



Clackamas County Sheriff's Office

JAIL DIVISION

Angela Brandenburg, Sheriff

CCJ.090 SEXUAL MISCONDUCT

CCJ.090 SEXUAL MISCONDUCT

CCJ.090.1 PURPOSE. It is the policy of the Clackamas County Sheriff's Office to provide a safe and secure environment for the inmates committed to the care and custody of the Clackamas County Jail (CCJ). The passage of the Prison Rape Elimination Act (PREA) by the United States Congress in 2003 reinforces previous policies of the Clackamas County Jail. All sworn/non-sworn staff, volunteers and contractors of the Clackamas County Sheriff's Office must abide by this and related laws, policies and standards that help prevent, detect, reduce, document and punish inmate sexual assault. Sexual misconduct, in any form, between staff and inmate or inmate and inmate is strictly prohibited. The purpose of this policy is to provide guidelines for prevention, responding, reporting, investigating and resolving complaints of inmate sexual assault or abuse.

CCJ.090.2 DEFINITIONS.

- A. Abuse of Public Office:** Under Oregon Revised Statutes (ORS) 162.405 and 162.415 the crime of Official Misconduct is described as follows: A public servant commits the crime of Official Misconduct in the second degree if the person knowingly violates any statute relating to the office of the person. A public servant commits the crime of Official Misconduct in the first degree if, in the intent to obtain a benefit or to harm another, the public servant knowingly fails to perform a duty imposed upon the public servant by law, or one clearly inherent in the nature of office, or the public servant knowingly performs an act constituting an unauthorized exercise in official duties.
- B. Inmate:** A person held in the Clackamas County Jail for arraignment, trial, transport to another institution, a judicial sanction, court order or a person serving a sentence regardless of location to include alternative forms of custody while under the custody of the Sheriff.
- C. Interference with Official Process:** Any failure to report, or effort to cover up, an incident of sexual misconduct. Making an allegation or statement that the party or witness knew could not have been true, or any other form of failure to cooperate with an investigation.
- D. Invasion of Privacy:** This includes, but is not limited to, the act or the attempted act, of observing or interfering with an inmate's personal affairs without a reasonable need to do so for the safety and security of the inmate, employees or other personnel within the institution. Violations may include unreasonable intrusive viewing of an inmate's use of the shower, toilet, areas where inmates dress or anything outside legitimate security needs.
- E. Retaliation:** Any act, whether covert or overt, or threat of action taken against an inmate or employee in response to the person's complaint of sexual misconduct or cooperation in the reporting or investigation of sexual misconduct, regardless of the merits or disposition of the complaint. Examples of such acts are: unnecessary discipline, intimidation, unnecessary changes in work assignments, unjustified transfers and unjustified denials of privileges and/or services.
- F. Sexual Abuse¹:** Any action or behavior that 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;

¹ 28 C.F.R § 115.6



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6. Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;
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.

G Sexual Harassment²: Any behavior or actions that includes any of the following acts, with or without consent of the inmate, detainee, or resident:

1. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and
2. Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

H. Sexual Misconduct: Any behavior or act of a sexual nature directed toward an inmate by an employee, volunteer, visitor, contract employee, another inmate or other agency representatives. This includes, but is not limited to, acts or any attempts to commit acts such as sexual abuse, sexual harassment, voyeurism, inappropriate behavior of a sexual nature, unreasonable invasion of privacy, conversations, or correspondence that suggests a romantic relationship between an inmate and any party referenced above.

I. Sexualized Work Environment: A work environment in which the behaviors, dress, and speech of either staff or inmates create a sexually charged workplace. Sexually explicit talk, actions, e-mails, posted cartoons, jokes or unprofessional dress can characterize a sexualized work environment. A sexualized work environment can severely erode the professional boundaries between staff and consequently between staff and inmates.

J. Staff: Employees, volunteers, interns, Reserve Deputies, staff members of other agencies, and contract employees of the Clackamas County Sheriff's Office.

K. Visitor: Any person granted access to the Clackamas County Sheriff's Office facilities, for personal or official reasons, who is not a staff member.

