

Michigan Department of Corrections

Investigating Allegations of Gender-Based Misconduct

Inservice Training

Trainer's Manual

July 2010

Office of New Employee Training and Professional Development

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Module Description

This module is designed to provide specialized training to those employees assigned the task of investigating gender-based employee misconduct complaints. Gender - based misconduct is the term used to describe certain kinds of prohibited staff behavior that is related to a prisoner's gender. Gender-based misconduct includes sexual misconduct, sexual harassment, overfamiliarity and retaliation for reporting a gender-based allegation. Topics covered include the concepts of victimology; witness interviews; use of questionnaires; contractual and legal considerations; and report writing procedures.

Module Developer and Date Developed

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Acknowledgments

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Time Frame

20 hours

Prerequisites

Vital Differences in Managing Women Prisoners (32 hour program)

Training Methods/Strategies

Lecture
Guided group discussion
Practical exercises involving role play

References

PD 03.03.140 - Prohibited Sexual Conduct Involving Prisoners

PD 01.01.140 - Internal Affairs Section

McC Campbell, S., Layman, E. & Moss, A. (2000). Sexual misconduct in corrections American Jails, November/December 2000.

Center for Innovative Public Policies, Inc. (2000). Training Curriculum for Investigating Allegations of Staff Sexual Misconduct with Inmates. Tamarac, Florida: McC Campbell, S., Layman, E.

Michigan Department of Corrections. Internal Affairs Investigative Manual.

Michigan Department of Corrections (2009/2010). Vital Differences in Managing Woman Offenders module - Unit 9 (Content developed by the Violence Against Women Training Institute).

The majority of material pertaining to investigations was authored by D/F/Lt. Detective David Minzey (retired), Michigan State Police, under contract as a consultant for the Michigan Department of Corrections (2002).

Michigan Department of Corrections (2001). New Sergeant Training, Introduction to Conducting Investigations 2/26/01. Appendix one: Proof Formulas For Handbook Rules

Labor Contracts from the following Unions: MCO, AFSME, MSEA, and the UAW.

Michigan Department of Corrections, Employee Handbook (January 2010).

Objectives

At the completion of this training participants will be able to:

Unit 1 - Introduction

1. Summarize the significant events and history of the Michigan Department of Corrections involvement with women prisoners.

- ☞ **Litigation overview**

- ☞ **Training mandates**

- ☞ **Necessity for investigator training**

- ☞ **Inherent benefits of adhering to sound correctional practices**

2. Identify the types of complaints that are the focus of this investigator training.

- ☞ **Sexual harassment**

- ☞ **Retaliation**

- ☞ **Violation of knock and announce**

- ☞ **Improper pat down search**

- ☞ **Violation of 1:1**

3. List the effects that gender-based employee misconduct can have on facility operations.

- ☞ **Jeopardizes facility security**

- ☞ **Illegal in 44 states including Michigan**

- ☞ **Violates the constitutionally guaranteed rights of prisoners**

- ☞ **Exposes the entire agency and staff to civil and criminal litigation**

- ☞ **Creates a hostile work environment**

- ☞ **Destroys trust between staff and the prisoner population**
 - ☞ **Corrupts professionals by inviting compromise and dishonesty**
 - ☞ **Undermines public support**
 - ☞ **Diminishes public support for funding and reforms**
 - ☞ **Victimizes those already vulnerable**
4. Review and discuss PD 03.03.140 Prohibited Sexual Conduct Involving Prisoners with an emphasis on issues relevant to investigators.
- ☞ **Definitions**
 - ☞ **Prisoner allegations of prohibited conduct**
 - ☞ **Investigation of allegations of prohibited conduct**
 - ☞ **Confidentiality of complaints and investigations**

Unit 2 - Victimology

1. Identify signs and symptoms associated with posttraumatic Stress Disorder (PTSD).
- ☞ **Repeated, disturbing memories, thoughts or images of past trauma**
 - ☞ **Flashbacks**
 - ☞ **Feeling upset when memory of past trauma is triggered**
 - ☞ **Irritable mood or angry outbursts**
 - ☞ **Easily startled**
 - ☞ **Develop phobias**
 - ☞ **Inability to control rage**
2. Explain the stages of victimization and recovery.

☞ **Catastrophe**

☞ **Relief and confusion**

☞ **Avoidance**

☞ **Reconstruction**

☞ **Adjustment**

3. State the long-term effects of child abuse and sexual assault.

☞ **Depression**

☞ **Anxiety**

☞ **Eating disorders**

☞ **Isolation and stagnated feelings**

☞ **Poor self-esteem**

☞ **Difficulty trusting others**

☞ **Tendency toward re-victimization**

☞ **Sexual problems**

☞ **Substance abuse**

☞ **Self mutilation and suicidal thoughts**

4. Discuss how a victim or witness with a past history of domestic violence may respond to an investigator.

☞ **Fearful**

☞ **Aggressive**

☞ **Withdrawn**

- ☞ **Reluctant to disclose information**
 - ☞ **Denial**
 - ☞ **Delayed in reporting due to fear of retaliation**
5. Discuss strategies for interacting with witnesses or victims that may be suffering from posttraumatic stress disorder.
- ☞ **Conduct interview in a neutral non-threatening environment**
 - ☞ **Appear friendly and courteous**
 - ☞ **Maintain a professional demeanor**
 - ☞ **Allow witness/victim to speak freely without interruption**
 - ☞ **Reinforce the Department's stance prohibiting retaliation for reporting misconduct**
6. Identify and discuss the following investigative conclusions
- ☞ **Sufficient Evidence**
 - ☞ **Insufficient Evidence**
 - ☞ **No Evidence**
 - ☞ **Other**

