



WISCONSIN DEPARTMENT OF CORRECTIONS

Governor Tony Evers / Secretary Kevin A. Carr

GUIDANCE DOCUMENT CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections §227.10 and §227.11 of the Wisconsin Statutes.

I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated.

I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

Casey Gerber

Name of Individual Certifying this Document/Proposed Document

Director, Office of Juvenile Offender Review

Title

Casey Gerber

Signature

12/11/2019

Date Signed

Department of Corrections – Wisconsin
Office of the Secretary
Wis. Stat. § 227.112(6)
DOC-2910 (6/2019)

 <p style="text-align: center;">WISCONSIN DEPARTMENT OF CORRECTIONS Division of Juvenile Corrections</p> <p style="text-align: center;">Policy and Procedure</p>	EFFECTIVE DATE 12/12/2019	PAGE NUMBER 1 of 9
	MANUAL REFERENCE	<input type="checkbox"/> New <input checked="" type="checkbox"/> Revision
	DJC POLICY # 300.07.07	Original Date: 9/15/2005
	ORIGINATED BY Ron E. Hermes, Administrator	
X		Date Signed:
DISSEMINATION <input type="checkbox"/> All Staff <input type="checkbox"/> Confidential – Security Related <input checked="" type="checkbox"/> Facilities <input type="checkbox"/> Field Offices <input type="checkbox"/> Health Services <input type="checkbox"/> Supervisory Staff Only	PRIORITY <input checked="" type="checkbox"/> Policy/Directive <input type="checkbox"/> Information Discuss at Staff Meeting Read/Route/Post	
	REPLACES POLICY IMP 20	
SUBJECT: Managing Allegations of Youth on Youth Sexual Misconduct		

Purpose

The purpose of this policy is to outline the steps that Division of Juvenile Corrections staff are to take when youth allege sexual abuse or misconduct.

Policy

It is the facility’s responsibility to assure the safety of youth, enforce applicable state laws, Department of Corrections Administrative Code and the federal Prison Rape Elimination Act (PREA) as it relates to sexual misconduct of youth in juvenile correctional facilities. The Division of Juvenile Corrections’ zero-tolerance policy towards sexual assault of any youth will guide implementation of the procedures described below.

The facility shall investigate all allegations of youth sexual assault, abuse, harassment, and inappropriate behavior; protect youth involved in such investigations; and report allegations of sexual assault, abuse, harassment, and inappropriate behavior to appropriate authorities.

Facilities shall evaluate each incident and determine what steps, if any, can be taken to prevent further incidents from occurring. Facilities shall track and report incidents and outcomes at their respective facilities and submit data to the Division of Juvenile Corrections (DJC) Central Office. DJC shall compile statistical information and comply with PREA reporting requirements.

References

- Wisconsin Administrative Code DOC § 373 - Youth Conduct In Type 1 Secured Correctional Facilities
- Wisconsin Administrative Code DOC § 373.15 – Sexual Intercourse
- Wisconsin Administrative Code DOC § 373.16 – Sexual Contact
- Wisconsin Administrative Code DOC § 373.27 – Inappropriate Sexual Conduct
- Wisconsin Administrative Code DOC § 373.73 – Procedure for Disciplinary Hearings
- Wisconsin Statute § 48.02 – Children’s Code; Abuse
- Wisconsin Statute § 48.981 – Abused or Neglected Children and Abused Unborn Children
- Wisconsin Statute § 940.19 – Battery

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Wisconsin Statute § 940.225 – Sexual Assault

Wisconsin Statute § 944.30 – Prostitution

Wisconsin Statute § 948.02 – Sexual Assault of a Child

Wisconsin Statute § 948.025 – Engaging in Repeated Act of Sexual Assault of the Same Child

Wisconsin Statute § 948.05 – Sexual Exploitation of a Child

Wisconsin Statute § 948.055 – Causing a Child to View or Listen to Sexual Activity

Wisconsin Statute § 948.10 – Exposing Genitals, Pubic Area or Intimate Parts

42 U.S.C.A. §15601. Prison Rape Elimination Act of 2003.

28 C.F.R § Part 115, et seq. National Standards to Prevent, Detect and Respond to Prison Rape

Executive Directive 72 - Sexual Abuse and Sexual Harassment in Confinement (PREA)

