

MICHIGAN DEPARTMENT OF CORRECTIONS WHV - Women's Huron Valley Correctional Facility OPERATING PROCEDURE	EFFECTIVE DATE 05/16/2013	NUMBER 03.02.130A
	SUPERSEDES OP-WHV- 03.02.130A (Dated: 05/01/09)	
SUBJECT PROCESSING PRISONER COMPLAINTS OF STAFF GENDER-BASED MISCONDUCT	AUTHORITY PD 03.02.130	
	ACA Standards N/A	
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OBJECTIVE:

To ensure staff properly respond to allegations of gender-based misconduct between prisoners and staff.

FORMS/RETENTION:

FORM: Mental Health Services Referral (Roberta R), CHX-212
RETAIN: Health Care File, Life of File

FORM: Prisoner/Parolee Grievance Form, CSJ-247A
First Step Grievance Receipt, CAJ-976
RETAIN: Grievance Coordinator; Three (3) years

POST ORDERS:

N/A

AUDIT ELEMENTS:

This procedure must be audited in accordance with PD-01.05.100, "Self-Audit of Policies and Procedures".

The Deputy Warden is responsible for ensuring that this Operating Procedure is complete and accurate, complies with all applicable Departmental Policies, Procedures and Administrative Rules, is updated as needed and is monitored on an ongoing basis to ensure that staff are following the procedure as written.

DEFINITIONS:

- A. Staff Gender-Based Misconduct (GBM) - Certain kinds of prohibited staff behavior, including staff sexual misconduct, sexual harassment, overfamiliarity, improper pat down searches, violation of the policies for one-on-one and knock and announce, and retaliation.
- B. Staff Sexual Misconduct (26h) - A sexual act directed by an employee toward a prisoner, including any of the following:
 1. An attempted, threatened, or requested sexual act or helping, advising, or encouraging another employee to engage in a sexual act.
 2. The intentional touching, either directly or through clothing, of a prisoner's genitals, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or gratify the sexual desire of any person.
 3. Invasion of privacy for sexual gratification, indecent exposure, or voyeurism.
- C. Overfamiliarity (26z) - Conduct between an employee and a prisoner which has or is likely to result in intimacy or a close personal association, or conduct that is contrary to the good order of the facility.
- D. Category 17 Allegations - A subset of gender based misconduct, as follows:

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1. Harassment, Sexual (17c) – Staff sexual harassment includes verbal statements or comments of a sexual nature directed by staff to a prisoner, demeaning references to gender or derogatory comments about body or clothing directed by staff to a prisoner, or profane or obscene language or gestures of a sexual nature directed by staff to a prisoner.
2. Harassment, Retaliation (17b) – Harmful action, or threat of such action, taken by staff against a prisoner because of that prisoner's resistance to, complaint regarding, or cooperation in an investigation of staff sexual misconduct or staff sexual harassment.
3. Clothed Body Search Violation (Pat Down) (17g) – Except in an emergency situation, or where there is reasonable suspicion that a prisoner is in possession of contraband, pat down and clothed body searches of prisoners are only to be conducted by female staff, in accordance with policy.
4. Knock And Announce Violation (17k) – Absent compelling circumstances or reasonable suspicion of unauthorized activity/rule violations, male staff shall verbally announce their presence prior to entering an area of the facility where prisoners could be in a state of undress.
5. One On One Violation (17l) – Male staff are restricted from being alone with female prisoners in one-on-one situations in areas of the facility that are not clearly visible to other prisoners or staff. This does not apply in emergency situations, when providing counseling, when conducting interviews during an investigation, or when reporting sexual misconduct, sexual harassment, or retaliation. Additionally, male health care staff is not prohibited from being alone with female prisoners when providing medical care, unless the prisoner is in a state of undress. In such cases, the employee is to be accompanied by a female health care employee.

INFORMATION:

PD-03.02.130, Prisoner/Parolee Grievances and MDOC OP-03.02.130, Prisoner/Parolee Grievances, establish overall Department policy and procedure regarding a prisoner's right to file a Prisoner/Parolee Grievance. Every effort will be made to effectively address, and where possible, resolve grievances at the earliest possible step in a timely fashion. OP-WHV-03.03.140, Prohibited Sexual Conduct Involving Prisoners, outlines staff responsibilities at the facility level for ensuring affirmative steps are taken to guard against staff sexual harassment, staff sexual misconduct, and any other types of gender-based misconduct between prisoners and staff; and for properly responding to allegations of such misconduct.