Unit 3 - Behavioral Aspects of Gender-Based and Sexual Misconduct

1. Discuss the dynamics of sexually motivated violations.
- ☞ **Emotionally entangling for:**
 - ☞ **Victim**
 - ☞ **The accused**

☞ **Families**

☞ **Friends**

☞ **Investigator**

2. Identify the broad categories of sexually motivated behavior.

☞ **Power reassurance**

☞ **Power assertive**

☞ **Anger retaliatory**

☞ **Anger excitation**

☞ **Opportunistic**

Unit 4 - Contractual and Legal Issues

1. Become familiar with portions of the various labor agreements pertaining to investigations.

☞ **AFSME**

☞ **MCO**

☞ **MSEA**

☞ **UAW**

☞ **NERE (non-exclusively represented employees)**

2. Review the FAQ list and contract excerpts from each bargaining unit and discuss

☞ **Contractual language varies among each bargaining unit**

☞ **Investigators must consult each contract prior to starting an investigation**

3. Differentiate between the two types of investigations.

☞ **Administrative**

☞ **Criminal**

4. Explain and give examples of the various types of evidence that may be collected during an investigation.

☞ **Testimonial**

☞ **Real/Physical**

☞ **Circumstantial**

☞ **Demonstrative**

5. Discuss the appropriate procedure for collecting various types of evidence including the proper chain of evidence.

☞ **Physical**

☞ **Documents**

☞ **Electronic evidence**

☞ **Medical**

6. Explain the difference between the Miranda and Garrity warnings.

☞ **Miranda - Criminal**

☞ **Garrity - Administrative**

Unit 5 - Developing an Investigative Strategy

1. Review the key elements necessary to conduct a successful investigation.

☞ **Develop an investigative plan**

☞ **Create a strategy**

☞ **Develop the steps necessary to complete the investigation**

 **View the finding from a larger perspective**

2. Gain a basic awareness of a condition known as vicarious victimization and some common symptoms that investigators may suffer following repeated exposure to sexual misconduct investigations.

- ☞ **Heightened sense of danger**
- ☞ **Nightmares**
- ☞ **Flashbacks**
- ☞ **Withdrawal**
- ☞ **Numbness**
- ☞ **Startle responses**
- ☞ **Alcohol or substance abuse**
- ☞ **Marital problems**
- ☞ **Perceptions of going insane**
- ☞ **Fatigue**
- ☞ **Depression**
- ☞ **Guilt**
- ☞ **Trouble remembering or concentrating**
- ☞ **Anxiety**
- ☞ **Sleeping disorders**
- ☞ **Headaches**
- ☞ **Muscle aches**
- ☞ **Stomach aches**

- ☞ **High blood pressure**
3. Identify support systems to combat the onset of vicarious victimization.
- ☞ **Learn about stress**
 - ☞ **Be available to each other**
 - ☞ **Be empathetic**
 - ☞ **Actively listen**
 - ☞ **Be a resource to other investigations**
 - ☞ **Share your experiences**
 - ☞ **Be sensitive to changes in behavior**
 - ☞ **Be supportive**
 - ☞ **Know your limits**
4. Participate in role play exercises utilizing the skills discussed and prepare written reports for review and critique during class.

Unit 6 - Interview and Interrogation

1. Explain the difference between an interview and an interrogation.
- ☞ **Interview - Conversation to develop or seek information**
 - ☞ **Interrogation - More focused to gain a confession**
2. Identify the components necessary to have a successful interview.
- ☞ **Planning**
 - ☞ **Location of the interview**
 - ☞ **Know what information is needed**

- ☞ **Timeliness**
 - ☞ **Considerate of an individual's feelings**
 - ☞ **Friendly attitude**
 - ☞ **Private setting**
 - ☞ **Avoid physical barriers**
 - ☞ **Sit rather than stand**
 - ☞ **Posture**
 - ☞ **Tone of voice**
 - ☞ **Encourage conversation**
3. Discuss the importance of having an interview strategy and some key elements to be included in that strategy.
- ☞ **Who to interview**
 - ☞ **What questions to ask**
 - ☞ **Desired outcome of the interview**
 - ☞ **Use of open-ended questions**
 - ☞ **Listening skills**
 - ☞ **Non-verbal behaviors**
 - ☞ **Mirroring responses to questions**
4. Identify useful techniques when using written questionnaires to gather facts.
- ☞ **Start with general questions**
 - ☞ **Move toward more specific questions**