Definitions, Acronyms and Forms

CFR – Code of Federal Regulations

Child abuse -- As defined in Wis. Stat. § 48.02 (1), abuse of a child includes the following:

- (a) Physical injury (for example, lacerations, fractured bones, burns, internal injuries) inflicted on a child by other than accidental means.
- (b) Sexual intercourse or sexual contact under Wis. Stat. § 940.225, 948.02 or 948.025. [Note the definition does not include the misdemeanor offense of sexual intercourse with a child age 16 or older.]
- (c) A violation of Wis. Stat § 948.05, sexual exploitation of a youth.
- (d) Permitting, allowing or encouraging a child to violate Wis. Stat. § 944.30, prostitution.
- (e) A violation of Wis Stat. §. 948.055, causing a child to view or listen to sexual activity.
- (f) A violation of Wis. Stat. § 948.10, exposing genitals or pubic area to/of a child for purposes of sexual gratification.

DJC – Division of Juvenile Corrections

DOC – Department of Corrections

DOC-1681 – Report of Suspected Child Abuse

DOC-1844 – Youth Statement

DOC-2805 – Sexual Abuse Allegation Staff Retaliation Monitoring

Facility Intake Worker- A supervisor who receives and submits initial allegation information

HSU – Health Services Unit

Inappropriate sexual conduct – This document will refer to inappropriate sexual conduct when discussing behavior that is not defined as sexual assault or child abuse, but violates DJC administrative code on youth behavior. Administrative codes addressing sexual behavior in juvenile correctional facilities include DOC 373.15, DOC 373.16 and DOC 373.27.

J-Tracker – Juvenile Management Information System

Mandatory Reporter – A person who is required by Chapter 48 of the Wisconsin Statutes or Executive Order 54 to report suspected child maltreatment. The DJC expects that any position not contemplated by the statute will report suspected abuse or neglect to their supervisor.

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Wisconsin Statutes defines abuse as any physical injury inflicted on a youth by other than accidental means.

- a. Physical injury includes, but is not limited to, lacerations; fractured bones; burns; internal injuries; severe or frequent bruising; or great bodily harm.
- b. Sexual intercourse or sexual contact under Wis. Stat. § 940.225 or 948.02, (i.e., sexual assault or sexual assault of a child).
- c. A violation of Wis. Stat. § 948.05 (i.e., sexual exploitation of a youth).
- d. Permitting, allowing, or encouraging a youth to violate Wis. Stat. §. 944.30 (i.e., prostitution).
- e. A violation of Wis. Stat. § 940.227 (i.e., forced viewing of sexual activity).
- f. Crimes related to sex trafficking

PPE- Personal Protective Equipment. Equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses

PREA – Prison Rape Elimination Act

Sexual Assault Nurse Examiner (SANE) – a nurse who has been trained through the Wisconsin State Crime Lab on following specific protocols for gathering evidence from victims and perpetrators of alleged sexual abuse.

Sexual Abuse- Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (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) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

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;
- (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 assault – When used in this document, “sexual assault” means sexual intercourse or sexual contact wherein one party to the activity did not give consent. For the purpose of this document, no person under age 18 may give consent to sexual intercourse.

Sexual contact – Wis. Stat. §. 940.225(5) (b) 1 defines sexual contact as “Intentional touching either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under Wis. Stat. § 940.19 (1) [causing bodily harm with intent].” [Note that intent as well as action is needed in order to define the offense.] For the purpose of this document, no person under age 16 may give consent to sexual contact.

Sexual intercourse – Includes genital and anal penetration and oral stimulation between persons, either by the defendant or upon the defendant's instruction.

Sexual Harassment - includes unwelcome sexual advances, unwelcome physical contact, or unwelcome verbal or physical conduct of a sexual nature.

SINC- Sensitive Investigation Network Communication

Procedure

I. Process

- A. Staff shall accept reports of sexual assault, abuse or harassment verbally, in writing, anonymously, and from third parties.
- B. Staff shall report immediately any knowledge, suspicion, or information received regarding an incident of sexual abuse or harassment. Retaliation against residents, and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation shall be reported immediately.
- C. The initial response to an alleged sexual incident shall be determined in part by whether or not the alleged incident occurred within the immediate past (within the past 120 hours) and if the incident is alleged to have been forced or non-consensual.
- D. In all cases, the facility's primary duties are to ensure the safety of the alleged victim(s), gather all pertinent facts and evidence, share information among appropriate authorities, and assure that proper documentation is kept.

