

WOODBURY COUNTY JAIL – PROCEDURES AND GUIDELINES

WCJSOG NO:	199	
SUBJECT:	Staff on Inmate Sexual Misconduct (PREA)	EFFECTIVE DATE: 12-18-13
REFERENCE:	Inmate Supervision	REVISED DATE:
APPROVED:	Sheriff D. Drew	REEVALUATED DATE: 01-02-17

5.32 STAFF ON INMATE SEXUAL MISCONDUCT (Prison Rape Elimination Act)

PURPOSE:

To describe the guidelines that shall be followed at the Woodbury County Jail Facility, ensuring sexual misconduct between staff and inmates does not occur.

PROCEDURE:

The potential abuse of power inherent in staff-inmate relationships is at the core of staff sexual misconduct. Sexual contact between staff and an inmate is considered sexual misconduct and is never consensual. This type of behavior is a breach of security and these relationships shall not be tolerated. Engaging in such behavior may result in criminal prosecution and/or termination of employment.

DEFINITIONS:

Allegation-Any event that is said to have happened but which has not yet been verified, these events include rumor and “inmate talk”.

Invasion of Privacy-Intentionally observing, attempting to observe, or interfering in an inmate’s activities, which involves hygiene or personal care, without a sound job related reason. Any act by any staff that is considered to be reasonable and a necessary part of official duties and responsibilities shall not be regarded as an invasion of privacy.

Intimacy-Other sexual inappropriate behavior not defined as sexual contact or sexual abuse of an inmate including kissing, intimate or flirtatious conversation or touching parts of the body not defined under sexual contact. This includes behavior unrelated to the performance of job duties.

Retaliation-The act of vengeance, covert or overt action or threat of action taken against an inmate in response to the inmate complaint of sexual misconduct OR cooperation in the reporting OR investigation of sexual misconduct regardless of the merits or the disposition of the complaint.

Sexual Activity-Intentional contact of an inappropriate nature either directly or through clothing such as touching of the genitalia, anus, groin, breast, inner thighs, or buttocks of a person. This includes touching unrelated to the necessary performance of job duties.

Sexual Abuse-Sexual abuse includes, but is not limited to, subjecting an inmate to sexual contact by persuasion, inducement, enticement, or forcible compulsion.

Sexual Harassment-Unwelcome sexual attention that can include:

- a. Unwelcome sexual flirtations, advances or propositions
- b. Verbal abuse of a sexual nature.
- c. Graphic verbal comments about an individual's body.
- d. Sexually degrading words used to describe an individual.
- e. Displaying of sexually suggestive objects or pictures.
- f. Any other verbal or physical conduct or communication of a sexual nature.

Sexual Misconduct- Sexual misconduct with an inmate includes acts or an attempt to commit acts of sexual contact, sexual abuse, invasion of privacy, intimacy, or behavior for personal sexual gratification that includes, but is not limited to:

- a. Having sexual contact and/or sexual intercourse with an inmate (that is in violation of this guideline). It is a criminal offense for staff to engage in sexual contact and/or sexual intercourse with an inmate.
- b. Requiring or allowing an inmate to engage in sexual contact, sexual intercourse, or other sexual conduct for any reason (i.e., sexual gratification of a staff member).
- c. Any action designed for sexual gratification of and by an inmate or staff.
- d. Making obscene or sexual advances, gestures, comments or exposing one's self, to an inmate or being receptive to any such advances, gestures, or comments made by an inmate toward a staff member.
- e. Touching of one's self in a sexually provocative way to solicit a response from an inmate.
- f. Viewing inmates in a manner which is not related to normal job duties and interfering with an inmate's personal business without a reasonable need to do so for the immediate safety and security of the inmate, staff or others within the facility. This includes, but is not limited to, excessive staring.
- g. Initiating any form or type of communication of a sexual nature with an inmate.
- h. Receiving any form or type of communication of a sexual nature from an inmate and failing to report the communication immediately to your supervisor.
- i. Influencing or making promises regarding, but not limited to any inmate's safety, custody, privacy, housing, privileges, work assignment, or program status in exchange for sexual favors or because an inmate refused to submit to a sexual advance. This includes an exchange of anything of value between staff and an inmate (i.e., putting money into or promising to put money into an inmate's account or bringing in or promising to bring in contraband for an inmate in exchange for sexual favors).

Staff-Refers to an employee, medical personal, contractor, vendor, volunteer, counselor or therapist.