L. Voyeurism³: An invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

CCJ.090.3 POLICY. It is the policy of the Clackamas County Sheriff's Office to maintain zero tolerance for any form of sexual misconduct between staff members, volunteers, visitors, contract employees, other agency representatives and other inmates⁴. Inmates shall be considered incapable of giving consent to engage in sexual activities with jail staff, volunteers, visitors or contractors. The Clackamas County Jail will take all steps necessary to prevent a sexualized work environment.

It shall be a violation of the Clackamas County Sheriff's Office policy for supervisors and managers to disregard allegations of sexual misconduct with inmates, regardless of who is making the reports. All reports of sexual misconduct will be investigated in a timely manner, and appropriate corrective action will be taken, up to and including termination and/or criminal prosecution. No employee or inmate will be harassed, intimidated, discharged or otherwise interfered with because they have reported an incident, or suspected incident, of sexual misconduct. Retaliation of any type will be grounds for disciplinary action.

Every reasonable effort will be made to maintain confidentiality of the person(s) involved .

² Ibid.

³ Ibid.

⁴ 28 C.F.R § 115.11(a)



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CCJ.090.4 PROCEDURES.

- A. **PREA COORDINATOR**⁵. The Clackamas County Jail will assign the Administrative Lieutenant in the jail as the coordinator for all sexual misconduct investigations or allegations. This assignment will be referred to as the PREA Coordinator. The coordinator will be granted the authority to develop, implement and oversee agency efforts to comply with PREA standards as set forth in this policy. The PREA Coordinator will be responsible for monitoring retaliation against those reporting sexual misconduct.⁶
- B. **STAFFING**⁷. The Clackamas County Jail will ensure through daily compliance checks of staffing levels and annual review of jail policies contained in CCJ.001—Organization and Basic Operational Function of the Clackamas County Jail and 25.41—Surveillance and Supervision that the jail staffing plan provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In circumstances where the staffing plan is not complied with, Jail Command Staff will be contacted and the need and justification for all deviations from the plan will be documented⁸. When determining adequate staffing levels and the need for video monitoring, the Clackamas County Jail shall take into consideration:
1. Generally accepted detention and correctional practices;
 2. Any judicial findings of inadequacy;
 3. Any findings of inadequacy from Federal investigative agencies;
 4. Any findings of inadequacy from internal or external oversight bodies;
 5. All components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated);
 6. The composition of the inmate population;
 7. The number and placement of supervisory staff;
 8. Institution programs occurring on a particular shift;
 9. Any applicable State or local laws, regulations, or standards;
 10. The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
 11. Any other relevant factors.
- C. **INMATES WITH DISABILITIES AND INMATES WHO ARE LIMITED ENGLISH PROFICIENT.**⁹ The Clackamas County Jail shall take appropriate steps to ensure that inmates with disabilities (including, for example, inmates who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the jail's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include, when necessary to ensure effective communication with inmates who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary (this includes staff that are trained and supervised to communicate and the use of professional interpreter services). In addition, the agency shall ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities, including inmates who have intellectual disabilities, limited reading skills, or who are blind or have low vision. The Clackamas County Jail will not use inmate interpreters, inmate readers, or other

⁵ 28 C.F.R § 115.11(b)

⁶ 28 C.F.R § 115.67

⁷ 28 C.F.R § 115.13(a) & (c)

⁸ 28 C.F.R § 115.13(b)

⁹ 28 C.F.R § 115.16



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types of inmate assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties, or the investigation of the inmate's allegations.

- D. HIRING AND PROMOTION DECISIONS.**¹⁰ The Clackamas County Jail shall not hire or promote anyone who may have contact with inmates, and shall not enlist the services of any contractor who may have contact with inmates, who:
1. Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);
 2. Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
 3. Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph D.2. of this section.
 4. CCJ shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.
 5. Before hiring new employees who may have contact with inmates, the agency shall:
 - a) Perform a criminal background records check; and
 - b) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.
 6. CCJ shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates.
 7. CCJ shall conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates.
 8. CCJ shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph D.1. of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. CCJ shall impose upon employees a continuing affirmative duty to disclose any such misconduct.
 9. Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.
 10. Unless prohibited by law, CCJ, with approval of County Counsel, shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.
- E. REPORTING AND INVESTIGATION OF SEXUAL MISCONDUCT.**¹¹ The Clackamas County Sheriff's Office shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment. All allegations of sexual abuse or sexual harassment are referred for investigation to the PREA Coordinator who will determine based upon the facts of the initial complaint if the conduct is a criminal investigation and referred to the Sheriff's Office Professional Standards Unit (who possesses legal authority to conduct criminal investigations) or the allegation does not involve potentially criminal behavior (administrative investigation and investigated within the jail). The

¹⁰ 28 C.F.R § 115.17

¹¹ 28 C.F.R § 115.22



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Sheriff's Office shall publish such policy on its website or make the policy available upon request. If an investigation is referred for criminal investigation the referral and investigation will be documented.