Any allegation of Gender-Based Misconduct may be reported by a prisoner verbally or in writing, including through the grievance process. The Deputy Warden will be responsible for handling complaints of staff GBM, as detailed in this operating procedure. Staff receiving a verbal or any other written complaint of gender-based misconduct shall immediately notify their supervisor and/or the on-duty Shift Commander, who will advise the Deputy Warden in a written report no later than the end of their shift. Staff receiving a complaint will advise the prisoner to file a grievance, in order to exhaust her administrative remedies in addition to reporting to their supervisor or on-duty shift commander.

NOTE: It is not required that a Grievant attempt to address or resolve a complaint of gender based misconduct with the staff member.

GRIEVANCES:

Grievances are to be coded by the Grievance Coordinator upon receipt, and based upon the most serious (e.g., sexual misconduct, retaliation, etc.) or otherwise clearest allegation(s) within it. In a grievance alleging 'retaliation', the allegation of retaliation serves as the primary allegation of the grievance, and the grievance is to be coded 17b. The allegation(s) against staff that is said to be the retaliation serves as the secondary allegation(s).

NOTE: Once a grievance has been coded and entered into the grievance database or AIPAS, it is not to be e-coded or changed in the system based upon the outcome of the investigation. This is to ensure that allegations for a specific grievance code can be tracked through the grievance process, and compared against specific findings (Insufficient Evidence, Sufficient Evidence, No Evidence, No Finding).

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Grievances containing allegations of staff sexual misconduct (26h) and staff overfamiliarity (26z) shall be coded with the appropriate category 26 grievance code. The Grievance Coordinator will forward the grievance directly to the Deputy Warden, who will review it. The Deputy Warden will forward the complaint to the Warden, who may initiate a preliminary investigation and/or refer it to Internal Affairs (IA), in accordance with PD-01.01.140, Internal Affairs.

Grievances containing allegations which are specifically, or most distinctly, Category 17 in nature, shall be coded with the appropriate Category 17 grievance code (17b, 17c, 17g, 17k, 17l). The Grievance Coordinator will forward the grievance directly to the Deputy Warden, who will review it. The Deputy Warden will forward the complaint to the Warden, who may initiate a preliminary investigation and/or refer it to Internal Affairs (IA), in accordance with PD-01.01.140, Internal Affairs.

The Grievance Coordinator shall not reject any grievance that alleges staff gender-based misconduct.

The assigned investigator of a grievance will sign off as the Step I Respondent. The Deputy Warden will sign off as the Step I Reviewer, and return the grievance to the Grievance Coordinator for processing. This is to ensure that the grievance is properly documented and recorded in the grievance database.

ALL COMPLAINTS:

Staff assigned by the Warden to investigate complaints of gender-based misconduct are to complete all investigations within 15 business days, unless they are granted an extension in writing by the Warden.

The Warden shall ensure that information regarding all staff gender-based misconduct allegations (e.g., grievances, kites, etc.) is forwarded to the Warden's Secretary. The Warden's Secretary or Administrative Assistant shall enter the information and allegations into AIPAS upon receipt.

MODIFIED ACCESS STATUS:

Prisoners on Modified Access will NOT be restricted from filing grievances for allegations defined in this procedure as Gender-Based Misconduct.

REPORTING:

The Grievance Coordinator will submit a written report to the Deputy Warden on the first of the month, pursuant to OP-WHV-03.03.140, Prohibited Sexual Conduct Involving Prisoners. The Grievance Coordinator shall ensure that the monthly Category 17 Grievance Report is sent to the WHV Litigation Coordinator no later than the 10th of the month for the preceding month.

This operating procedure is divided into the following sections:

- I. Verbal and Written Complaints Other Than Grievances
- II. Complaints Received Through A Grievance
- III. Reporting

PROCEDURE:

WHO

DOES WHAT

I. VERBAL AND WRITTEN COMPLAINTS OTHER THAN GRIEVANCES

- | | |
|-------------------------------|--|
| Staff | 1. Receives a prisoner complaint alleging staff gender-based misconduct, via prisoner kite, in some other written form, or verbally. |
| Staff Receiving the Complaint | 2. Notifies their supervisor and/or the on-duty Shift Commander of the complaint, immediately. |

Supervisor / On-Duty
Shift Commander

3. Advises the prisoner to file a grievance, in order to exhaust her administrative remedies, if the complaint is received from the alleged prisoner victim herself.
4. Determines what actions, if any, should be taken to ensure the safety of the alleged prisoner victim.
5. Notifies Health Care Services of the complaint, if appropriate.
6. Ensures a (CHX-212) Mental Health Services Referral (ROBERTA-R) is completed and submits to Mental Health Services if allegation is for staff sexual misconduct.
7. Advises the Deputy Warden of the prisoner's complaint in a written report no later than the end of their shift, attaching to the report any documentation or written evidence of the complaint.