☞ **Use open-ended questions**

☞ **Carefully review the language used in the written response**

Unit 7 - Preparing a Written Report

1. Identify the steps necessary to complete a report following an investigation.

☞ **Gather all factual information**

☞ **Record the facts as soon as possible**

☞ **Organize facts to best reflect the truth**

☞ **Write the report**

2. Explain the basic principles required for both criminal and administrative reports.

☞ **Organized**

☞ **Factual**

☞ **Accurate**

☞ **Grammatically correct**

☞ **Complete**

☞ **Concise**

☞ **Impartial**

☞ **Timely**

3. Review the report headings necessary for all gender-based employee misconduct investigations.

☞ **Allegation**

☞ **Venue/Jurisdiction**

- ☞ **Prisoner**
 - ☞ **Staff**
 - ☞ **AIPAS inquiry**
 - ☞ **Individuals interviewed**
 - ☞ **Confidentiality warning**
 - ☞ **Documents reviewed**
 - ☞ **Findings/Conclusions**
 - ☞ **Attachments**
4. Discuss the common problems associated with report writing.
- ☞ **Time management**
 - ☞ **Inexperience and/or lack of training**
 - ☞ **Poor writing skills**
 - ☞ **Inefficient report writing forms or established methods**
 - ☞ **Technically difficult or legally complex cases**
 - ☞ **Investigators who are cynical or not motivated**
 - ☞ **Inexperience or lack of supervisory training**
5. Identify various techniques to improve report writing skills.
- ☞ **Improved note taking**
 - ☞ **Well planned investigation**
 - ☞ **Clearly articulate the elements of the violation**

- ☞ **Use a standardized reporting system**
- ☞ **Use an active writing voice**
- ☞ **Clearly identify every person involved**
- ☞ **Use descriptive words**
- ☞ **Control sentence length**
- ☞ **Use accurate quotes**
- ☞ **Limit abbreviations**
- ☞ **Correct spelling**
- ☞ **Use simple clear language**
- ☞ **Carefully use adjectives and adverbs**
- ☞ **Report without bias**
- ☞ **Use outline or bullet format**
- ☞ **Make use of dictionaries, policies, procedures, and rule books**
- ☞ **Critique by the Administrator who assigned the investigation**

Unit 1: Introduction

I. Introduction

- A. Introduce yourself and any guest trainers or visitors to the class. Ask each participant to introduce themselves, give their current job classification, how much previous investigative experience they have. At this time, pass out the CAR-854 training sheet for participants to sign.

Trainer note:

Welcome participants and present the information contained in the historical perspective section below. Refer participants to **(Handout 1A) Nunn Settlement**.

Investigator Training - Key Concept Outline (2/1/02)

I. Litigation Overview:

Discuss legal actions that have been filed against facilities housing women prisoners in the Michigan Department of Corrections which impact the investigative process:

- Constitutional Rights of Institutionalized Persons Action (CRIPA)
- Nunn v. MDOC, et al
- Neal v. MDOC
- LaCross v. Zang
- Mason v. Granholm

CRIPA: First complaint included allegations about Scott and Crane.

July 1994: Initial complaint filed in U. S. District Court in the Western District

Allegations:

- Sexual Assaults of women prisoners; other types of sexual abuse by guards
 - Improper pat down searches
 - Improper visual surveillance
 - Improper urinalysis procedures
- Presence of Illicit Drugs in the Facilities
- Excessive levels of violence
- Grossly deficient medical care which fails to meet the serious needs of prisoners; Lack of access to medical care; Inadequate health care staffing
- Dangerously inadequate Mental Health Care; lack of adequate staffing
- Unsanitary conditions which pose a direct threat to the prisoner population
- Systematic denials of due process

Action Taken by the Federal Court - Complaint Dismissed

DOJ failed to fulfill the requirements which allowed the CRIPA act to be invoked.

October 1994: Another Federal Court Judge ruled that DOJ had failed to offer any creditable evidence of injury, irreparable or otherwise.

Between 1994 and 1997 when the second CRIPA complaint was filed, DOJ staff interviewed over 500 prisoners.

Other events which occurred during the course of this litigation:

1996 Human Rights Watch Report was published, All Too Familiar, Sexual Abuse of Women in U. S. State Prisons.

Special Rapitour appointed by the United Nations was denied access to Scott and Crane by Governor Engler.

CRIPA: Second complaint filed against Scott and Crane

March 10, 1997: Complaint filed in the U.S. District Court in the Eastern District
If successful, DOJ would be granted injunctive relief.

Many allegations made initially were dropped from the second complaint. Those which remained included:

- *Defendants are failing to protect persons confined to the Scott Correctional Facility (SCF) and the Florence Crane Correctional Facility (ACF) from sexual misconduct by correctional officers and staff. Prisoners at SCF and ACF are subjected to a variety of sexual misconduct from Defendants' employees including sexual relationships, sexual assaults, sexual touching and fondling, and without good reason frequent, prolonged, close up and prurient viewing during dressing, showering, and use of toilet facilities.*
- *Defendants are failing to provide adequate medical care, by inter alia, failing to provide access to adequate care for serious medical needs.*
- *Defendants are failing to provide adequate mental health care by, inter alia, failing to treat serious mental health needs of prisoners.*

Nunn v. MDOC: filed against Scott, Crane, Camp Branch, and corrections centers housing women prisoners.

