

LATE TESTIMONY

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

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DIRECTOR

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TOMMY JOHNSON
Deputy Director
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JAMES L. PROPOTNICK
Deputy Director
Law Enforcement

No. 2009-2529

January 8, 2010

The Honorable Cindy Evans
State Representative
25th State Legislature
State Capitol, Room 425
Honolulu, Hawaii 96813

RE: Request for Information

Dear Representative Evans:

I am in receipt of your of letter dated, December 9, 2009, requesting information. Please be advised that Director Clayton Frank forwarded your letter to me and requested that I respond to you.

I want to thank you for the opportunity to provide clarity and factual information regarding this extremely sensitive issue. Now that our exhaustive review of records and reports has been completed, I am able to respond to your inquiry. As requested, the following information is provided:

• **Question #1:**

What are the department's policies on sexual assault for cases of inmate-to-inmate, and staff-to-inmate?

Response:

Inmates reporting sexual assault by either another inmate or staff member are taken to the Health Care Section for an immediate evaluation.

If it is determined that the alleged sexual assault occurred within the preceding 72 hours, the inmate shall be immediately transported to the local rape treatment center or emergency room for examination, treatment, and collection of forensic evidence.

The facility physician shall examine inmates alleging sexual assault after 72 hours of occurrence with outside referrals made to the appropriate specialist as necessary. Any remaining evidence of the alleged sexual assault is thoroughly documented and preserved for the investigative purposes.

In all cases, the victim is provided testing, counseling and prophylactic treatment for sexually transmitted and other communicable diseases. Females at risk for pregnancy are offered

Honorable Cindy Evans, State Representative

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Plan B if the sexual assault occurred within seventy-two (72) hours. In all cases the confidentiality of the victim is strictly maintained as the Department does not release or confirm an inmate or staff members name or other pertinent information when sexual assault has been alleged. Any inmate alleging sexual assault by staff or another inmate are immediately separated from the general population and placed in protective custody while the investigation is completed. If a staff member is allegedly involved, a cease and desist order to also issued barring any contact with the inmate.

The Mental Health staff provides the victim with crisis intervention, evaluation and follow-up care. Outside referrals to a rape-counseling specialist are also provided. The Mental Health services are provided to the victim based on the judgment of the outside specialists or therapists.

See attached Correctional Policies No. (COR.12.01) – Right to Safety Custody (Attachment 1) and Correctional Administration Policy No. (COR.10.1B.05) – Procedures in the Event of Physical or Sexual Assault (Attachment 2), and (COR.10.1H.02) – Confidentiality of Medical Record Information (Attachment 3).

- **Question #2:**

What are the policies governing the confidentiality of sexual assault for cases of inmate-to-inmate, and staff-to-inmate?

Response:

In all cases, confidentiality of the victim is strictly maintained as the Department does not release or confirm an inmate or staff member's involvement in any alleged sexual assault incident/case, nor does the Department release the name or other pertinent information when sexual assault has been alleged of either the victim or alleged perpetrator.

The Department follows the guiding principals of the Federal Prison Rape Elimination Act (PREA) in all cases of alleged sexual assault regardless of whether inmates and/or staff are involved.

- **Question #3:**

Do you have reports on sexual assaults (inmate-to-inmate, staff-to-inmate) from 2008 to date by facility (in state and out of state), including the outcome of investigations (e.g. dismissal of charges)?

Response:

The Department of Justice (DOJ) requires all correctional facilities to complete an annual survey on sexual violence within facilities. The latest survey for the period 1 January 2008 –

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31 December 2008 is attached (Attachment 4). For calendar year 2009, the DOJ will provide the survey sometime during calendar year 2010. However, included in the attached spread-sheet, we have included reported sexual assault cases for calendar year 2009 that will be used to complete the DOJ 2009 survey once it is received.

Further, it should also be noted, the DOJ does not require the Department of Public Safety (PSD) to provide this type of information for out-of-state facilities, as all facilities across the country are required to report incidents via the annual survey that is provided directly to the facilities by the DOJ. However, PSD's contract with the Corrections Corporation of America (CCA) requires immediate reporting of all serious incidents, including alleged sexual assaults. Therefore, we have included reported allegations of sexual assault from the mainland facilities in the attached spreadsheet as well (Attachment 5).

The total number of sexual assault complaints received from January 1, 2008 through December 31, 2009, was 17 (8 Inmate-on-inmate and 9 Staff-on-Inmate). Of the 8 inmate-on-inmate complaints received 3 were unfounded, 3 were unsubstantiated, 1 was substantiated (consensual sexual contact between both inmates), and 1 is currently under investigation.

Of the 9 Staff-on-inmate complaints received 3 were unfounded, 1 case was unsubstantiated, 4 were substantiated (1 was previously reported in 2007), and 1 case is currently being investigated.

Note: During July 2008, PSD received information that at least 7 female inmates from Hawaii were sexually assaulted at the Otter Creek Facility. PSD's subsequent investigation determined that 3 cases (all of which were previously reported and one cases was from 2007) were substantiated. Of the remaining 4 cases, 3 were unfounded with two of the alleged victims denying any type of inappropriate behavior or contact with staff. The remaining case was determined to be unsubstantiated.