II. Chain of Command

- A. A staff member who becomes aware of an alleged sexual incident between youth shall remain with the alleged victim and immediately report the incident to a supervisor.
- B. The supervisor shall then be responsible for the immediate management of the alleged victim and perpetrator.
- C. A supervisor is responsible for notifying the Superintendent, Regional Chief, or designee for direction on how to proceed with the investigation and/or referral process outlined below based upon alleged time frames and circumstances.
- D. The supervisor of the living unit of the alleged victim and perpetrator will also be notified by Superintendent, Regional Chief, or designee.

III. Reported Sexual Contact –120 Hours or Less Since the Reported Sexual Abuse Incident

- A. Ensure the safety and wellness of the alleged victim and alleged perpetrator.
1. First responder shall be responsible for separating the alleged victim and alleged perpetrator and making sure the alleged victim is safe and is being observed.
 2. Referral shall be made to Psychological Services or Crisis Intervention Worker.
 3. Referral to HSU shall be made immediately.
 - a. HSU is not to gather forensic evidence related to the incident. An off-site medical facility with SANE capability is to be utilized.
 - b. Each DJC facility shall identify local medical facilities with SANE capability.
 4. Ongoing professional health care services shall be provided and psychological services if deemed necessary.

B. Refer to appropriate authorities

1. Local Law Enforcement is to be notified as soon as there is reasonable cause to believe that a sexual assault or abuse has occurred.
2. The Superintendent, Regional Chief, or designee shall determine who shall notify law enforcement.
3. When outside agencies investigate sexual abuse, the DJC facility shall cooperate with outside investigators and shall work to remain informed about the progress of the investigation.
4. Staff shall complete a DOC-1681 if child abuse is alleged to have occurred.
5. Mandatory reporters are responsible to report suspected child abuse to the county child protective services and local law enforcement and shall update a supervisor.

C. Gather evidence

1. A trauma-sensitive approach shall be taken when gathering evidence. The alleged victim is to be requested not to take any actions that could destroy physical evidence such as washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.
2. The alleged victim shall be immediately transported to an outside medical facility to be examined by a SANE. The alleged perpetrator may also be transported to an outside medical facility to be examined by a SANE.
3. The youth's room or area in which the alleged incident occurred should be sealed off utilizing PPE for evidence collection pending the arrival of law enforcement.
4. SANE guidelines require that any clothing or articles that may be utilized by the Wisconsin State Crime Lab are to be placed in paper bags, not plastic (plastic holds moisture which destroys DNA). PPE shall be utilized when gathering potential evidence.
5. In any instance where sexual assault is alleged, each youth allegedly involved in the incident shall be given the opportunity to make a written statement, using a DOC-1844.
6. The DJC facility shall also conduct its own internal investigation. Staff with knowledge pertinent to the allegation shall be interviewed by the supervisor designated to lead the investigation. All involved staff shall be directed to write a J-Tracker Incident Report concerning the allegations.

IV. Reported Sexual Contact –120 Hours or More Since the Reported Sexual Abuse Incident

A. Ensure the safety of the alleged victim.

1. First responder shall be responsible for separating the alleged victim and alleged perpetrator and to ensure the alleged victim is safe and is being observed.

2. Referral shall be made to Psychological Services or Crisis Intervention Worker.
3. Ensure ongoing HSU services are available.
4. Ongoing professional health care services shall be provided.

B. Refer to appropriate authorities

1. A supervisor of the alleged victim's living unit, in consultation with Superintendent, Regional Chief, or designee, shall be responsible for evaluating the alleged incident and determining which authorities, if any, need to be alerted.
2. Staff shall complete a DOC-1681, if the alleged incident meets the definition of child abuse.
3. Mandatory reporters are responsible to report suspected child abuse to the county child protective services and local law enforcement in the county where the incident is alleged to have occurred. The mandatory reporter shall update a supervisor.
4. When outside agencies investigate sexual abuse, the DJC facility shall cooperate with outside investigators and shall work to remain informed about the progress of the investigation.

