

LINDA LINGLE
GOVERNOR



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No. _____

TESTIMONY ON HOUSE BILL 2266
RELATING TO CORRECTIONS

By

Clayton A. Frank, Director
Department of Public Safety

LATE

House Committee on Finance
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

Friday, February 19, 2010; 2:00 PM
State Capitol, Conference Room 308

Representative Oshiro, Representative Lee, and Members of the Committee:

The Department of Public Safety (PSD) opposes House Bill 2266, which seeks to require the PSD to provide appropriate counseling for victims of sexual assaults and to develop policies to achieve a zero-tolerance policy on sexual assault. PSD already provides counseling and other immediate services to victims of sexual assaults, have well-established zero-tolerance policies in place (see attached policies and procedures COR.12.01, COR.101B.05, and COR.10.1H.02), and follows many of the provisions and intent of the federal Prison Rape Elimination Act (PREA).

The standards developed by the commission established under PREA were submitted to the Attorney General of the United States in June of 2009. Under PREA, the Attorney General is to develop federal regulations regarding prison sex assaults. The earliest date the federal regulations could be published would be June of 2010, with indications that the regulations will actually take longer to publish. All states have one year following the date the regulations are published to comply with the regulations.

PSD staff has consistently attended seminars and meetings regarding PSD's compliance with the federal regulations once they are promulgated. PSD will endeavor to comply with all state laws as well as the federal regulations once they are published.

PSD already complies with the intent of this measure and PREA, and any sexual assault victim is currently offered counseling services as well as other related services. In addition, PSD is currently assessing the PREA standards and awaiting the federal regulations before it amends its policies any further to avoid unnecessary change and expense. PSD also provides the statistics annually to the federal government on sexual assaults within the department (see attached Annual Department of Justice Survey Report), and can provide the same statistics to the Legislature.

Therefore, PSD opposes this measure, as we believe the requirements of HB 2266 are premature, and unnecessary at this time as the actions required by the measure are already in place, and may change when federal PREA regulations are published.

Thank you for the opportunity to provide testimony on this measure.

Attachments

**DEPARTMENT OF PUBLIC SAFETY****CORRECTIONS ADMINISTRATION
POLICY AND PROCEDURES****SUBJECT:
RIGHT TO SAFE CUSTODY****EFFECTIVE DATE:**

DEC 12 2009

POLICY NO.:

COR.12.01

SUPERSEDES (Policy No. & Date):

493.12.01 & 09/26/85

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

"ATTACHMENT 1"

COR P & PM	SUBJECT: RIGHT TO SAFE CUSTODY	POLICY NO.: COR.12.01
		EFFECTIVE DATE: DEC 12 2009
		Page 2 of 2


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:

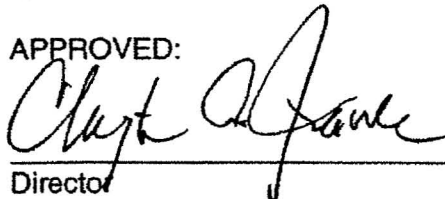


 Deputy Director for Corrections

12/10/09

 Date


APPROVED:



 Director

12/12/09

 Date

	DEPARTMENT OF PUBLIC SAFETY CORRECTIONS ADMINISTRATION POLICY AND PROCEDURES	EFFECTIVE DATE: 1/9/09	POLICY NO.: COR.10.1B.05
		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
		Page 3 of 4

- .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:	POLICY NO.:
	PROCEDURE IN THE EVENT OF PHYSICAL OR SEXUAL ASSAULT	COR.10.1B.05
		EFFECTIVE DATE JAN 09 2009
		Page 4 of 4

5.0 SCOPE

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

APPROVAL RECOMMENDED:

[Signature] 1/7/09

 Medical Director Date

[Signature] 12/22/08

 Health Care Division Administrator Date

[Signature] 1/7/09


 Deputy Director for Corrections Date

APPROVED:

[Signature]

 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
		Page 2 of 4

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
		Page 3 of 4

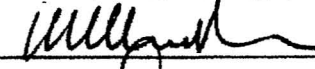
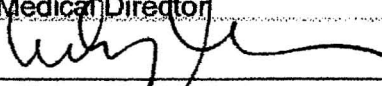
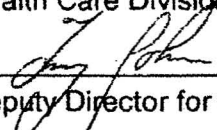
- c. All other communications to correctional staff on medical requirements involving an inmate shall be communicated on Form DOC 0449, Medical Needs Memo. The green copy shall be retained and filed in the patient's medical record under the Miscellaneous Index after all required signatures are secured.
- 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
	EFFECTIVE DATE: SEP 19 2009
	Page 4 of 4

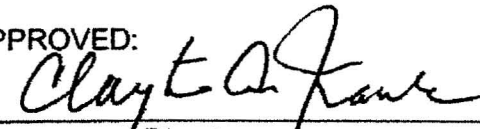
5.0 SCOPE

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

APPROVAL RECOMMENDED:

 _____ Medical Director	7/22/09 _____ Date
 _____ Health Care Division Administrator	7/15/09 _____ Date
 _____ Deputy Director for Corrections	9/16/09 _____ Date

APPROVED:

 _____ Director
9/19/09 _____ Date

12. Did the inmate sustain any physical injury during the incident?

- Yes
 - No
- What injuries occurred?
- Bruises
 - Lacerations
 - Swelling
 - Pain
 - Head Injury
 - Other

[Redacted]

13. Did the inmate report any emotional trauma from this incident?

- Yes
- No

14. Were there any witnesses?

- Yes
 - No
- Name
 - Position
 - Other

[Redacted]

15. Were there any other inmates involved in the incident?

- Yes
 - No
- Name
 - Position
 - Other

[Redacted]

16. Was any force or violence used during the incident?

- Yes
- No

[Redacted]

17. What type of force or violence was involved in the incident?

- Physical Force
- Verbal Abuse
- Sexual Assault
- Other

18. Did the inmate report any emotional trauma from this incident?

- Yes
- No

19. Were there any witnesses?

- Name
- Position
- Other

20. Were there any other inmates involved in the incident?

- Name
- Position
- Other

21. Was any force or violence used during the incident?

- Yes
- No

22. What type of force or violence was involved in the incident?

- Physical Force
- Verbal Abuse
- Sexual Assault
- Other

23. Did the inmate report any emotional trauma from this incident?

- Yes
- No

24. Were there any witnesses?

- Name
- Position
- Other

Section A - INMATE-ON-INMATE SEXUAL VIOLENCE

1