As of September 1, 2009, PSD no longer has any female inmates at the Otter Creek Facility in KY.

- **Question #4:**

What are the medical protocols for treating sexual assault (i.e. testing, availability of sexual assault kits to preserve evidence), including in facility procedures and out of facility treatment, if a victim is sent to a local emergency room?

Response:

Inmates reporting sexual assault by either another inmate or staff member are taken to the Health Care Section for an immediate evaluation.

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If it is determined that the alleged sexual assault occurred within the preceding 72 hours, the inmate shall be immediately transported to the local rape treatment center or emergency room for examination, treatment, and collection of forensic evidence.

The facility physician shall examine inmates alleging sexual assault after 72 hours of occurrence with outside referrals made to the appropriate specialist as necessary. Any remaining evidence of the alleged sexual assault is thoroughly documented and preserved for the investigative purposes.

In all cases, the victim is provided testing, counseling and prophylactic treatment for sexually transmitted and other communicable diseases. Females at risk for pregnancy are offered Plan B if the sexual assault occurred within seventy-two (72) hours. In all cases the confidentiality of the victim is strictly maintained as the Department does not release or confirm an inmate or staff members name or other pertinent information when sexual assault has been alleged. Any inmate alleging sexual assault by staff or another inmate are immediately separated from the general population and placed in protective custody while the investigation is completed. If a staff member is allegedly involved, a cease and desist order to also issued barring any contact with the inmate.

The Mental Health staff provides the victim with crisis intervention, evaluation and follow-up care. Outside referrals to a rape-counseling specialist are also provided. The Mental Health services are provided to the victim based on the judgment of the outside specialists or therapists.

See attached Correctional Policies No. (COR.12.01) – Right to Safety Custody and Correctional Administration Policy No. (COR.10.1B.05) – Procedures in the Event of Physical or Sexual Assault, and (COR.10.1H.02) – Confidentiality of Medical Record Information.

- **Question #5:**

What mental health counseling services are provided to victims of sexual assault within the correctional system (i.e. average number of counseling hours, procedures and guidelines for counseling)?

Response:

The Mental Health staff provides the victim with crisis intervention, evaluation and follow-up care. Outside referrals to a rape-counseling specialist are also provided. The Mental Health services are not limited and are provided to the victim based on the judgment of the outside specialists or therapists.

Honorable Cindy Evans, State Representative

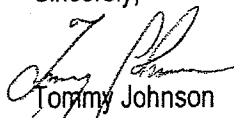
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If we can be of further assistance or if any response requires additional clarification, please do not hesitate to contact me directly at 587-1340.

Sincerely,




Tommy Johnson

Deputy Director for Corrections

c: Clayton A. Frank, Director
Tom Read, Departmental PREA Representative

Attachments

	DEPARTMENT OF PUBLIC SAFETY CORRECTIONS ADMINISTRATION POLICY AND PROCEDURES	EFFECTIVE DATE: DEC 12 2009	POLICY NO.: COR.12.01
		SUPERSEDES (Policy No. & Date): 493.12.01 & 09/26/85	
SUBJECT: RIGHT TO SAFE CUSTODY			Page 1 of 2

1.0 PURPOSE

To set forth a policy establishing standards protecting inmates from the possibility of personal abuse at the hands of either staff or other inmates.

2.0 REFERENCES

.1 References

- a. American Corrections Association (ACA), Standards for Adult Correctional Institutions, 4th Edition, 4-4281, Protection from Harm.
- b. Departmental Policy and Procedure (P&P), COR.01.05, Reporting Ward Abuse.
- c. Departmental P&P, COR.08.07, Use of Force.
- d. Hawaii Revised Statutes (HRS) Chapter 353C-2, Director of Public Safety, Powers and Duties.

3.0 POLICY

- .1 Facility personnel may manifest abuse of inmates in forms other than physical mistreatment. Abuse may be psychological as well as physical. Abuse may be perpetrated against inmates by other inmates as well as facility personnel.

Inmates have a right to reasonable security and safe custody. Facilities are required to take reasonable precaution to protect inmates from imminent harm, violent assaults, or other forms of abuse. Facility personnel must make reasonable efforts to insure inmate's safe custody.

- .2 All facilities shall take reasonable steps to protect inmates under their charge from violent assaults by other inmates or facility personnel. Where facility personnel know or have reason to know of any impending assaults on any inmate or of the dangerous propensity of an inmate for violent assault, reasonable steps shall be taken to avert the assault or danger.
- .3 Such steps may include the use of segregated confinement and reclassification. However, segregated confinement shall only be used when necessary and not to extend beyond a period of 30 days. In administrative assessment reveals

COR P & PM	SUBJECT: RIGHT TO SAFE CUSTODY	POLICY NO.: COR.12.01
		EFFECTIVE DATE: DEC 12 2009
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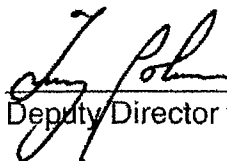
that the condition necessitating the segregated confinement persists after the initial period, segregation may continue for up to an additional 30 days.