Deputy Warden

8. Reviews the written report, and ensures a written statement from the prisoner is obtained and prisoner is interviewed.
9. Determines if any specific recommendations will be provided to the Warden (i.e., stop order, suspended prisoner contact, other staff involvement, etc.).
10. Delivers the completed written report, recommendation(s) and any accompanying information to the Warden's Office, with a copy to the Grievance Coordinator.

Grievance
Coordinator

II. COMPLAINTS RECEIVED THROUGH A GRIEVANCE

1. Receives a Step I Prisoner/Parolee Grievance form alleging staff gender-based misconduct.

NOTE: It is not required that Grievant attempt to address or resolve the allegations or complaint with the named staff member.

2. Reviews the grievance carefully to determine the most appropriate coding.

NOTE: The Grievance Coordinator will meet first with the Deputy Warden, in order to come to an agreement that the grievance involves staff gender-based misconduct, and on the grievance code.

3. Places the date the grievance was received in the upper left hand corner on all carbonless pages of the form.
4. Enters into the Computerized Grievance Tracking System the following:
 - A. Prisoner Name
 - B. Prisoner Number
 - C. Date Received
 - D. Institution CMIS Code
 - E. Housing Unit
 - F. Grievance identifier Number/code (e.g. WHV-YR-MO-####-00X)
 - G. Employee Being Grieved

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5. Completes a First Step Grievance Receipt (CAJ-976) with the following:
 - A. Prisoner Name
 - B. Prisoner Number
 - C. Date Received
 - D. Grievance Identifier Number/Code (e.g., WHV-YR-MO-####-00X)
 - E. Subset Category (e.g. 17B, 17C, 17G, etc.)
6. Forwards the completed First Step Grievance Receipt (CAJ-976) to the Grievant.

NOTE: The following standard language, advising the Grievant that the time frame necessary for providing her with a Step 1 response may be longer than usual, will be placed onto each grievance RECEIPT for complaints of staff gender-based misconduct, as indicated:

Staff Sexual Misconduct (26h); Staff Overfamiliarity (26z)

"The grievance you filed on << Date >> alleging << type of staff gender-based misconduct >> has been received and reviewed. Given the nature of the allegations, it can not be processed according to established grievance response timelines. The allegations which you have made have been forwarded to the Internal Affairs Section. This process may exceed the timelines established in the MDOC grievance procedure. If you disagree with the response you receive from the investigation, you may file a Step 2 appeal, which would not be considered untimely."

"You should not interpret this information as stating or implying that it is a mistake to file a grievance. Your allegations will be thoroughly investigated and appropriate actions will be taken if the allegations are sustained."

Searches (Pat Down & Strip) (17g); Knock and Announce Violation (17k); One-on-One Violation (17l) Retaliation (17B)

"The grievance you filed on << Date >> alleging << type of staff gender-based misconduct >> has been received and reviewed. Given the nature of the allegations, it is being assigned to a specially trained investigator for investigation. The Warden will determine the type of investigation that will be initiated. The investigator will advise the Warden of his/her finding. The time frame necessary for providing you with a Step 1 response may be longer than usual, so an extension of an additional 15 business days is being granted. The due date for your Step 1 response is << Date >>. If necessary, an additional extension may be considered. If you disagree with the Step 1 response you receive from the investigation, you may file a Step 2 appeal, which would not be considered untimely."

"You should not interpret this information as stating or implying it was a mistake to file a grievance. Your allegations will be thoroughly investigated and appropriate actions will be taken if the allegations are sustained."

7. Delivers the completed grievance and any accompanying information immediately and directly to the Deputy Warden, but not more than 24 hours after it was received. Delivers the grievance directly to the Warden, in the absence of the Deputy Warden.

NOTE: The grievance shall not be placed in institutional mail.

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Deputy Warden

8. Reviews the grievance, and determines what actions, if any, should be taken to ensure the safety of the alleged prisoner victim.
9. Notifies Health Care Services of the complaint, if appropriate.
10. Ensures a CHX-212 Mental Health Services Referral (ROBERTA-R) is completed and submits to Mental Health Services if allegation is for staff sexual misconduct.
11. Determines if any specific recommendations will be provided to the Warden (i.e., stop order, suspended prisoner contact, other staff involvement, etc.).
12. Delivers the completed grievance and any accompanying information immediately and directly to the Warden's Office.