March 1997: Complaint filed in the U. S. District Court in the Eastern District

Plaintiff attorneys in Nunn wanted injunctive relief and punitive damages.

Brief overview of the allegations in the *Nunn* complaint included the following:

- Male staff and officers are assigned to women's housing units. Male officers supervise women prisoners while the women are performing basic bodily function in toilet and showers and cells. Male officers and staff routinely enter the women's cubicle areas, showers, and restrooms without announcing their arrival.
- Male RUOs perform random and specific clothed body searches on women prisoners which include pat downs of their breasts and genital areas.
- Male officers accompany women on transport to medical care and these officers remain and observe during gynecological and other intimate medical procedures.
- Women prisoners are routinely subjected to offensive sex-based language, sexual harassment, offensive touching and requests for sexual acts by male officers.
- There is a pattern and practice of male officers and staff:
 - sexually assaulting women prisoners in contravention of law and policy
 - requesting sexual acts from women prisoners as a condition of retaining good time credits, work details, educational and rehabilitative program opportunities, among other rights and privileges
- Allegations of sexual assaults have and continue to be reported on a monthly basis since male officers have been employed in housing units at the women's facilities.

- Defendants have failed to protect the women prisoners from the pervasive sexual harassment, sexual abuse, and assaults to which women are subject in all facilities.
- Staff have threatened and retaliated against women prisoners who have refused to participate in sexual activity or who have reported staff sexual misconduct.
- MDOC has failed to screen and provide training to male guards on the issue of cross gender supervision.
- MDOC was aware of prior actions and allegations of sexual assaults and sexual conduct by male guards and failed to take any steps to train, adequately supervise, investigate or discipline guards charged with these acts.

Action Taken by the Federal Court:

Judge John Corbett O'Meara was assigned both the *CRIPA* and *Nunn* cases. For purposes of discovery, he joined the two cases.

During the subsequent two years of discovery:

-Over 100 MDOC staff were deposed

-Over 400 prisoners were deposed

-Over 900,000 pages of documents were duplicated and provided to DOJ and Nunn attorneys

-15 tours of Scott and Crane involving DOJ experts and staff and MDOC experts were conducted.

Neal V. MDOC

March 27, 1996: Complaint filed

This class action lawsuit involved allegations of all women prisoners - past, present, and future, who have been or will be sexually assaulted, harassed, or retaliated against for reporting or resisting such conduct.

Case involved over 400 prisoner plaintiffs.

Judge ruled that the trials would be conducted in groups of 10-12 prisoners. Potential for 40 or more trials.

1st jury trial: January 2008

- 10 prisoner plaintiffs
- Verdict: Judgment in favor of the plaintiffs for \$15.5 million in punitive damages and attorney fees

2nd jury trial: October 2008

- 8 prisoner plaintiffs
- Verdict: Judgment in favor of the plaintiffs for \$7.3 million in punitive damages and attorney fees

LaCross v. Zang

August 31, 2005: Complaint filed

There were 37 prisoner plaintiffs who alleged that they were subjected to sexual assaults, batteries, sexually degrading treatment, intentional infliction of emotional distress, violations of privacy and bodily integrity rights while under the jurisdiction of the MDOC, by the named defendants and other employees of the MDOC.

Mason v. Granholm

October 20, 2005: Complaint filed

Involved 12 prisoner plaintiffs who were former or current prisoners alleging that they had been subjected to discrimination, sexual abuse, and degrading treatment by male prison staff while under the jurisdiction of the MDOC.

II. Outcome of Lawsuits

CRIPA

In May 1999, a Settlement Agreement was reached with DOJ. The Settlement Agreement did not constitute an admission by MDOC of the truth of the allegations related to sexual misconduct, nor did it constitute an admission of liability.

Refinement to MDOC work rules and specific policies and procedures occurred. Additionally, refinements were made to the mandatory training which all staff assigned to women's facilities complete.

Additional specialized training was agreed upon for specific staff from the women's facilities:

- Specialized training in Sexual Assault and Domestic Violence for Medical and Mental Health Staff who work in women's facilities as well as the staff who conduct gender based misconduct investigations.
- Specialized training for women prisoners regarding Appropriate and Inappropriate Staff and Prisoner Interactions.
- Specialized training for staff who conduct gender-based misconduct investigations.

On March 7, 2000, an Order of Dismissal was entered by the Federal Court. The case

was dismissed with prejudice and without costs or fees to any party.

Nunn - (See Handout 1A)

On July 31, a Settlement Agreement was signed in the *Nunn* case.

- \$3.7 million dollars in punitive damages were paid to the named prisoner plaintiffs and their attorneys
- A copy of the Settlement Agreement which impacted the changes in policy and procedure is contained in the appendix. P.D. 03.03.140 reflects the spirit of the terms of the Settlement Agreement.

Neal - (See Handout 1B)

In July 2009, the parties agreed to a Settlement Agreement in the Neal v. MDOC case.