- .4 Facilities shall take appropriate measures through supervisory measures to evaluate their staff's behaviors and actions in order to identify persons who may constitute a threat to inmates and facility staff. When such individuals are identified as posing a threat to staff or inmates, Supervisors and staff shall submit reports through their chain of command to the Warden. Upon receipt, the Warden shall take appropriate action to eliminate such threats.
- .5 Facilities shall develop procedures to provide a reasonable measure of safety for inmates from attacks from other inmates or facility personnel. Technological devices such as closed circuit television should be used whenever possible to enhance supervisory requirements.
- .6 Facilities shall not deprive any inmate of clothing, bedding, light and ventilation, heat, out of cell time for recreation, balanced diet, hygiene or health care for punitive or disciplinary purposes. Any deprivation of such resources or services shall be solely for the safety and welfare of the offender and only as ordered by competent health care authority.

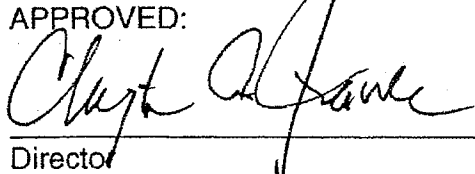
4.0 SCOPE

This policy applies to all State Correctional Facilities.


APPROVAL RECOMMENDED:


 Deputy Director for Corrections

12/10/09
 Date

APPROVED:

 Director

12/12/09
 Date

	DEPARTMENT OF PUBLIC SAFETY	EFFECTIVE DATE: 1/9/09	POLICY NO.: COR.10.1B.05
	CORRECTIONS ADMINISTRATION POLICY AND PROCEDURES	SUPERSEDES (Policy No. & Date): COR.10.1G.09 (04/21/05)	
	SUBJECT: PROCEDURE IN THE EVENT OF PHYSICAL OR SEXUAL ASSAULT		Page 1 of 4

1.0 PURPOSE

The purpose of this policy is to establish guidelines and procedures for the medical examination of victims of sexual assault.

2.0 REFERENCES AND DEFINITIONS

.1 References

- a. Hawaii Revised Statutes, Section 26-14.6, Department of Public Safety; and Section 353C-2, Director of Public Safety, Powers and Duties.
- b. National Commission on Correctional Health Care, Standards for Health Services in Prisons and Jails, (2008).

.2 Definitions

- a. Critical Incident: An incident that results in physical, emotional or psychological injury significant enough to require a review process and corrective action.
- b. Forensic Evidence: Evidence used in legal proceedings.

3.0 POLICY

- .1 Sexual assaults may result in internal or psychological injury that is not readily visible or it may result in a sexually transmitted disease. A report by an inmate of a sexual assault to any correctional employee shall be reported through the established chain-of-command.
- .2 Sexual assaults may result in criminal charges and involvement of other law enforcement agencies. With the exception of an immediate transport to an emergency room in a critical injury case, all evidence associated with the victim, at the scene of the alleged assault or associated with the assailant, shall be preserved for the investigative authorities.
- .3 Health services staff shall not collect forensic evidence from the victim or the assailant. The collection of forensic evidence shall be done by a local rape

	SUBJECT: PROCEDURE IN THE EVENT OF PHYSICAL OR SEXUAL ASSAULT	POLICY NO.: COR.10.1B.05
		EFFECTIVE DATE 1/9/09
		Page 2 of 4

treatment center, the hospital emergency room or investigative and law enforcement officers trained in the collection of forensic evidence that is used in a court of law.

4.0 PROCEDURES

- .1 Notification of a sexual assault by an inmate to a correctional employee shall be reported through the employee's chain of command. Notification shall include the Warden and the Clinical Section Administrator or designee.
- .2 Inmates allegedly injured in a sexual assault, even without visible signs of injury, require a documented medical evaluation. The inmate shall be brought to the Health Care Section for an immediate evaluation. If the inmate cannot be transported to the Health Care Section, health care staff shall report to the site where the inmate is. If there is no health care staff on duty, the physician-on-call shall be notified. If necessary, an ambulance shall be summoned in accordance with Policy and Procedure COR.10.1E.08, Emergency Services.
- .3 A nurse shall thoroughly assess the patient within their capabilities if there is no physician on site. The patient's complaint, history and the medical evaluation of injuries (or lack thereof) shall be documented in the medical record. Health care staff shall complete the Inmate Medical Injury Report, Form DOC 0422 (Attachment A).
A copy of the report shall be routed to the facility safety officer. Photographs shall be taken whether or not there are visible injuries. However, the taking of photographs shall not delay necessary treatment.
- .4 If it is determined that the alleged sexual assault occurred within the preceding 72 hours, the inmate shall be transported to the local rape treatment center or emergency room for examination and collection of forensic evidence.
- .5 Inmates alleging sexual assault shall not be transported to an outside medical center, or returned to their housing units, until they are interviewed by the investigative officers except if there is an emergency where permanent injury or death will result without immediate medical attention, or if a delay will result in the lapsing of the 72 hour time limit for collecting internal forensic evidence. The internal forensic evidence shall be collected and analyzed by the local rape treatment center or emergency room. All forensic evidence (e.g. clothes, underwear, bed linen, blood or semen, etc.) shall be left on the inmate or in place and preserved for the investigative officers.