1. All employees of the Clackamas County Sheriff's Office are required to report all allegations, complaints or observations of sexual misconduct, or suspected sexual misconduct, to their immediate supervisor. The ability to resolve these issues is dependent on staff cooperation in reporting incidents that violate this policy. The report will be taken, whether or not it is part of the agency; and include information of retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.¹²
2. The following procedure shall be used when a sexual misconduct incident or allegation is reported to, or observed by, a staff member.¹³ The first priority shall be the safety and security of the alleged victim.¹⁴ Jail medical/mental health services will be requested, if needed. If needed emergency medical services will be activated. Care shall be taken to preserve any evidence and/or crime scene. After these initial responses are initiated, staff shall adhere to the following list:¹⁵
 - a. The staff member will notify the on-duty supervisor immediately. If the offending party is in the staff member's chain of command, the staff member should report the incident directly to the Under Sheriff, Sheriff, or the Clackamas County Department of Employee Services.
 - b. The staff member to whom the complaint was made, or who observed the incident, shall write a detailed report and submit it to their supervisor. Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.¹⁶
 - c. The supervisor will immediately notify the chain of command.
 - d. The supervisor will take any immediate action necessary to separate the parties involved in the alleged sexual conduct. This may include relieving a staff member from duty.
 - e. The supervisor will inform all parties to the complaint that retaliation against the complainant, witnesses or others involved in the complaint or investigation is strictly prohibited and can result in separate corrective action(s).¹⁷
 - f. If a crime scene exists, it will be treated as such. The scene will be isolated, secured and all personnel entering the area will be logged in and out. CCJ shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.¹⁸
 - g. In those cases of sexual assault, the on-duty supervisor will direct that the alleged victim will be transported to an appropriate medical facility. The medical facility will provide post-sexual assault treatment as per their best medical practices; this will include measures for reducing the incidence of transmission of sexual diseases, mitigating any physical trauma/injury, and for women, pregnancy. The effective medical treatment of the victim shall be balanced against the need to preserve any physical evidence of the assault, to promote the potential for investigation and successful prosecution of any related crime. CCJ shall offer all victims of sexual abuse access to forensic

¹² 28 C.F.R § 115.61 (a)

¹³ 28 C.F.R § 115.65

¹⁴ 28 C.F.R § 115.62

¹⁵ 28 C.F.R § 115.64

¹⁶ 28 C.F.R § 115.61 (b)

¹⁷ 28 C.F.R § 115.67 (a)

¹⁸ 28 C.F.R § 115.21 (a) (b)



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medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiary or medically appropriate.

- h. Jail supervisors and/or command staff shall consider calling in Clackamas County Sheriff's Office Detectives or the Oregon State Police to conduct criminal investigations.
- i. CCJ shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.¹⁹
- j. The Clackamas County Jail shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.²⁰
 - 1) The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.
 - 2) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

F. REPORTING TO OTHER CONFINEMENT FACILITIES.²¹ Upon receiving an allegation that an inmate was sexually abused while confined at another facility, PREA Coordinator shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.

- 1. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
- 2. The Clackamas County Jail shall document that it has provided such notification.