GUIDELINE:

1. The Woodbury County Jail has a **zero tolerance** of sexual misconduct of any kind between staff and inmates.
2. All inmates shall be advised of their right to be free of sexual misconduct from staff and explained procedures in reporting an incident.
3. Any conduct of a sexual nature by staff directed toward inmates under their care, custody and supervision is **prohibited**. Sexual misconduct with inmates includes acts or an attempt to commit acts.
4. Staff shall adhere to all the guidelines of the policy and shall ensure their conduct does not constitute or promote sexual misconduct nor in any way violate the provisions of this guideline.
5. All allegations and incidents of sexual misconduct by staff with inmates must be reported, fully investigated and treated in a confidential and serious manner.
6. Staff receiving any knowledge, suspicion or information of alleged staff on inmate sexual misconduct must not reveal any information related to the alleged sexual misconduct to anyone other than those who are directly involved in an investigation of said incident.
7. During the course of their duties Correctional Staff are required to touch parts of an inmate's body or view inmate's in various stages of undress as part of routine searches and procedures. Claims of staff sexual misconduct by inmates that have undergone these security procedures will not be investigated. Inmates may process these claims through the normal grievance process.
8. The Supervisor that receives the information on an alleged sexual misconduct will immediately take measures to provide separation between the staff member and (inmate) victim.
9. The area of the alleged sexual misconduct will be secured as a crime scene until the scene is processed by the WCSO Identification Division.
10. Any staff member who reports an incident of alleged staff on inmate sexual misconduct shall not be retaliated against by ANY other staff.
11. ANY staff who retaliates, harasses, bullies or otherwise attempts to intimidate a person who has reported alleged staff on inmate sexual misconduct is subject to disciplinary action up to and including termination.

12. Any staff member found in violation of staff on inmate sexual misconduct is subject to disciplinary measures up to and including immediate termination following an administrative ruling that said staff member engaged in actual or attempted sexual misconduct.

Staff Training:

1. All staff having contact with inmates shall receive training regarding Staff on Inmate Sexual Misconduct (Prison Rape Elimination Act).
2. All staff in positions that have inmate contact shall review this guideline annually and shall sign a receipt acknowledging this guideline has been reviewed.

Reporting:

1. It is mandatory that all allegations and incidents of sexual misconduct between staff and inmates including invasion of privacy, intimacy, sexual activity and sexual abuse shall be immediately reported to their Supervisor.
2. The Supervisor (O.I.C) that receives such knowledge, suspicion or information of alleged sexual misconduct shall immediately report the incident to the Jail Administration in a timely manner.
 - a. If the alleged sexual misconduct is against the immediate supervisor, the staff receiving such information can take the information received to the next supervisor in line within the chain of command or may contact the Jail Administration.
3. The Jail Administration will forward all reports regarding an alleged staff on inmate sexual misconduct to the State Jail Inspector.

Medical:

1. An inmate who reports they have been sexually abused or assaulted will be examined on-site by the nursing staff and determine if a referral to another medical facility is indicated for collection of evidence. The victim will also be tested for sexually transmitted diseases.
2. The (inmate) victim will receive counseling.
3. Follow up counseling shall be available to inmates who are victims of staff sexual misconduct along with recommended follow-up and ongoing support.

Investigation:

1. The Jail Administration will forward all paperwork of the alleged sexual misconduct to the Sheriff's Command. In an effort for the department to remain un-bias and neutral, the Sheriff may elect to have an outside agency investigate the alleged incident in lieu of the WCSO Investigative Division.

2. The jail staff shall provide complete cooperation and will not interfere with the investigative process of an alleged sexual misconduct. This includes failure to report or attempt to cover up an incident of an alleged sexual misconduct, allegation or statement that a person or a witness knew could not have been true, or any form of failure to cooperate with an investigation or inquiry. Failure to cooperate or failure to report shall result in disciplinary action.
3. Purposeful, malicious false reporting will result in disciplinary action and/or criminal charges.
4. Interviews shall be conducted in a thorough, professional, and non-threatening manner consistent with acceptable practices for potentially traumatized victims of sex crimes.
5. Inmates are required to provide complete cooperation and shall not interfere with the process of investigating sexual misconduct. This includes failure to report or attempts to cover up an incident of sexual misconduct, allegation or statement that a party or a witness knew could not have been true, or any form of failure to cooperate with an investigation or inquiry. Failure to cooperate, failure to report, or purposeful, malicious false statements shall result in corrective action, including disciplinary action being taken.
6. If a staff member resigns or is terminated the investigation into the allegation of misconduct must continue to a final outcome.
7. Following an inmate's allegation that a staff member has committed sexual misconduct against the inmate, the agency shall inform the inmate as to whether the allegation has been determined to be: Substantiated, Unsubstantiated or Unfounded.