	SUBJECT: PROCEDURE IN THE EVENT OF PHYSICAL OR SEXUAL ASSAULT	POLICY NO.: COR.10.1B.05
		EFFECTIVE DATE 1/9/09
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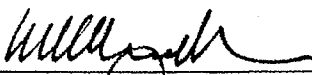
- .6 Inmates alleging sexual assault after 72 hours of occurrence shall be examined by the facility physician with outside referrals made to the appropriate specialist when necessary. Any remaining evidence of the alleged sexual assault shall be documented and preserved for the investigative officers.
- .7 In all cases, the victim shall be provided testing, counseling and prophylactic treatment for sexually transmitted and other communicable diseases. Females at risk for pregnancy will be offered Plan B if the sexual assault occurred within seventy-two (72) hours. The Mental Health staff shall provide the victim with crisis intervention, evaluation and follow-up care.
- .8 If the alleged assailant is a correctional employee, that employee shall not be involved in any proceedings involving the victim, including medical care rendered, counseling, hospital duty or transport. The victim and the alleged assailant shall have no contact with each other until the case is resolved and the victim's safety can be assessed by the Warden.
- .9 If the alleged victim of rape refuses medical treatment, the refusal shall be documented according to policy and procedure COR.10.11.06, Right to Refuse Treatment. The patient's refusal of treatment shall be filed in the medical record. Health care staff shall record the alleged assault in the medical record to the extent possible without the patient's cooperation. Notes should include the date and time of the complaint, the date, time and location of the alleged assault, the patient's affect, any visible signs of injury, or lack thereof, and any other pertinent information.
- .10 Health care staff shall cooperate with the investigating officers to the extent allowed by law and in accordance with COR.10.1H.02, Confidentiality of Health Records and Information.

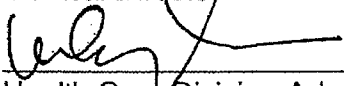
	SUBJECT: PROCEDURE IN THE EVENT OF PHYSICAL OR SEXUAL ASSAULT	POLICY NO.: COR.10.1B.05
		EFFECTIVE DATE JAN 09 2009
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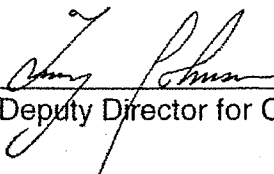
5.0 SCOPE

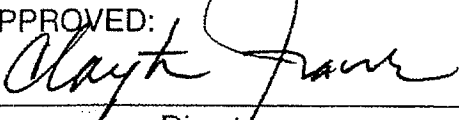
This policy and procedure applies to all correctional facilities and their assigned personnel.

APPROVAL RECOMMENDED:


 _____ 1/7/09
 Medical Director Date



 _____ 12/22/08
 Health Care Division Administrator Date


 _____ 1/7/09
 Deputy Director for Corrections Date

APPROVED:


 Director
 1/5/09

 Date

	DEPARTMENT OF PUBLIC SAFETY	EFFECTIVE DATE: SEP 19 2009	POLICY NO.: COR.10.1H.02
	CORRECTIONS ADMINISTRATION POLICY AND PROCEDURES	SUPERSEDES (Policy No. & Date): COR.10.1H.02 (10/9/07)	
SUBJECT: CONFIDENTIALITY OF MEDICAL RECORD INFORMATION		Page 1 of 4	

1.0 PURPOSE

To ensure the privacy of medical record information

2.0 REFERENCES AND DEFINITIONS

.1 References

- a. Hawaii Revised Statutes: Section 26-14.6, Department of Public Safety; and Section 353C-2, Director of Public Safety, Powers and Duties; and Section 92F, Public Access to Government Records; Exemption Medical Records; and 92F-13(4), Withholding protected health information for living or deceased individuals.
- b. Hawaii Revised Statutes: Section 325-101, HIV; ARC; & AIDS; Section 334-5, Mental Health, Drug Addition and Alcoholism.
- c. Health Insurance Portability and Accountability Act, 45 C.F.R., 160-164, (1996); Published in Federal Register 67, No. 157, August 14, 2002.
- d. National Commission on Correctional Health Care, Standards for Health Services in Prisons and Jails, (2008).
- e. Department of Public Safety, Policy ADM.O5.02, Public Access to Department Information; COR.10.1H.07, Inmate Requesting Information From the Medical Record; and COR.10.1H.09, Release of Protected Health Information, H-09; and

.2 Definitions

- a. Medical Record: An individual's personal health information maintained in a medical record or chart.
- b. Confidentiality: To hold in confidence or to keep private and privileged identifiable health information pertaining to an individual.