G. TRAINING.²²

1. Staff Training for Sexual Misconduct with Inmates:

- a. The jail commander will ensure that jail employees receive documented annual training concerning prohibited sexual misconduct with inmates. New employees will receive policy training as part of their new employee orientation. The training should be done jointly with harassment training whenever possible.
- b. Training may be tailored to staff position and/or duties. It should include:

¹⁹ 28 C.F.R § 115.21 (c) (d) (e)

²⁰ 28 C.F.R § 115.53

²¹ 28 C.F.R § 115.63

²² 28 C.F.R § 115.31



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- 1) policies and procedures concerning sexual harassment in the workplace and sexual misconduct with inmates;
 - 2) protecting inmate privacy;
 - 3) prohibited and inappropriate behaviors;
 - 4) red-flag activities;
 - 5) detecting and preventing sexual misconduct;
 - 6) issues of consent;
 - 7) official misconduct offenses (ORS 162.405 and 162.415);
 - 8) reporting requirements;
 - 9) responding to incidents of sexual misconduct;
 - 10) communicating effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates;
 - 11) penalties; and,
 - 12) sexual misconduct case studies.
2. **Contract Employee Training.**²³ The jail contract administrator shall provide training to all contract employees entering a jail facility. He or she shall monitor adherence to this policy. Volunteer staff, agreements, training and orientation must include information about the zero tolerance policy concerning sexual misconduct with inmates.
3. **Inmate Orientation.**²⁴ During inmate orientation, jail staff members will inform inmates regarding the following:
- a. the right to be free from sexual misconduct from any staff member, other inmate or any other person while in custody;
 - b. rules about behaviors and prohibitions against sexual activity with staff, visitors, and other inmates;²⁵
 - c. rules about appropriate dress;
 - d. multiple reporting paths such as an inmate request form, grievance, or a confidential letter to the Jail Commander or Sheriff;
 - e. disciplinary consequences for making a false complaint of sexual misconduct; and,
 - f. the inmate manual shall include guidance on sexual misconduct.
4. **Intergovernmental Agreements with Other Agencies.** All agreements with other agencies that supervise or come in contact with inmates shall include statements concerning the zero-tolerance policy for any form of sexual misconduct with inmates. Intergovernmental agreements or memoranda of understanding will also include clear agency roles for the reporting of sexual misconduct with inmates. The Jail Commander will provide associate agencies copies of this policy.

²³ 28 C.F.R § 115.32

²⁴ 28 C.F.R § 115.33

²⁵ 28 C.F.R § 115.78



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5. **Contract Management.** The advertising and awarding of contracts for Corrections Division services shall:
- a. identify its zero tolerance for any form of sexual misconduct with an inmate;
 - b. define prohibited behavior by contractors and staff members;
 - c. incorporate policies and procedures on expected professional behavior and prohibited sexual misconduct;
 - d. specify training and orientation for contractors prior to entering the jail;
 - e. establish reporting requirements and timetables for contractors to report allegations or suspicions of sexual misconduct with inmates;
 - f. address how to deal with incidents of potential sexual misconduct involving contract employees; and,
 - g. define procedures for barring contractors from the facility during the investigation of any allegations.
6. **Investigations.** Those individuals that perform criminal investigations into allegations of sexual misconduct will receive training in conducting investigations in confinement settings. This training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral. This training will be documented in each individual's training files.²⁶
7. **Medical and Mental Health.**²⁷ The Clackamas County Jail shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:
- a. How to detect and assess signs of sexual abuse and sexual harassment;
 - b. How to preserve physical evidence of sexual abuse;
 - c. How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
 - d. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.
 - e. Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual misconduct to appropriate authorities and to inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.²⁸
- All forensic examinations shall, be done by outside jail providers. The jail medical contractor shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.²⁹
- H. **INMATE REPORTING.**³⁰ The Clackamas County Jail shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents. All allegations of sexual misconduct, including third-party and anonymous reports, shall be reported to the PREA Coordinator.³¹ Staff shall accept

²⁶ 28 C.F.R § 115.34

²⁷ 28 C.F.R § 115.35

²⁸ 28 C.F.R § 115.61 (c)

²⁹ 28 C.F.R § 115.35 (c) (d)

³⁰ 28 C.F.R § 115.51

³¹ 28 C.F.R § 115.61 (e)



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reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports. These reporting avenues will include:

1. Inmate Confidential Grievance System.
2. Inmate Confidential Telephone System.
3. Confidential letters to outside agencies or Clackamas County Sheriff or Command Officers. These letters will be treated as privileged mail in accordance with *CCJ.031.4.Q—Inmate Mail*.
4. Internet reporting (both confidential and anonymous) for outside individuals and those released from custody to initiate reports.³² The Clackamas County Jail staff may privately report sexual abuse and sexual harassment of inmates using the internet reporting system.