- \$100 million in punitive damages and attorney fees were awarded to the plaintiffs, to be paid out over a period of six years.
- The LaCross v. Zang and Mason v. Grahholm lawsuits were dismissed.
- If the MDOC fails to make a payment by the established due dates, the plaintiffs may terminate the Settlement Agreement and reinstate the class action and other related cases.
- The Settlement overrides previous jury awards.
- The Settlement covers all allegations made prior to August 14, 2009.
- New allegations made after August 14, 2009, could initiate more lawsuits.

- B. Inform participants that this training is targeted specifically for employees assigned the responsibility of investigating the following gender-based misconduct complaints at facilities housing women prisoners:
1. sexual harassment
 2. retaliation for reporting gender-based misconduct
 3. violation of knock and announce
 4. improper pat down searches
 5. violation of 1:1 rule

Class activity: In an effort to focus the participants on the subject matter and demonstrate the importance of having a zero tolerance policy regarding gender-based employee misconduct - Break the participants into small groups and ask them to brainstorm the negative outcomes that result from allowing this type of behavior in a prison setting. Compare the participants' responses with the list provided below and discuss. Have participants document their list on a flip chart and report out to the class. The lists will most likely contain many of the points provided below.

Jeopardizes facility security

Illegal in 44 states including Michigan

Violates the constitutionally guaranteed rights of prisoners

Exposes the entire agency and staff to civil and criminal litigation

Creates a hostile work environment

Destroys trust among staff and the prisoner population

Corrupts corrections professionals by inviting compromise and dishonesty

Undermines public support

Source: McCampbell, S., Layman, E. & Moss, A. (2000). Sexual misconduct in corrections American Jails, November/December 2000.

Acknowledge that this class activity was likely a review for many of the participants. However, investigators must realize that it is their duty to conduct fair and thorough investigations following prisoner complaints. Prohibiting certain behaviors is only the first step in ensuring a safe facility. The next, and perhaps the most critical step, involves the investigation of prisoner complaints. Investigators must approach all investigations with an open mind and proceed with diligence and professionalism.

Employees and prisoners must know that the Department takes all complaints seriously and that the appropriate administrative action will be taken in all cases. A credible and legitimate investigatory process is essential to reinforce the Department's zero tolerance position.

II. Policy Review - Class Exercise

Ask participants to locate P.D. 03.03.140 from their participant handouts. Begin this section by asking for participant volunteers to read aloud from the policy directive. Have each volunteer read one of the definitions listed on page 1.

Trainer note: After completing this exercise ask participants if there are any questions concerning these definitions. If not, have participants turn page 3 and quietly read sections N through BB. (Allow 5 minutes for this activity) After participants have had sufficient time to read the policy, briefly summarize each section and encourage class discussion.

Summarize the key points from each section:

- N. Staff shall immediately report allegations of conduct prohibited by this policy to appropriate supervisory staff. Failure to do so is a work rule violation and may result in discipline pursuant to PD 02.03.100 "Employee Discipline".
- O. Prisoners may report allegations of conduct prohibited by this policy, including threats of such conduct, to the inspector or any other Department employee. Such allegations may be reported verbally or in writing, including through the grievance process.

- P. Prisoners in a CFA facility who report that they have been the victim of prisoner on prisoner non-consensual sexual acts or staff sexual misconduct shall be referred to Bureau of Health Care Services (BHCS) psychological services staff for assessment, counseling, and other necessary mental health services consistent with the requirements set forth in PD 04.06.180 "Mental Health Services". Prisoners in an FOA facility who report that they have been the victim of prisoner on prisoner non-consensual sexual acts or staff sexual misconduct shall be permitted to speak with a counselor available in the local community, if requested.
- Q. Prisoners who make accusations of misconduct against employees, including for staff sexual misconduct, staff sexual harassment, or staff overfamiliarity, which are investigated and result in a finding of "no evidence" shall be charged with the major misconduct of "Interference with the Administration of Rules", with approval of the Director, CFA or FOA Deputy Director as appropriate, or designee.
- R. Complaints filed by a prisoner regarding conduct prohibited by this policy shall serve to exhaust a prisoner's administrative remedies only when filed as a grievance through all three steps of the grievance process in compliance with PD 03.02.130 "Prisoner/Parolee Grievances".
- S. Reasonable steps shall be taken to ensure the confidentiality of reports of conduct prohibited by this policy and any resulting investigations. Persons interviewed as part of an investigation shall be specifically warned not to discuss the investigation with others.