	SUBJECT: CONFIDENTIALITY OF HEALTH RECORDS INFORMATION	POLICY NO.: COR.10.1H.02
		EFFECTIVE DATE: SEP 19 2009
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3.0 POLICY

- .1 Disclosure of patient health information is prohibited by law. Confidentiality rules and laws bind any correctional employee exposed to protected health information.
- .2 Maintaining confidentiality of patient health information shall be included in the orientation of all health care staff.
- .3 Health care staff shall ensure patient encounters are conducted in such a way so as to permit privacy while maintaining staff safety and clinic security.
- .4 Medical records shall be maintained under secure conditions and separate from institutional records.
- .5 The Clinical Services Branch Administrator shall determine access to health records and health information. Routine access to medical information shall be limited to health care staff requiring the records for the provision of clinical services relevant to the patient's health.
- .6 Medical records shall be sealed and tracked during transport.

4.0 PROCEDURE

- .1 All medical records, documents and medical information shall be secured in an envelope or box and stamped confidential during transfer. A routing form requiring signatures of all persons handling the record shall be attached to the outside of the envelope or box.
- .2 Inmates having a medical condition needing special custodial requirements, shall have those requirements, not the medical diagnoses, communicated by the health care staff to the facility staff as follows:
 - a. Special diets require a provider order and shall be documented on DOC Form 0426, Special Medical Diet, the original copy shall be retained and filed in the patient's medical record under the Chronic Care Index;
 - b. Inmates sustaining an injury shall have the injury documented by health care on DOC Form 0422, Inmate Injury Medical Report. The original copy is filed in the patient's medical record under the Progress Notes Index; the canary copy shall be forwarded to the institution's safety officer.

	SUBJECT: CONFIDENTIALITY OF HEALTH RECORDS INFORMATION	POLICY NO.: COR.10.1H.02
		EFFECTIVE DATE: SEP 19 2009
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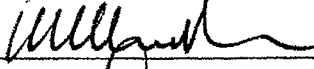
- c. All other communications to correctional staff on medical requirements involving an inmate shall be communicated on Form DOC 0449, Medical Needs Memo. The green copy shall be retained and filed in the patient's medical record under the Miscellaneous Index after all required signatures are secured.
- 3 Any documents or lists containing items such as inmate names, diagnoses, or other potential indicators linking medical information to a specific patient such as diagnostic test results, chronic care lists, sick call appointment reasons, outside provider appointments, etc., shall be protected from access by non-health care staff.
 - 4 Medical records shall not be left unattended in areas accessible by inmates or non-health care staff.
 - 5 Health care staff shall conduct patient care interviews and discussions in a manner allowing for as much patient audio and visual privacy as safely can be permitted.
 - 6 Patient specific medical information shall not be discussed in common areas such as hallways, restrooms break areas, etc.
 - 7 Medical information carried by security staff to outside health care providers shall be secured in a sealed envelop or box and addressed to the provider to ensure confidentiality.
 - 8 Circumstances may arise when information received by health care staff may be construed to jeopardize the facility's security. The health care employee shall immediately notify the facility Clinical Section Administrator, or Branch Administrator or Health Care Division Administrator proceeding through his or her Health Care Division chain of command until reaching someone to discuss the concern.
 - 9 Any correctional employee overhearing or otherwise discovering confidential patient health information shall not disclose this information to anyone.
 - 10 This policy and procedure shall not prohibit the sharing of medical information as required by law, such as the public health reporting of certain communicable diseases.

	SUBJECT: CONFIDENTIALITY OF HEALTH RECORDS INFORMATION	POLICY NO.: COR.10.1H.02
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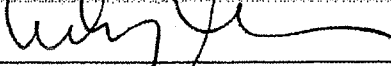
5.0 SCOPE

This policy and procedure applies to all correctional facilities and their assigned personnel.


APPROVAL RECOMMENDED:


7/22/09

Medical Director Date

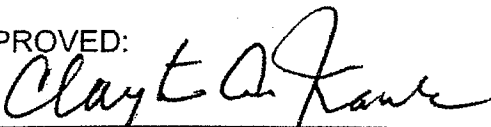

7/15/09

Health Care Division Administrator Date


9/16/09

Deputy Director for Corrections Date

APPROVED:



Director
9/19/09

Date



SURVEY ON SEXUAL VIOLENCE 2008

— Incident Form (Adult) —

Incident Number ___ out of ___

1. On what date did the incident occur?
(If more than one date, report the most recent.)

Month Day Year
01 09 2008

2. In what facility did the incident occur?

Name
HALAWA CORR FACILITY
City/Place
AIEA, HI 96701

3. Where did the incident occur? (Mark all that apply.)

- 01 In the victim's cell/room (if the victim and perpetrator share a cell/room, count as the victim's cell)
- 02 In the perpetrator's cell/room
- 03 In a dormitory or other multiple housing unit
- 04 In a common area within a cell block (shower, dayroom)
- 05 In a temporary holding cell within the facility
- 06 In a program service area (commissary, kitchen, storage, laundry, cafeteria, workshop, or hallway)
- 07 Outside the facility
- 08 While in transit
- 09 Other - Specify

4. What time did the incident occur? (Mark all that apply.)

- 01 Morning (6 a.m. to noon)
- 02 Afternoon (noon to 6 p.m.)
- 03 Evening (6 p.m. to midnight)
- 04 Overnight (midnight to 6 a.m.)

5. How many victims were involved in the incident?

Number of victims: **1**

→ If more than two victims were reported, report these characteristics in Notes.