- I. CRIMINAL AND ADMINISTRATIVE AGENCY INVESTIGATIONS.**³³ The Clackamas County Sheriff's Office will conduct its own investigations, unless determined by the Sheriff or Undersheriff such investigation will be done by an outside agency, into allegations of sexual misconduct. When outside agencies investigate sexual abuse, the Clackamas County Jail shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

All investigations shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports for either criminal or administrative in scope. The Clackamas County Sheriff's Office shall retain all written reports whether criminal or administrative for as long as the alleged abuser is incarcerated or employed by the agency, plus five years. The departure of the alleged abuser or victim from the employment or control of the Clackamas County Sheriff's Office shall not provide a basis for terminating an investigation.

1. Criminal Investigations.

- a. Where sexual misconduct is alleged that rises to the level of criminal behavior, the Sheriff's Office shall use investigators who have received special training in sexual abuse investigations.
- b. Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual misconduct involving the suspected perpetrator.
- c. When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- d. The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
- e. Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.
- f. Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

2. Administrative Investigations.

- a. Administrative investigations shall include an effort to determine whether staff actions or failures to act contributed to the abuse.

³² 28 C.F.R § 115.54

³³ 28 C.F.R § 115.71



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- b. Administrative investigations shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
 - c. If during an administrative investigation the potential for substantiated allegations of conduct appear to be criminal it shall immediately be referred for prosecution.
 - d. The evidentiary standard for administrative investigations shall be preponderance of the evidence in determining whether allegations of sexual misconduct are substantiated.
 - e. After all reports of sexual abuse, the Clackamas County Jail will monitor (at a minimum of ninety [90] days—longer if deemed necessary by administration) the conduct and treatment of inmates or staff who reported the sexual abuse and of inmate who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmate or staff. All acts of retaliation will be promptly remedied through appropriate steps of jail staff. Any individual who expresses a fear of retaliation will be given appropriate protection against retaliation. This may include staff or inmate disciplinary procedures against those perpetrating the retaliation. Monitoring of retaliation should include, but not limited to:
 - 1) Inmate disciplinary reports;
 - 2) housing assignments;
 - 3) program changes;
 - 4) period status checks of inmates;
 - 5) negative staff performance reviews; and
 - 6) reassignments of staff.
3. **Report of Findings.**³⁴ Following an investigation into an inmate's allegation that he or she was the victim of sexual misconduct, the Clackamas County Jail shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
- a. If the Clackamas County Sheriff's Office did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.
 - b. Following an inmate's allegation that a staff member has committed sexual misconduct against the inmate, the agency shall subsequently inform the inmate (unless the Clackamas County Sheriff's Office has determined that the allegation is unfounded) whenever:
 - 1) The staff member is no longer posted within the inmate's living area;
 - 2) The staff member is no longer employed at the facility;
 - 3) The Clackamas County Jail learns that the staff member has been indicted on a charge related to sexual misconduct within the facility; or
 - 4) The Clackamas County Jail learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
 - c. Following an inmate's allegation that he or she has been sexually abuse by another inmate, the Clackamas County Jail shall subsequently inform the alleged victim whenever:

³⁴ 28 C.F.R § 115.73



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- 1) The Clackamas County Jail learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
 - 2) The Clackamas County Jail learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
- d. All such notifications or attempted notifications shall be documented.
- e. The Clackamas County Jail's obligation to report under this standard shall terminate if the inmate is released from custody.
- J. PROHIBITED CONDUCT.** Conduct specifically prohibited that may cause a violation of this policy, includes but is not limited to:
1. any sexual advance by a staff member or visitor;
 2. requests for sexual favors by a staff member or visitor;
 3. invasion of privacy beyond what is reasonable or necessary for safety and security;
 4. inappropriate touching, fondling, hugging or kissing;
 5. any sexual act or contact between staff or visitors and inmates;
 6. indecent exposure by a staff member or visitor in front of an inmate;
 7. other verbal and physical conduct of a sexual or gender based nature;
 8. any comments, gestures, drawings, pictures, writings or physical conduct that is sexually suggestive, derogatory or offensive;
 9. influencing, promising, or threatening an inmate's safety, custody level, privacy housing privileges, work detail, programs status or court proceedings in exchange for sexual favors;
 10. failing to report any suspicious activity of a sexual nature, either observed or suspected, based on possible evidence;
 11. permitting sexually offensive behavior, sexual harassment or sexual misconduct to continue once its occurrence is known;
 12. interfering with the official process of reporting or investigating incidents or allegations of sexual misconduct; and,
 13. masturbating on county property or in a county vehicle.
- K. IDENTIFYING STAFF SEXUAL MISCONDUCT WITH INMATES.** Staff must be alert to these inappropriate behaviors or activities that may lead to or indicate incidents of sexual misconduct. Inappropriate behaviors and activities:
1. **For Staff Members:**
 - a. over-identifying with an inmate ("my inmate") or the inmate's issues (being blind to an inmate's actions);
 - b. using an inmate's first name (if inconsistently applied);
 - c. granting special requests or showing favoritism;
 - d. spending an unexplainable amount of time with an inmate;



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- e. overly concerned about an inmate;
- f. having sole involvement with a particular inmate;
- g. indispensable inmate: "only inmate who can do this job;"
- h. confronting other staff over an inmate;
- i. working posts or job assignments that are isolated from other staff;
- j. working in a secluded area with an inmate;
- k. taking an inmate out of the cell at unusual times;
- l. cannot account for time during work;
- m. having excessive knowledge about an inmate and his or her family;
- n. inappropriately intervening or helping with the inmate's personal life or legal affairs;
- o. voluntarily testifying for an inmate or requests special treatment for an inmate;
- p. intercepting inmate disciplinary infractions or edits infractions;
- q. tracking outside inmate calls (number and content of call);
- r. delegating unusual or out of the ordinary duties to inmates;
- s. bringing in large amounts of food, drinks, or snacks;
- t. sharing food, drinks, or snacks with inmates;
- u. consistently working more overtime than peers, especially in cross-gender posts;
- v. volunteering to work overtime only in specific posts;
- w. in the facility during "off-hours;"
- x. in a crisis (such as divorce, ill health, bankruptcy, or death in family); and/or,
- y. own family is involved with inmate's family.

2. For an Inmate:

- a. is in an unauthorized area or repeatedly out of the inmate's assigned place;
- b. wants to go to work assignment early or volunteers to stay late;
- c. knows personal information about staff;
- d. has an unusual balance or activity in an inmate's commissary account;
- e. has letters from, or photos of staff;
- f. is seen nude or partially clothed when the inmate should be fully clothed; and/or,
- g. uses a staff member's first name.

3. Either Staff or Inmates:



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- a. Telephone calls to and from staff or inmates;
 - b. inmate-staff rumors;
 - c. overheard conversations between staff and inmates, or inmates and inmates which are sexual in nature or refer to the physical attributes of staff or inmates;
 - d. drastic change in behavior or appearance (dress, make-up, or hair);
 - e. pregnancy or diagnosis of a sexually transmitted disease;
 - f. sexual or personal banter between staff and staff, or staff and inmates; and/or,
 - g. horse-play or interaction with sexual overtones between staff and inmates or inmates and inmates..
- L. CONSENT.** A sexual act or sexual contact between any staff member or visitor and an inmate, even if the inmate consents, initiates or pursues, is prohibited and can be illegal. Inmates shall be considered incapable of giving consent to engage in sexual misconduct with jail staff members. An inmate's consent to and/or initiation or pursuit of sexual misconduct with a jail staff member shall not excuse, negate or mitigate a jail staff member's duties, responsibilities and/or penalties under this policy.
- M. SPECIFIC PROHIBITED CONDUCT.** Conduct specifically prohibited includes but is not limited to:
- 1. any sexual advance by a staff member or visitor;
 - 2. requests for sexual favors by a staff member or visitor;
 - 3. invasion of an inmate's privacy beyond that reasonably necessary for safety and security;
 - 4. inappropriate touching, fondling, hugging, or kissing;
 - 5. any sexual act or contact between a staff member or visitor and an inmate, or an inmate with another inmate;
 - 6. indecent exposure by the staff member or visitor in front of an inmate;
 - 7. other verbal, physical or graphic conduct of a sexual or gender-based nature;
 - 8. sexual comments, gestures, drawings, picture, writings, or any physical conduct that is of a sexual nature or is sexually suggestive, derogatory, or offensive;
 - 9. influencing, promising or threatening an inmate's safety, custody or security level (including recommendations for court actions), privacy, housing, privileges, work detail or program status in exchange for sexual favors;
 - 10. failing to report any suspicious activity of a sexual nature either observed or suspected based on possible items or evidence found in an area;
 - 11. permitting sexually offensive behavior, sexual harassment, or sexual misconduct to continue after its occurrence is known; and/or,
 - 12. interference with the official process of reporting or investigating an sexual misconduct incident or allegation.
- N. SEXUAL ABUSE INCIDENT REVIEWS.**³⁵ The Clackamas County Jail shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