- T. For each investigation which sustains an allegation of prisoner on prisoner sexual violence, and for each investigation which results in sustained disciplinary charges for staff sexual misconduct/harassment, the investigator assigned to the case shall complete the United States Department of Justice Survey on Sexual Violence form (SSV-IA) and submit it to the PREA Administrator. The investigator shall include with the form a copy of the investigative report and related Critical Incident Report/FOA Critical Incident Notification form, major misconduct reports, and major misconduct hearing reports, as applicable.
- U. All reported allegations of prisoner on prisoner sexual violence or threats of such behavior, whether reported verbally or in writing, shall be referred for investigation to the Warden or designee or, in FOA, to the appropriate Regional Administrator.
- V. Allegations of prisoner on prisoner non-consensual sexual acts also shall be referred to MSP or other appropriate law enforcement agency for investigation. The Department investigation shall be coordinated as necessary with the investigating law enforcement agency.
- W. The PREA Administrator may request that an investigation be conducted in response to allegations s/he receives alleging staff sexual misconduct/sexual harassment or staff overfamiliarity at facilities housing female prisoners.
- X. All reported allegations of staff sexual misconduct, staff sexual harassment, or staff overfamiliarity, whether reported verbally or in writing, shall be referred for investigation as set forth in PD 02.03.100 "Employee Discipline", except that if the allegation falls within the jurisdiction of the Internal Affairs Division, Operations Support Administration, it shall instead be referred to that Division as set forth in PD 01.01.140 "Internal Affairs".
- Y. In all investigations of staff sexual misconduct/sexual harassment or

staff overfamiliarity, investigators shall personally interview the alleged victim, the alleged perpetrator, and sufficient witnesses to establish the facts.

- Z. Staff who are accused of, witnessed, or have personal knowledge of staff sexual misconduct/sexual harassment, or staff overfamiliarity and refuse to cooperate with an investigation shall be subject to discipline, in accordance with PD 02.03.100 "Employee Discipline".
- AA. Wardens and, for FOA facilities, the FOA Deputy Director shall ensure that information on all allegations of staff sexual misconduct/sexual harassment and staff overfamiliarity is entered into the Allegations Investigations Personnel Action System (AIPAS).
- BB. Except for staff specifically authorized by the Director, only the PREA Administrator and his/her staff and the Deputy Director of Operations Support Administration (OSA) and his/her staff involved in employee disciplinary proceedings, including the Internal Affairs Division, shall have access to information in AIPAS.

III. OVERVIEW

- A. Investigation is a process of discovery. The purpose of any investigation is to determine "what happened". The role of an investigator is to collect information to help answer that question. This task may be challenging, difficult, time-consuming, and often emotional. The discovery of who, what, when, where, and how is determined through careful collection of evidence and documentation of information. The why, or motivation of gender-based or sexual misconduct, is often more difficult to understand.

Trainer Note:

An Investigator's two major objectives:

1. To conduct a thorough and competent investigation that will clearly either support or refute allegations, with evidence, information gathered from witnesses, and documentation;
2. To safeguard the well being and security of the complainant, the subject, the respondent, the institution and the agency, and ensure the integrity and credibility of the process.

(Source: Investigation of Sex Crimes, curriculum of Southern Police Institute School of Justice Administration, University of Louisville)

- B. It is important that the focus of an investigation be on the factual components of the allegation, not on pre-conceived notions, rumors, or biases of any sort. The investigator's role is to collect information in a fair and professional manner.
- C. An allegation of gender-based or sexual misconduct against an employee is often a traumatic experience for the employee, the person initiating the allegation, and ***the investigator***. It is important to understand that the system works best when allegations are handled professionally, responsibly, and in a timely manner.

IV. INVESTIGATION OR INQUIRY

- A. There are occasions where incidents, by their very nature, require a formal investigation. The allegation of a sexual assault is one such example. Often times, however, it is not clear as to whether there was a violation of either an administrative rule or criminal law. It may be necessary to inquire.
- B. An ***inquiry*** is a basic attempt to seek information. It may involve asking a question or two about what appears to be inappropriate behavior, reviewing documents, or observing activities. Inquiries are a normal part of supervising employees, monitoring prisoners, and observing visitor activities. Most inquiries are resolved quickly and do not require any further action. Occasionally, an inquiry uncovers a situation where a rule and/or law have been violated. To address that situation an investigation may be required. Many investigations are the result of a simple inquiry.
1. Examples of an inquiry:
 - a. Asking a few questions about suspicious behavior
 - b. Checking on a subordinate that seems to be asleep
 - c. Reviewing visitor records for accuracy
- C. An ***investigation*** is an official, systematic examination. It requires a careful and methodical assessment, and detailed documentation. While an inquiry helps answer a general question, an investigation is designed to answer very specific questions.
1. An investigation is a process of discovery, a process that

incorporates several different components. These components may include:

- a. the collection of forensic evidence
 - b. written statements
 - c. interviews
 - d. medical reports
 - e. administrative paperwork
 - f. videotapes, etc.
- D. The investigative process also involves establishing parameters. There must be an allegation involving a violation of some rule, law, policy, or code of conduct. The investigation is the process by which pertinent information is collected to determine whether there was a violation and, if so, who committed the offense. While it is not possible to be totally unbiased, an investigator must strive to be objective and fair.
- E. A police officer whose wife was killed by a drunk driver may not be the best person to investigate a drunken driving complaint. At some point it may be necessary for him to investigate an accident where the driver at fault may be drunk. If so, he must understand his potential bias and make sure that he is investigating the accident based upon that specific information and not on the accident that killed his wife.