CODE OF IOWA

702.17 Sex Act

The term “sex act” or “sexual activity” means any sexual contact between two or more persons by: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person, except in the course of examination or treatment by a licensed Physician or by use of artificial sexual organs or substitutes therefore in contact with the genitalia or anus.

709.1 Sexual Abuse

Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances.

1. The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other.
2. Such other person is suffering from a mental defect or incapacity.

709.2 Sexual Abuse 1st

A person commits sexual abuse in the first degree when in the course of committing sexual abuse the person causes another serious injury. Sexual abuse in the first degree is a class “A” felony.

709.3 Sexual Abuse 2nd

A person commits sexual abuse in the second degree when the person commits sexual abuse under any of the following circumstances:

1. During the commission of sexual abuse the person displays in a threatening manner a dangerous weapon, or uses or threatens to use force creating a substantial risk of death or serious injury to any person.
2. The person is aided or abetted by one or more persons and the sex act is committed by force or against the will of the other person against whom the sex act is committed.

Sexual abuse in the second degree is a class “B” felony.

709.4 Sexual Abuse 3rd

A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances.

1. The act is done by force or against the will of the other person, whether or not the person is the person’s spouse or is cohabiting with the person.

2. The person is in a position of authority over the other person and uses that authority to coerce the other person to submit.

Sexual abuse in the third degree is a class "C" felony.

709.9 Indecent Exposure

A person who exposes the person's genitals or pubes to another not the person's spouse, or who commits a sex act in the presence of or view of a third person, commits a serious misdemeanor, if:

1. The person does so to arouse or satisfy the sexual desires of either party; and
2. The person knows or reasonably should know that the act is offensive to the viewer.

709.11 Assault With Intent to Commit Sexual Abuse

1. Any person who commits an assault with the intent to commit sexual abuse is guilty of a class "C" felony.
2. If the person thereby causes serious injury to any person is guilty of a class "D" felony.
3. If the person thereby causes any person a bodily injury other than a serious injury, the person is guilty of an aggravated misdemeanor if no injury results.

709.15 Sexual Exploitation (Counselor, Therapist)

1. As used in the section:
 - a. "Counselor or therapist" means a physician, psychologist, nurse, professional counselor social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the state, who provides or purports to provide mental health services.
 - b. "Former patient or client" means a person who received mental health services from the counselor or therapist.
 - c. "Mental health service" means the treatment, assessment, or counseling or another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including an intrapersonal or interpersonal dysfunction.
 - d. "Patient or client" means a person who receives mental health services from the counselor or therapist.
2. Sexual exploitation by a counselor or therapist occurs when any of the following are found:
 - a. A pattern or practice or scheme of conduct to engage in any of the conduct described in paragraph "b" or "c". A counselor or therapist who commits sexual exploitation in violation of this section, commits a class "D" felony.

- b. Any sexual conduct, with an emotionally dependent patient or client or emotionally dependent former patient or client for the purpose of arousing or satisfying the sexual desires of the counselor or therapist of the emotionally dependent patient or client or emotionally dependent former patient or client, which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act. A counselor or therapist who commits sexual exploitation in violation of this section commits an aggravated misdemeanor.
- c. Any sexual conduct with a patient or client or former patient or client with one year of the termination of the provision of mental health services by the counselor or therapist for the purpose of arousing or satisfying the sexual desire of the counselor or therapist or the patient or client or former patient or client which includes but is not limited to the following; kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act. A counselor or therapist who commits sexual exploitation in violation of this section, commits a serious misdemeanor.

Sexual exploitation by a counselor or therapist does not include touching which is part of a necessary examination or treatment provided patient or client by a counselor or therapist acting within the scope of the practice or employment in which the counselor or therapist is engaged.

709.16 Sexual Misconduct With Offenders

An officer, employee, contractor, vendor, volunteer, or agent of a county who engages in a sex act with a prisoner incarcerated in a county jail commits an aggravated misdemeanor.

709.21 Invasion of Privacy Nudity

A person who knowingly views, photographs, or films another person, for the purpose of arousing or gratifying the sexual desire of any person. commits invasion of privacy. A person who violates this section commits a serious misdemeanor.

Class "A" Felony-Life Sentence

Class "B" Felony-25 years

Class "C" Felony-10 years \$1000-\$10,000 fine

Class "D" Felony-5 years \$750-\$7,500 fine

Aggravated Misdemeanor-2 years \$625-\$6,250

Serious Misdemeanor-1 year \$315-\$1,875

Simple Misdemeanor-30 days \$65-\$625