NOTE: The grievance shall not be placed in institutional mail.

Warden's Secretary/
Designee

13. Receives a grievance or written staff report alleging complaints of staff gender-based misconduct (as specified).

Warden

14. Reviews the grievance or written staff report.

Warden's Secretary/
Designee

15. Enters all relevant and required information about the complaint into AIPAS, upon review by the Warden and assignment of the investigation.
16. Assigns a complaint of a Category 17 violation (as specified) to a qualified investigator, specifically trained to conduct investigations into Category 17 allegations, along with a date by which the investigation is to be completed and returned.

NOTE: Investigations are to be completed within 15 business days, unless the investigator is granted an extension in writing by the Warden.

Warden's Secretary/
Designee

17. Prepares a memorandum assigning the investigation to the selected employee.
18. Contacts the assigned employee, and provides her/him with the investigation packet of information and documents.

Assigned Investigator

19. Receives the Category 17 Investigation packet and signs for it, noting the date by which the investigation is to be completed and returned.
20. Reviews the packet and conducts the investigation, including confidentiality warning statements and questionnaires.

Investigator and
Warden

21. Communicate with each other, and with the Office of Attorney General, regarding requests to interview the Grievant and other prisoners, in order to ensure proper notifications and authorizations are received in advance of interviews.

Investigator

22. Submits the completed investigation packet and a DRAFT response to the prisoner if the complaint was received via Grievance to the Deputy

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Warden, by the assigned due date or approved extension.

NOTE: This is to ensure there is concurrence with the investigation findings before responding to the prisoner, or placing a final Step 1 response on a Prisoner/Parolee Grievance form itself.

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| Deputy Warden | 23. | Reviews the completed investigation packet and <u>DRAFT</u> response, to ensure: all allegations have been addressed and thoroughly investigated; the investigation is thorough and complete; references to prisoner(s) and language within the report is sensitive and appropriate; and, the findings appear accurate based upon the facts presented. |
| | 24. | Forwards approved Step 1 Grievance Response and original Grievance to Investigator for processing. |
| Investigator | 25. | Documents the outcome (i.e. findings) of the investigation in the Step I response area of the original Prisoner/Parolee Grievance form, if the complaint originated as a grievance and the Deputy Warden of Custody concurs. |
| Investigator and
Deputy Warden | 26. | Signs off on a Step 1 Prisoner/Parolee Grievance as: the Step 1 Respondent (Investigator), and the Step 1 Reviewer (Deputy Warden). |
| Deputy Warden | 27. | Submits the completed investigation packet and the signed Step 1 Prisoner/Parolee Grievance response (if applicable), to the Warden. |
| | 28. | Recommends to the Warden any corrective or disciplinary action against the employee(s) and/or prisoner(s), as appropriate. |
| Warden | 29. | Reviews the completed investigation packet and the signed Step 1 Prisoner/Parolee Grievance response (if applicable), either concurring with the findings and response or ordering further action. |
| Warden's Secretary or
Designee | 30. | Updates all relevant and required information about the complaint and investigation in AIPAS, once the matter is closed. |
| | 31. | Returns a completed Prisoner/Parolee Grievance form to the Grievance Coordinator for recording and distribution. |
| | 32. | Ensures the prisoner is otherwise notified of the results of the investigation in writing, if the complaint originated in a manner other than by a formal grievance. |

III. REPORTING

- | | | |
|--------------------------|----|---|
| Grievance
Coordinator | 1. | Submits a written report to the Deputy Warden on the first of the month, pursuant to OP-WHV-03.03.140, prohibited Sexual Conduct Involving Prisoners. |
| Warden | 2. | For each investigation which results in sustained disciplinary charges for staff sexual misconduct/sexual harassment, staff designated by the Warden shall ensure that a completed United States Department of Justice Survey on Sexual Violence form (SSV-IA) is sent to the PREA Section along with any other documentation as requested by the PREA Administrator. If the case involves only an allegation of staff overfamiliarity, documentation shall be provided as requested by the PREA Administrator or disgreee. |

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3. The Warden or FOA Deputy Director, as appropriate, shall ensure that the complainant and the victim if not the complainant are notified in writing of the final disposition of an investigation involving staff sexual misconduct/sexual harassment or staff overfamiliarity. This shall include notification of whether any disciplinary action has been taken; however, details of the discipline, including the specific charges and sanctions, shall not be provided.

MDW/kh
5/15/2013