- F. There are times when even the best investigators should not be involved in an investigation because of extenuating circumstances. It is not a reflection of a person's competency if they request to step down; rather it is a reflection of their character.
1. Examples of an investigation:
 - a. A woman prisoner reports a staff member touched her breast during a pat down search
 - b. A nurse reports that a doctor is giving prisoners less pain medication than he lists on the prisoner's chart
 - c. A female ADW reports that someone left lewd pictures on her desk
 2. The role of an investigator is:
 - a. to conduct a professional, thorough, and competent investigation that will establish facts;
 - b. safeguard the well being and security of the complainant, the prisoner, any witnesses, the prisoner population, the staff, the facility, and the department; and the integrity and credibility of the investigative process.
 3. In most cases the investigation will support or refute the allegation(s).

Unit 2: Victimology

I. Victimology Section

- A. To effectively investigate gender-based employee misconduct complaints, it is beneficial to have an understanding of the background of potential witnesses and the victim.

- B. This portion of the training is designed to provide investigators with information concerning the victimization of women and the effects of domestic violence. A sensitivity to these issues will allow investigators to more effectively interact with women prisoners.

- C. In addition, a sensitivity to the effects of domestic violence and a basic understanding of post-traumatic stress disorder may help the investigator to structure and plan the interview in such a manner as to not re-victimize the prisoner during the investigation process.

Trainer Note: The following material was developed by the Violence Against Women Training Institute.

II. Women Prisoners As Victims

- A. There is increasing evidence that many women in prison were abused in childhood, in adult relationships, or in both. Such abuse, we now know, has both short-term and long-term effects on its victims. To effectively work with persons having such backgrounds, it is helpful to understand the dynamics and effects of this kind of abuse. Our correctional institutions historically have been developed and administered based on an understanding of what works with a predominantly male prison population. In recent years, we have come to recognize that the pathway to prison for women is markedly different, and that how we work with the female prison population may need to be different in order to appropriately supervise them and assist in effective rehabilitation.
- B. Understanding the dynamics of abuse in women prisoners' lives and the potential effects of that trauma on behavior is not meant to excuse the criminal acts that resulted in their incarceration, nor should it necessarily excuse any disciplinary infractions of women prisoners. A prisoner's prior victimization may or may not be the reason for her current behavior. However, understanding a prisoner's possible reasons for acting the way she does could feasibly decrease the number of infractions we see, help us design an effective response to infractions, and may also assist prisoners with their rehabilitation efforts. Ultimately, an increased understanding how sexual assault, child abuse and domestic violence may affect women makes for improved supervision and increased staff safety.

III. The “Discovery” of Child Abuse, Sexual Assault and Domestic Violence

- A. Prior to the late 1970’s, sexual assault, child abuse and domestic violence were not widely recognized as social problems appropriate for public discussion. This has changed significantly in the last 30 years, with increased advocacy on behalf of victims and media attention to these issues.

- B. In the U.S. we have a number of strong beliefs about the sanctity of the home and family. Sayings such as “A man’s home is his castle” and “Home is where the heart is” create perceptions of the family as the unquestioned source of privacy, safety, security and love. These perceptions, among other things, kept Americans unwilling for a long time to explore the negative side of family life.

- C. As advocates and researchers began to address and examine child abuse, sexual assault and domestic violence, it became clear that, for many women and children, the American home was actually a very violent place. The research also revealed that while men are sometimes victimized, women are the most likely to be victimized and injured.

- D. It also became clear that victims of child abuse, sexual assault and domestic violence usually suffered long-term negative effects.

- E. Additionally, research demonstrated a connection between some male children who witnessed or experienced domestic violence and their potential to become domestic violence assailants in their adolescent or adult relationships. Researchers and practitioners in the field also noted that some survivors of domestic violence, after enduring years of abuse and trying virtually every avenue of help with little or no success, resorted to killing their abusive partners.
- F. In sum, over the course of the last 30 years, we have “discovered” a number of serious forms of victimization of women and children. That is not to say that these abuses have not been going on for quite a long time before that. All evidence indicates that this is a long-abiding pattern of behavior in human history.
- G. While violence against women and children has long been accepted and ignored, it now is seen as a legitimate and serious social problem, worthy of state intervention. The abuses have been there all along, but now we recognize that they have serious, undesirable, enduring and painful consequences to the victims and to society in general.

- H. What happens to children who suffer physical and sexual abuse and/or witnessing domestic violence? It is important to note that female children are sexually assaulted at a higher rate than male children. Whatever the gender of the child victim, experiencing physical and sexual violence in childhood is extraordinarily traumatizing. The effects of that trauma can last a lifetime – even for those victims who cannot remember everything that happened to them or who, due to social conditioning or psychological survival, do not perceive that what happened to them was especially “bad.” We turn next to a consideration of these long-term effects.
- I. The immediate effects of child abuse or sexual assault (whether victim of child sexual assault or a sexual assault as an adult) are usually obvious. Physical injuries and emotional shock can often be seen in victims of physical abuse or sexual assault. Adult assailants often threaten their child victims with terrible penalties if they tell anybody what happened. While most bruises and other physical injuries will heal with time, the long-term psychological impact of these traumatic events is not usually healed with only the passage of time.