C. Gather evidence

1. Law enforcement or social service staff responsible for the investigation shall be responsible to gather data from the alleged victim, alleged perpetrator, and witnesses as they see fit.
2. DJC staff shall gather information and conduct an internal investigation. Information is released to the authorities following proper release of information procedures.
3. In any instance where sexual assault is alleged, each youth allegedly involved in the incident shall be given the opportunity to make a written statement using a DOC-1844.

V. Allegation does not meet the definition of Sexual Assault or Child Abuse but meets definition of Inappropriate Sexual Conduct as defined in DOC 373.

- A. Administrative Code 373 outlines sexual activity is not permitted by youth while in a correctional facility.
- B. Sexual activity that may not meet the definitions of criminal/delinquent conduct may still be in violation of Administrative Code 373.27 inappropriate sexual conduct.
- C. A J-Tracker incident and infraction report shall be written for all youth involved if the act violated facility and/or DJC rules.

VI. Notification, Documentation and Incident Review

A. Notification

1. DJC Central Office

Information on all incidents involving sexual activity shall be reported to DJC administration through a J-Tracker Incident Report.

2. PREA Office

Information on all incidents involving sexual activity shall be reported to the PREA Office through SINC by the Facility Intake Worker. The Security Director or designee shall assign a PREA Investigator.

3. Parents/Legal Guardians/County or State Agent

Appropriate notifications to parents/legal guardians and the county worker or state agent shall be made as soon as practicable, not to exceed 48 hours by a supervisor or designated staff.

An entry shall be made in the youth's COMPAS notes about the notifications. It shall not include details about the incident.

4. Victim

Following an investigation of a sexual abuse allegation in a DJC facility, the designated PREA investigator shall inform the alleged victim, in writing of investigation results.

5. Monitoring

- a. DJC supervisory staff shall monitor retaliation using DOC-2805 or in SYNC to ensure that all youth involved in the reporting or investigation of sexual abuse and or sexual harassment are protected.
- b. For at least 90 days following a report of sexual abuse, the DJC facility shall monitor the conduct and treatment of youth who reported the sexual abuse and the youth who was reported to have experienced sexual abuse to determine if retaliation occurred and they shall act promptly to remedy any such retaliation. The facility shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.
- c. If any individual who cooperates with an investigation expresses a fear of retaliation, the facility shall take appropriate measures to protect that individual against retaliation.

B. Documentation

1. An investigatory file shall be established and maintained for each reported incident.
2. When the DJC facility receives a disposition/determination on any referral, that information shall be forwarded to DJC administration and PREA coordinator.

C. Incident Review

1. All DJC facilities shall conduct a review within 30 days of the conclusion of every sexual abuse investigation unless the allegation was determined to be unfounded.
2. The team shall consist of upper level management officials with input from supervisors, investigators and medical and mental health practitioners.
3. The review team shall:
 - a. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect or respond to sexual abuse.
 - b. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender or intersex identification, status or perceived status; gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility.
 - c. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse.
 - d. Assess the adequacy of staffing levels in that area during different shifts.
 - e. Assess whether monitoring technology should be deployed or augmented to supplement supervision by employees.
 - f. A report of the findings shall be submitted to the DJC Administrator and Central Office PREA Compliance Manager.

D. Data Collection

1. The facility shall collect accurate, uniform data from incident-based documents such as reports, investigation files, and sexual abuse incident reviews for every allegation of sexual abuse within facilities using a standardized instrument and set of definitions.

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2. The extracted data, at minimum, shall include the information to answer all questions from the most recent version of the Department of Justice Survey of Sexual Victimization.

cc: Office of the Secretary
DJC Leadership Team

Division of Juvenile Corrections Facility/Region Implementation Procedure	
Facility/Region:	
DJC Policy Number: 300.07.07	
Subject: Managing Allegations of Youth on Youth Sexual Misconduct	
New Effective Date: 12/12/2019	Original Effective Date: 9/15/2005
Will Implement: <input type="checkbox"/> As Written <input type="checkbox"/> With following procedures for facility implementation	
Superintendent's/Regional Chief's Approval:	

REFERENCES

DEFINITIONS, ACRONYMS, AND FORMS

FACILITY PROCEDURE

- I.
 - A.
 - B.
 - 1.
 - 2.
 - a.
 - b.
 - c.
 - 3.
 - C.

II.

III.

RESPONSIBILITY

I. Staff

II. Youth

III. Other