³⁵28 C.F.R § 115.86



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1. Such review shall ordinarily occur within thirty (30) days of the conclusion of the investigation.
 2. The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or 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; or 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 staff; and
 - f. Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (a)-(e) of this section, and any recommendations for improvement and submit such report to the Jail Commander and PREA Coordinator. The Clackamas County Jail shall implement the recommendations for improvement, or shall document its reasons for not doing so.
- O. DATA COLLECTION, REPORTING AND ACCESS.**³⁶ The Administrative Lieutenant will collect all data on sexual assaults of inmates and report them as state and federal authorities' request. Data on individual inmates should be made available only to staff with a need to know and securely stored to prevent such unauthorized access. All data will be collected for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.³⁷ Data will be used to assess, identify and address security issues, a sexual harassment work environment and whether procedures match written policy. Data collected is for the purpose of review in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:³⁸
1. Identifying problem areas;
 2. Taking corrective action on an ongoing basis; and
 3. Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.
 - a. Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.
 - b. The report shall be approved by the Jail Commander and made readily available to the public through written request.
 - c. The report may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

³⁶28 C.F.R § 115.87

³⁷28 C.F.R § 115.89

³⁸28 C.F.R § 115.88



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PREA COMPLIANCE NOTES:

- 28 C.F.R § 115.12—Not Applicable
- 28 C.F.R § 115.13(d)—found in CCJ.083.4.A—Facility Inspections and Documentation
- 28 C.F.R § 115.14— found in CCJ.011—Detention of Juveniles (However, does not comply with absolute sight, sound and physical contact below age of 18 [youth])
- 28 C.F.R § 115.15(a) (b) (c) (f)— found in CCJ.047.4D.5—Inmate Searches
- 28 C.F.R § 115.15(d)— found in CCJ.041.4.H—Surveillance and Supervision
- 28 C.F.R § 115.15(e) (f)— found in CCJ.103—Transgender Inmates
- 28 C.F.R § 115.18—Performed upon upgrades to facility
- 28 C.F.R § 115.41— found in CCJ.024—Inmate Classification Authority
- 28 C.F.R § 115.41— found in CCJ.024—Inmate Classification Authority & CCJ.026—Administrative Segregation
- 28 C.F.R § 115.42 (a) (b)— found in CCJ.024—Inmate Classification Authority
- 28 C.F.R § 115.42(c) (d) (e) (f) (g)— found in CCJ.103—Transgender Inmates
- 28 C.F.R § 115.43— found in CCJ.026—Administrative Segregation
- 28 C.F.R § 115.52— found in CCJ.029—Inmate Request Grievance Forms
- 28 C.F.R § 115.68— found in CCJ.026—Administrative Segregation
- 28 C.F.R § 115.68— found in Clackamas County Sheriff's Office Rules and Regulations Chapter 9—Discipline
- 28 C.F.R § 115.77— found in CCJ.097—Use of Student Interns, Cadets, Contractors and Reserve Deputy Sheriffs within the Clackamas County Jail
- 28 C.F.R § 115.81— found in CCJ.074—Administration of Inmate Health Care
- 28 C.F.R § 115.82— found in CCJ.074—Administration of Inmate Health Care
- 28 C.F.R § 115.83— found in CCJ.074—Administration of Inmate Health Care
- 28 C.F.R § 115.93— found in CCJ.083—Facility Inspections and Documentation