10, 2013	February 3, 2014

## I. DEFINITIONS

“Contractor” means a person who provides services on a recurring basis pursuant to a contractual agreement with the Department of Corrections 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. Sexual abuse of an inmate, detainee or resident by a staff member, contractor or volunteer as established in 28 C.F.R. § 115.6.

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;

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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 but not limited to 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, humiliating, harassing, degrading, or gratifying the sexual desire of 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. This includes completed, attempted, threatened, or requested acts including sexual assault, sexual contact, sexual harassment, voyeurism, 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, consultants, and contractors doing business with the Department of Corrections.

“Unauthorized behavior” means any activity or contact with an offender or offender's family that is unrelated or unnecessary to the staff member's assigned duties or official Department business.

“Volunteer” means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency 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 the toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitalia or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions, as described in 28 C.F.R. § 115.6.

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## II. POLICY and PROCEDURE

This policy shall apply to all full time, part-time, and interim employees, interns, students, volunteers, consultants, and contractors doing business with the Department of Corrections. The Department of Corrections has a zero tolerance policy toward sexual offenses. Corrections' employees shall avoid offensive or inappropriate conduct at work and sexual offenses. Complaints of sexual offenses shall be investigated in a prompt, effective and uniform manner.

### A. PROHIBITED BEHAVIOR

A staff member shall be prohibited from:

1. Any acts defined as sexual abuse in this policy.
2. Any acts defined as sexual contact in this policy.
3. Any acts defined as sexual harassment in this policy.
4. Any acts defined as a sexual offense in this policy.
5. Any acts defined as unauthorized behavior in this policy.
6. Sexual advances in any form towards an offender.
7. Sexually offensive language, comments or gestures.
8. Influencing, promising or threatening an offender's safety, custody, privacy, housing, privileges, work or program status, in exchange for personal gain or favor of a sexual nature.
9. Creating or encouraging an atmosphere of intimidation, hostility, or offensiveness as perceived by any individual who observes the sexually offensive behavior or language.
10. The act or attempted act of observing or interfering with an offender's personal affairs without a reasonable need to do so for the immediate safety and security of the offender, staff member, or others within the institution or office environment, i.e., failing to properly announce his presence when entering a housing unit, reading personal mail or written materials of an offender when not required for the safety and security of the environment.

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11. Any activity or contact with an offender or offender's family that is unrelated or unnecessary to the staff member's assigned duties or official Department business.

#### B. STAFF MEMBER RESPONSIBILITY

If a staff member is subjected to an offer by an offender that would constitute a sexual offense if made by a staff member or learns of a sexual offense occurring, the staff member shall take the following steps:

1. Immediately report to appropriate supervisor all contacts, observations, reports received, suspicions and knowledge of a sexual offense directed towards or by an offender; retaliation against an offender or staff member who reported an incident; and any staff member neglect or violation of responsibilities that may have contributed to an incident or retaliation. The staff member shall document any report received verbally. The staff member may also contact the hotline listed on the department's website established to privately report a sexual offense involving an offender.
2. Ensure that his conduct does not constitute or promote a sexual offense or violate the provisions of this policy and procedure.

#### C. SUPERVISOR RESPONSIBILITY

1. The supervisor receiving a complaint of a sexual offense shall ask the complainant to put the specifics of his complaint in writing. If the complainant refuses, the supervisor shall: (a) document the refusal and the specifics of the complaint as told to him by the complainant; and, (b) ask the complainant to confirm that his written version is accurate.
2. The supervisor receiving a complaint of a sexual offense shall ask the staff member involved and any witnesses to the incident to put the specifics of the incident in writing.
3. A supervisor receiving a complaint of a sexual offense shall report it directly to the Warden, District Supervisor or Division Director, who shall contact the Division of Personnel Services or the Office of Legal Services before taking further action.

#### D. INVESTIGATION

Depending upon the nature of the complaint, the Division of Personnel Services, the Office of Legal Services and the appropriate Deputy Commissioner shall determine whether the investigation shall be conducted at the district or institutional level or by an outside investigator. During the course of the

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investigation, the accused may be temporarily re-assigned. The accused may be placed on special investigative leave pursuant to 101 KAR 2:102.

#### E. FINAL ACTION

1. Staff members found to have violated this policy shall be subject to disciplinary action up to and including dismissal, based upon the findings of the investigation. Such disciplinary action shall be commensurate with the nature and circumstances of the violation.
2. Any staff member found to have engaged in sexual abuse based upon the findings of the investigation may be terminated. All terminations, including resignations that would have resulted in termination if not for the resignation, related to criminal activity shall be reported to the Kentucky State Police.
3. If the findings are inconclusive but the investigation reveals potentially problematic conduct, preventative action shall be taken. The accused shall be reminded of Corrections' policy and further preventive measures may be taken including additional training to avoid a further recurrence or permanent reassignment.
4. The victim of a sexual offense shall be referred to medical and mental health resources to receive help in dealing with the effects of the sexual offense at no financial cost.

#### F. 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 the incident, 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.

#### G. 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.

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#### H. FALSE ACCUSATIONS

If a person files a knowingly false complaint or knowingly provides false information to anyone in the course of an investigation, disciplinary action, up to and including dismissal may be taken.

#### I. PREVENTION

1. Supervisors shall conduct and document unannounced rounds to identify and deter staff sexual offenses.
2. A staff member shall not alert other staff if a supervisory round occurs, unless such announcement is related to the legitimate operational functions of the institution.
3. A staff member of the opposite gender from the offender in a housing unit shall announce his or her presence before entering the unit as described by institution post orders or written guidelines.