6. Victim #1: What was the victim's gender?

- 01 Male
- 02 Female

7. Victim #1: What was the victim's age at the time of the incident?

- 01 Under age 18
- 02 18 - 24
- 03 25 - 29
- 04 30 - 34
- 05 35 - 39
- 06 40 - 44
- 07 45 or older

8. Victim #1: What was the victim's race/ethnic origin?
(Mark all that apply.)

- 01 White (not of Hispanic origin)
- 02 Black (not of Hispanic origin)
- 03 Hispanic or Latino
- 04 American Indian/Alaska Native (not of Hispanic origin)
- 05 Asian (not of Hispanic origin)
- 06 Native Hawaiian or Other Pacific Islander (not of Hispanic origin)
- 07 Other racial category in your information system - Specify

9. Victim #2: What was the victim's gender?

- 01 Male
- 02 Female

10. Victim #2: What was the victim's age at the time of the incident?

- 01 Under age 18
- 02 18 - 24
- 03 25 - 29
- 04 30 - 34
- 05 35 - 39
- 06 40 - 44
- 07 45 or older

11. Victim #2: What was the victim's race/ethnic origin?
(Mark all that apply.)

- 01 White (not of Hispanic origin)
- 02 Black (not of Hispanic origin)
- 03 Hispanic or Latino
- 04 American Indian/Alaska Native (not of Hispanic origin)
- 05 Asian (not of Hispanic origin)
- 06 Native Hawaiian or Other Pacific Islander (not of Hispanic origin)
- 07 Other racial category in your information system - Specify

Burden Statement

Under the Paperwork Reduction Act, we cannot ask you to respond to a collection of information unless it displays a currently valid OMB control number. The burden of this collection is estimated to average 15 minutes per response, including reviewing instructions, searching existing data sources, gathering necessary data, and completing and reviewing this form. Send comments regarding this burden estimate or any aspect of this survey, including suggestions for reducing this burden, to the Director, Bureau of Justice Statistics, 810 Seventh Street, NW, Washington, DC 20531. Do not send your completed form to this address.

12. Did the victim(s) sustain any physical injury during the incident?

- 01 Yes → a. **What injuries occurred?**
(Mark (X) all that apply for all victims.)
- 01 Knife or stab wounds
 - 02 Broken bones
 - 03 Anal or vaginal tearing
 - 04 Teeth chipped or knocked out
 - 05 Internal injuries
 - 06 Knocked unconscious
 - 07 Bruises, black eye, sprains, cuts, scratches, swelling, welts
 - 08 Other - Specify _____

b. Did the victim(s) receive medical treatment for these injuries?

- 01 Yes
- 02 No
- 03 No (No injury sustained)

13. Who reported the incident?
(Mark (X) all that apply.)

- 01 Victim
- 02 Another inmate (non-victim)
- 03 Family of victim
- 04 Correctional officer/front line staff
- 05 Administrative Staff
- 06 Medical/healthcare staff
- 07 Instructor/teacher
- 08 Counselor
- 09 Chaplain or other religious official
- 10 Other - Specify _____

14. After the incident was reported, was the victim(s) - (Mark (X) all that apply for all victims.)

- 01 Given a medical examination
- 02 Administered a rape kit
- 03 Tested for HIV/AIDS
- 04 Tested for other sexually transmitted diseases
- 05 Provided with counseling or mental health treatment
- 06 None of the above

15. After the incident was reported, was the victim(s) - (Mark (X) all that apply for all victims.)

- 01 Placed in administrative segregation/protective custody
- 02 Placed in a medical unit, ward, or hospital
- 03 Confined to own cellroom
- 04 Given a higher custody level with the facility
- 05 Transferred to another facility
- 06 Other - Specify _____

07 None of the above

16. What type of sexual violence was involved in the incident? (See definitions below)

- 01 Inmate-on-inmate nonconsensual sexual act → Complete Section A
- 02 Inmate-on-inmate abusive sexual contact → Complete Section A
- 03 Staff sexual misconduct → Complete Section B
- 04 Staff sexual harassment → Complete Section B

Definitions of Sexual Violence

Nonconsensual Sexual Acts: Contact of any person without his or her consent, or of a person who is unable to consent or refuse.

AND

Contact between the penis and the vagina or the penis and the anus including penetration, however slight; OR Contact between the mouth and the penis, vagina, or anus.

OR

Penetration of the anal or genital opening of another person by the hand, finger, or other object.

Abusive Sexual Contact (less severe): Contact of any person without his or her consent, or of a person who is unable to consent or refuse.

AND

Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.

EXCLUDES

Incidents in which the intent of the sexual contact is to harm or debilitate rather than to sexually exploit.

Staff Sexual Misconduct: Any behavior or act of a sexual nature directed toward an inmate by an employee, volunteer, contractor, official visitor, or other agency representative (exclude inmate family, friends, or other visitors).

Sexual relationships of a romantic nature between staff and inmates are included in this definition. Consensual or nonconsensual sexual acts including intentional touching of the genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or gratify sexual desire.

OR

Completed, attempted, threatened, or requested sexual acts.

