

Sixth District Department of Correctional Services POLICY	Issue Date 10/18/13	Effective Date 02/10/17	Policy Number 2406-17
Subject <b>SEXUAL MISCONDUCT WITH OFFENDERS COMMUNITY CONFINEMENT STANDARDS (PREA Investigations)</b>		Review Month June	Author 0590 (MLA)
Rescinds 2406-15	Reference PREA Standards	Prison Rape Elimination Act-Community Confinement Standards, United States Department of Justice Final Rule 28 C.F.R. Part 115, Docket No. OAG-131, RIN 1105-AB34, May 17, 2012, §115.271, 115.272, 115.273	

**PURPOSE:**

To establish policy in regard to Prison Rape Elimination Act (PREA) related investigations.

**POLICY:**

It is policy of the Sixth Judicial District, Department of Correctional Services, to provide a safe, humane, and secure environment, free from the threat of sexual violence and sexual harassment for all offenders, by maintaining a program of education, prevention, detection, response, investigation, prosecution and tracking. The Sixth Judicial District Department of Correctional Services has zero tolerance for sexual violence of any kind.

This policy applies to all employees, prospective employees, interns, volunteers and contractors of the Sixth Judicial District, Department of Correctional Services and is maintained current by the District Director or the Designee.

**PROCEDURE:**

1. Criminal and Administrative Investigations §115.271 (use flow charts 2406A & 2406B):
  - A. Investigations into allegations of sexual abuse and sexual harassment are done promptly, thoroughly and objectively for all allegations, including third-party and anonymous reports.
  - B. Where sexual abuse is alleged, the agency uses investigators who have received special training in sexual abuse investigations pursuant to §115.234.
  - C. Investigators gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; interview alleged victims, suspected perpetrators and witnesses; and review prior complaints and reports of sexual abuse involving the suspected perpetrator.

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**PROCEDURE:** (continued)

- D. When the quality of evidence appears to support criminal prosecution, the agency conducts compelled interviews only after consulting with the local legal authorities having jurisdiction to determine if further investigation is warranted.
  - E. The credibility of an alleged victim, suspect or witness is assessed on an individual basis and is not determined by the person's status as offender or staff. The Department does not require an offender who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
  - F. Administrative investigations:
    - 1) Include an effort to determine whether staff actions or failures to act contributed to the abuse; and
    - 2) Are documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments and investigative facts and findings.
  - G. Criminal investigations:
    - 1.) Are documented in a written report that contains a thorough description of physical, testimonial and documentary evidence and attaches copies of all documentary evidence where feasible.
    - 2.) When outside agencies are investigating allegations of sexual abuse, the facility cooperates with outside investigators and their endeavors to remain informed about the progress of the investigation.
    - 3.) Substantiated allegations of conduct that appears to be criminal are referred for prosecution.
  - H. The Department retains all written reports referenced in paragraphs F-G of this section for as long as the alleged abuser is incarcerated or employed by the Department, plus five (5) years.
  - I. The departure of the alleged abuser or victim from the employment or control of the facility or Department does not provide a basis for terminating an investigation.
  - J. Any State entity or Department of Justice component that conducts such investigations does so pursuant to the above requirements.
2. Evidentiary Standard for Administrative Investigations §115.272:
- A. The Department imposes no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

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**PROCEDURE:** (continued)

1. Reporting to Offenders §115.273:
  - A. Following an investigation into an offender's allegation of sexual abuse suffered in a Department facility, the Department informs the offender as to whether the allegation has been determined to be substantiated, unsubstantiated or unfounded.
  - B. If the Department did not conduct the investigation, it requests the relevant information from the investigative agency in order to inform the offender.
  - C. Following an offender allegation that a staff member has committed sexual abuse against the offender the Department subsequently informs the offender (unless the Department has determined that the allegation is unfounded) whenever:
    - 1) The staff member is no longer in the offender's facility;
    - 2) The staff member is no longer employed at the facility;
    - 3) The Department learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
    - 4) The Department learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
  - D. Following an offender's allegation that he or she has been sexually abused by another offender, the Department subsequently informs the alleged victim whenever:
    - 1) The Department learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
    - 2) The Department learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
  - E. All such notifications or attempted notifications are documented.
  - F. The Department's obligation to report under this standard is terminated if the offender is released from the Department's custody.

BY ORDER OF:

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Bruce Vander Sanden, Director