

Prison Rape Elimination Act

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Policy Development

- Definitions
- Reporting and Notification
- Evidence Collections
- Medical and Mental Health Services
- Responsibilities
- Direct First Responder
- Separation of Victim
- Procedures
 - Recent v Non-recent Sexual Assaults
- Administrative v Criminal Cases
- Timeframes

Policy Development

- Employee Training
 - prevention, detection, response, investigation
- Inmate Training
 - prevention, self-protection, reporting, treatment
- Screening
 - predators, prey, housing, separation
- Medical and Mental Health
 - reporting, confidentiality, victim services, examinations
- Data Collection

Policy Development

- Procedure for reporting
- Staff required to report
- Inclusions in report
- Record keeping

Policy Development

Definitions

- A. Aggressor - The person or individual committing a sexual assault against another.
- B. Victim Support Person - A designated employee that has been specially trained to support an alleged victim/offender during the investigation of the alleged sexual assault.

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Definitions

- C. Sexual Misconduct – Sexual misconduct includes any sexual behavior that is directed towards an offender. Sexual misconduct includes, but is not limited to, any acts or attempts to commit acts which involve sexual contact or intimate relationships, sexual abuse or assault, sexual harassing or an invasion of privacy.

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Definitions

- D. **Sexual Harassing Activities** – Sexually offensive comments or gestures or any physical conduct which is of a sexual nature or sexually suggestive. Influencing, promising or threatening an offender's safety, custody or security level (including recommendations for court actions), privacy, housing, privileges, work detail or program status in exchange for sexual favors. Creating an intimidating, hostile or offensive environment for an offender or others by engaging in or permitting, sexually offensive behavior or language that is directed at or observable by offenders or others.

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Definitions

- E. **Offender Fraternization** – Prohibited activities with offenders and ex-offenders. Engaging in any nonprofessional association, contact, or personal relationship with offenders, ex-offenders, or members of their families, which compromises the employee's ability to effectively discharge their professional duties. Exceptions include family members and previously established relationships.

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Definitions

- E. The following activities with offenders and ex-offenders are strictly prohibited:
1. Personal trading, selling, or buying of any possession or other article/s of value.
 2. Accepting or offering a gift, money, or anything of value, directly or indirectly. This prohibition includes any member of the offender's family.
 3. Giving, receiving, or loaning money, or anything of value, for any purpose.

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4. Delivering or sending verbal or written messages which are not within the scope of the employee's assigned duties.
5. Engaging in any other activity which constitutes, or offers the opportunity for, abuse of the employee's position. Showing favoritism in job, housing or program assignments.
6. Sharing personal, intimate and/or sexual information.

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Definitions

- G. **Invasion of Privacy** – The act of observing, attempting to observe, or interfering in an offender's personal, intimate routines unrelated to the necessary performance of required job duties.

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Definitions

- H. **Retaliation** – An act of vengeance, covert or overt action, or threat of action, taken against an offender in response to the offender's complaint of sexual misconduct or cooperation in the reporting or investigation of sexual misconduct, regardless of the merits or the disposition of the complaint. Examples of acts of retaliation are unnecessary discipline, intimidation, unnecessary changes in work or program assignments, unjustified transfers or placements, unjustified denials of privileges or services. Retaliation will result in disciplinary action against an employee.

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Definitions

- I. **Interference with Official Process** – Any failure to report or cover-up an incident of sexual misconduct, making an allegation or statement that the party or witness knew could not have been true, or any other form of failure to cooperate with an investigation or inquiry. Interference with official process will result in employee discipline.

Legal Liability for Sexual Abuse of Persons in Custody

State Laws That May Be Used

- Staff Sexual Misconduct
- Sexual Assault/Battery
- Sodomy
- Vulnerable Adult Statutes
- Official Misconduct
- Filing a False Police Report
- Obstructing and Delaying

Civil Liability – Constitutional Claims

- Most Common Legal Bases for Challenges:
 - 42 USC 1983
 - 8th Amendment
 - 4th Amendment
 - 14th Amendment
 - State Tort Claims

42 USC 1983

- Causes a federal cause of action for the vindication of rights found elsewhere
- Key Elements:
 - Deprived of a right secured by the Constitution or US Law
 - Deprivation by a person acting under color of law
 - Includes volunteers and contractors

Eighth Amendment

- Prohibits cruel and unusual punishment
- Legal Standard is deliberate indifference
 - Established in a prison rape case *Farmer v Brennan*
 - Two part Test
 - The injury must be objectively serious
 - The official must have a sufficiently culpable of mind and have acted with deliberate indifference or reckless disregard for the inmate's constitutional rights.

Courts Look For:

- **Deliberate indifference to inmate vulnerability safety or health**
 - Official knew of and disregarded an excessive risk to an inmate's safety or health
 - Official must be aware of facts from which an inference could be drawn that a substantial risk of harm exists and he must draw the inference

Fourteenth Amendment – Substantive Due Process

- Was the individual deprived of life, liberty or property without due process of law?
- Lower legal standard than the 8th
- Depending on the situation – 14th Amendment may apply to pre-trial inmates and juveniles.

State Tort Claims

- **Assault**
- **Battery**
- **Intentional infliction of emotional distress**
- **Negligent infliction of emotional stress**
- **Negligent hiring, firing, supervision, staff training**

Official Liability

- **Did it happen on your watch?**
- **Were you responsible for promulgating and enforcing policy?**
- **Did you fail to act or ignore information presented to you?**
- **Was it a failure to train, supervise, etc?**