OR

Occurrences of indecent exposure, invasion of privacy, or staff voyeurism for sexual gratification.

Staff Sexual Harassment: Repeated verbal statements or comments of a sexual nature to an inmate by an employee, volunteer, contractor, official visitor, or other agency representative (exclude inmate family, friends, or other visitors). Demeaning references to gender or derogatory comments about body or clothing.

OR

Repeated profane or obscene language or gestures.

Section A - INMATE-ON-INMATE SEXUAL VIOLENCE

17. How many perpetrators were involved in the incident?

Number of perpetrator:

→ If more than two perpetrators were involved, report these characteristics in Notes.

18. Perpetrator #1: What was the perpetrator's gender?

- 01 Male 02 Female

19. Perpetrator #1: What was the perpetrator's age at the time of the incident?

- 01 Under age 18 04 30-34 07 45 or older
02 18-24 05 35-39
03 25-29 06 40-44

20. Perpetrator #1: What was the perpetrator's race/ethnic origin? (Mark all that apply.)

- 01 White (not of Hispanic origin)
02 Black (not of Hispanic origin)
03 Hispanic or Latino
04 American Indian/Alaska Native (not of Hispanic origin)
05 Asian (not of Hispanic origin)
06 Native Hawaiian or Other Pacific Islander (not of Hispanic Origin)
07 Other racial category in your information system
Specify _____

21. Perpetrator #2: What was the perpetrator's gender?

- 01 Male 02 Female

22. Perpetrator #2: What was the perpetrator's age at the time of the incident?

- 01 Under age 18 04 30-34 07 45 or older
02 18-24 05 35-39
03 25-29 06 40-44

23. Perpetrator #2: What was the perpetrator's race/ethnic origin? (Mark all that apply.)

- 01 White (not of Hispanic origin)
02 Black (not of Hispanic origin)
03 Hispanic or Latino
04 American Indian/Alaska Native (not of Hispanic origin)
05 Asian (not of Hispanic origin)
06 Native Hawaiian or Other Pacific Islander (not of Hispanic Origin)
07 Other racial category in your information system
Specify _____

24. What was the nature of the incident? (Mark all that apply.)

- 01 Voluntary sexual contact between adults
02 Unwanted touching for sexual gratification
03 Pressure/coercion (without force) resulting in a nonconsensual sexual act
04 Physical force (or the threat of force) resulting in a nonconsensual sexual act
05 Other - Specify _____

25. What type of pressure or physical force was used by the perpetrator on the victim? (Mark all that apply for all perpetrators.)

- 01 Persuasion or talked into sexual activity
02 Bribery or black mail
03 Gave victim drugs or alcohol
04 Offered protection from other inmates
05 Threatened with physical harm
06 Physically held victim down or restrained in some way
07 Physically harmed or injured
08 Threatened with a weapon
09 Other - Specify _____

- 10 None

26. What sanction was imposed on the perpetrator? (Mark all that apply for all perpetrators.)

- 01 Placed in solitary confinement or disciplinary segregation
02 Confined to own cell/room
03 Placed in higher custody level within same facility
04 Transferred to another facility
05 Loss of "good/gain" time or increase in "bad" time
06 Given extra work
07 Loss of privileges
08 Arrested
09 Referred for prosecution
10 Given new sentence
11 Other - Specify _____

Section B - STAFF SEXUAL MISCONDUCT AND HARASSMENT

27. What was the nature of the incident? (Mark all that apply.)

- 01 Physical force resulting in a nonconsensual sexual act
02 Pressure or abuse of power resulting in a nonconsensual sexual act
03 Indecent exposure, invasion of privacy or voyeurism for sexual gratification
04 Unwanted touching for sexual gratification
05 Sexual harassment or repeated verbal statements of a sexual nature by staff
06 Sexual relationship between inmate and staff that appeared to be willing
07 Other - Specify _____

- 08 Level of coercion unknown

28. How many staff were involved in the incident?

Number of staff _____

→ If more than two staff were involved, report these characteristics in Notes.

29. Staff #1: What was the gender of the staff?

- 01 Male
- 02 Female

30. Staff #1: What was the age of the staff at the time of the incident?

- 01 24 or younger
- 02 25 - 29
- 03 30 - 34
- 04 35 - 39
- 05 40 - 44
- 06 45 - 54
- 07 55 or older

31. Staff #1: What was the race/ethnic origin of the staff involved in the incident? (Mark (X) all that apply.)

- 01 White (not of Hispanic origin)
- 02 Black (not of Hispanic origin)
- 03 Hispanic or Latino
- 04 American Indian/Alaska Native (not of Hispanic origin)
- 05 Asian (not of Hispanic origin)
- 06 Native Hawaiian or Other Pacific Islander (not of Hispanic origin)
- 07 Other racial category in your information system. Specify _____

32. Staff #2: What was the gender of the staff?

- 01 Male
- 02 Female

33. Staff #2: What was the age of the staff at the time of the incident?

- 01 24 or younger
- 02 25 - 29
- 03 30 - 34
- 04 35 - 39
- 05 40 - 44
- 06 45 - 54
- 07 55 or older

34. Staff #2: What was the race/ethnic origin of the staff involved in the incident? (Mark (X) all that apply.)

- 01 White (not of Hispanic origin)
- 02 Black (not of Hispanic origin)
- 03 Hispanic or Latino
- 04 American Indian/Alaska Native (not of Hispanic origin)
- 05 Asian (not of Hispanic origin)
- 06 Native Hawaiian or Other Pacific Islander (not of Hispanic origin)
- 07 Other racial category in your information system. Specify _____

35. Was the staff involved in the incident an employee of the facility, a contractor, or a volunteer? (Mark (X) all that apply for all staff involved.)

