


Fifth Judicial District Department of Correctional Services Policy and Procedural Manual		Approval Date: 4-23-14 Approved By:  <small>Sally Kreemer, Director Fifth Judicial District Department of Correctional Services</small>
Division: Administration Unit(s): All Units	Subject: PREA 7 - Investigations	Effective Date: 4-23-14 Review Dates: N/A Revision Dates: N/A Origination Date: 4-23-2014
PREA Standards: 115.271 115.272 115.273		

PURPOSE

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

POLICY

It is the policy of the Fifth 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 Fifth Judicial District Department of Correctional Services has zero tolerance for sexual violence of any kind.

APPLICABILITY

This policy applies to all employees, prospective employees, interns, volunteers and contractors of the Fifth Judicial District Department of Correctional Services and will be maintained current by the District Director or designee.

PROCEDURES

I. Criminal and Administrative Investigations § 115.271

- A. Investigations into allegations of sexual abuse and sexual harassment shall be done promptly, thoroughly and objectively for all allegations, including third-party and anonymous reports.
- B. Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.234.
- C. Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- D. When the quality of evidence appears to support criminal prosecution, the Department shall turn the investigation over to law enforcement.
- E. 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 offender or staff. The

Department will 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. Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and
 - 2. 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.
- G. Criminal investigations shall be 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.
- H. Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.
- I. The Department shall retain all written reports referenced in paragraphs (F) and (G) of this section for as long as the alleged abuser is incarcerated or employed by the Department, plus five years.
- J. The departure of the alleged abuser or victim from the employment or control of the facility or Department shall not provide a basis for terminating an investigation.
- K. Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.
- L. When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

II. Evidentiary Standard for Administrative Investigations § 115.272

- A. The Department shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

III. Reporting to Offenders § 115.273

- A. Following an investigation into an offender's allegation of sexual abuse suffered in a Department facility, the Department shall inform 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 shall request the relevant information from the investigative agency in order to inform the offender.
- C. Following an offender's allegation that a staff member has committed sexual abuse against the offender, the Department shall subsequently inform 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 shall subsequently inform 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 shall be documented.
- F. The Department's obligation to report under this standard shall terminate if the offender is released from the Department's custody.

Attachment: [1] PREA Investigation Findings

PREA INVESTIGATION FINDINGS

1. Substantiated:

The investigation found a preponderance of the evidence that shows the allegation to be true.

2. Unsubstantiated:

The evidence is insufficient to prove the allegation true or false, a preponderance of credible evidence has not been obtained. The evidence is inconclusive, cannot show the allegation did happen nor that it did not happen.

3. Unfounded:

A preponderance of the evidence indicates the allegation to be untrue. Does not mean that the investigation failed to prove that the misconduct happened.

To write major report for unfounded allegation: Decision by DIS Administrator

Standard considered:

Investigation found *objective evidence* that the offender *knew* it was false when the allegation was made.

Preponderance of the Evidence:

The greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in a civil trial, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight that may be. (Black's Law Dictionary, 7th Edition)