- 01 Full or part-time paid employee
- 02 Contract employee or vendor
- 03 Volunteer or intern
- 04 Other - Specify _____

36. What was the primary position description of the staff involved in the incident? (Mark (X) all that apply for all staff involved.)

- 01 Administrator, including wardens, superintendents, assistants and others in administrative positions
- 02 Correctional officer/supervision staff
- 03 Clerical, including secretaries, clerks, receptionists, and other administrative support
- 04 Maintenance and other facility support staff, including groundskeepers, janitors, cooks, and drivers
- 05 Medical or health care staff, including counselors, doctors, dentists, psychologists, psychiatrists, social workers, nurses, and medical assistants
- 06 Education staff, including instructors, teachers, librarians, and education assistants
- 07 Other program staff
- 08 Other staff - Specify _____

37. What sanction was imposed on the staff? (Mark (X) all that apply for all staff involved.)

- 01 Reprimanded or disciplined
- 02 Demoted or diminished responsibilities
- 03 Transferred to another facility
- 04 Arrested
- 05 Referred for prosecution
- 06 Discharged
- 07 Staff resigned (prior to completion of investigation)
- 08 Staff resigned (after investigation was completed)
- 09 Other - Specify _____

NOTES

REPORTED ALLEGATIONS OF SEXUAL ASSAULT - 1 January 2008 to Present

Facility	Type of Case	Status of Case	Case Disposition	Remarks
WCF	Inmate-on-Inmate	Unsubstantiated	Closed	No Further Action Warranted
OCCC	Inmate-on-Inmate	Unfounded	Closed	No Further Action Warranted
OCCC	Inmate-on-Inmate	Unsubstantiated	Closed	No Further Action Warranted
OCCC	Staff-on-Inmate	Under Investigation	Investigation on-going	Staff Member Indicted
WCCC	Inmate-on-Inmate	Unsubstantiated	Closed	No Further Action Warranted
WCCC	Inmate-on-Inmate	Under Investigation	Investigation on-going	
HCF	Inmate-on-Inmate	Unfounded	Closed	No Further Action Warranted
HCCC	None Reported	N/A		
KCF	None Reported	N/A		
MCCC	None Reported	N/A		
KCCC	None Reported	N/A		
Saguaro, AZ	Inmate-on-Inmate	Unfounded	Closed	No Further Action Warranted
Saguaro, AZ	Inmate-on-Inmate	Substantiated	Both Inmates Disciplined	Incident was Consensual Sexual Contact Between both Inmates.
Saguaro, AZ	Staff-on-Inmate	Substantiated	Investigation Completed	Staff Member Fired & is Being Prosecuted
Red Rock, AZ	None Reported	N/A		
Otter Creek, KY	Staff-on-Inmate	See Below	See Below	

For Otter Creek, there were a total of 7 reported cases of Staff-on-Inmate Sexual Assaults Reported. Of the 7 reported cases, 3 were substantiated (1 case was from 2007 and previously reported). The staff involved all 3 cases were terminated and prosecuted. 3 cases were unfounded (2 inmates denied any involvement with staff members and 1 case the inmate was determined to be lying). The remaining case was unsubstantiated.

LATE TESTIMONY

TO: COMMITTEE ON PUBLIC SAFETY
Sen. Will Espero, Chair
Tuesday, March 16, 2010
1:25 P.M.
Room 229, Hawaii State Capitol

RE: Support of HB 2266HD1 B Prison Rape Notice

FROM: Atty Daphne Barbee-Wooten
1188 Bishop Street, Suite 1909, Honolulu, Hawaii 96813

Dear Senator Espero and Members of the Committee on Public Safety:

My name is Daphne Barbee-Wooten. I am an attorney in private practice here in Honolulu. I represent many people who are incarcerated. I support the bill HB 2266HD1 which requires the Department of Public Safety to report to the legislatures on implementation of the Federal Prison Rape Elimination Act and to provide data regarding the acts of sexual assault and sexual misconduct. I would only add that this bill should require the Department to present what procedures and acts it has taken to prevent sexual assault and measures to ensure sexual assault in the prisons will not occur again. Remedies such as prosecuting guards who abuse inmates sexually and other remedies such as termination from employment should also be addressed by the Department of Public Safety. Furthermore, any inmate who reports rape or sexual abuse should not be retaliated against by the Department of Public Safety, but every measure should be taken to protect that inmate. Thank you for your consideration.

Dated: Honolulu, Hawaii

March 15, 2010

/s/ Daphne Barbee-Wooten
Daphne Barbee-Wooten
Attorney at Law