- J. Most therapists and child-development specialists believe that abusive incidents are NEVER really forgotten, no matter how young the child was at the time of the abuse. Children may, for a time, lose conscious memory of them, as do many people who have been through traumatic events. Survivors of trauma sometimes forget the actual events of a catastrophe for awhile – whether the catastrophe involved natural events such as earthquakes, hurricanes and other “acts of God,” or human-caused events such as kidnaping, domestic violence, rape, witnessing a murder, or some other act of human violence. While some survivors may forget what happened for a period of time, they often live with symptoms and engage in behaviors are generated from deeply buried and disturbing memories of the trauma.

Exercise: Brainstorm at your table a list of behaviors that you might expect to see from someone who has been a victim of child abuse, sexual assault, or ongoing domestic violence at the hands of an intimate partner.

- K. Whether or not the memories of the trauma are present or repressed, those who have survived traumatic experiences such as child abuse, child sexual abuse, or domestic violence, often experience “posttraumatic stress disorder” (usually referred to as “PTSD”).

- L. The National Institute on Mental Health defines PTSD as “an anxiety disorder that can develop after exposure to a terrifying event or ordeal in which grave physical harm occurred or was threatened. Traumatic events that may trigger PTSD include violent personal assaults, natural or human-caused disasters, accidents, or military combat.”

Source: <http://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.html>

PTSD can cause many symptoms. These symptoms can be grouped into three categories:

1. Re-experiencing symptoms:

Flashbacks—reliving the trauma over and over, including physical symptoms like a racing heart or sweating

Bad dreams

Frightening thoughts.

Re-experiencing symptoms may cause problems in a person’s everyday routine. They can start from the person’s own thoughts and feelings. Words, objects, or situations that are reminders of the event can also trigger re-experiencing.

2. Avoidance symptoms:

Staying away from places, events, or objects that are reminders of the experience

Feeling emotionally numb

Feeling strong guilt, depression, or worry

Losing interest in activities that were enjoyable in the past

Having trouble remembering the dangerous event.

Things that remind a person of the traumatic event can trigger avoidance symptoms. These symptoms may cause a person to change his or her personal routine. For example, after a bad car accident, a person who usually drives may avoid driving or riding in a car.

3. Hyper-arousal symptoms:

Being easily startled

Feeling tense or “on edge”

Having difficulty sleeping, and/or having angry outbursts.

Hyper-arousal symptoms are usually constant, instead of being triggered by things that remind one of the traumatic event. They can make the person feel stressed and angry. These symptoms may make it hard to do daily tasks, such as sleeping, eating, or concentrating.

Taken from National Institute on Mental Health,
<http://www.nimh.nih.gov/health/publications/post-traumatic-stress-disorder-ptsd/what-are-the-symptoms-of-ptsd.html>

- M. **Handout 2A, “Stages of Recovery from Trauma”** discusses some generalized stages that many experts believe trauma victims must go through in some form in order to reach a psychological resolution. It is important to note that it is precisely because traumatic events are so damaging that many people are unable to reach the adjustment stage on their own. For example, without intervention, some victims may get ‘stuck’ in the avoidance stage (#3 on handout). They may seek to forget the violence or avoid thinking about what has happened to them as a way to cope. The psychological “price” for these ways of coping, however, may involve self-destructive behaviors. For example, a survivor of sexual assault, child abuse, and/or domestic violence might start using substances (legal and illegal) as a way to numb or quiet the pain they are feeling. For some women, substance abuse stemming from trauma may have led to the crime for which they are serving time.

IV. “Long-Term Effects of Child Abuse and Child Sexual Assault”

Exercise: At your tables, brainstorm a list of what you might expect the long-term effects to be in an adult of a history of childhood sexual abuse.

Are these behaviors you see in women prisoners?

- A. **Handout 2B** shows some of the many behaviors that are linked with a history of childhood sexual abuse. It is especially important for staff in correctional facilities to note that inappropriate sexual behavior may be one of the long-term effects of child sexual abuse (Becker et.al. 1982; Rew, 1989). For example, sexually abused children may learn to use sex as a tool to try to get the love or attention they need, or they may believe that sexual interactions are necessary to placate or please those in authority positions. They may also learn that they cannot escape from or avoid the sexual abuse and that they will be punished if they attempt to do so. Most child victims are abused or molested by family members or close family friends who are usually authority figures to the child. The fact that those in authority over them are now the prison staff members does not change the conditioned, --and typically unconsciously re-enacted -- learning that took place during childhood. For these reasons, a woman prisoner may be especially vulnerable to sexual re-victimization while incarcerated, whether the sexual behavior is initiated by corrections staff or by the prisoner herself.

- B. Some male staff working in women’s prisons report or complain that women prisoners “come on” to them or act seductively around them, even after being told to stop. This reported behavior could be a result of a history of abuse. Or it could be generated by an actual desire of that prisoner to sexually interact with that staff person. One must also be aware, however, that as a result of societal conditioning of men and gender roles, some men incorrectly interpret women’s behavior as seductive or as inviting sexual contact.

- C. Although some women prisoners may make sexual advances toward staff, or may appear receptive to inappropriate sexual behavior by staff, it is important to note that the appearance of prisoner willingness to engage in sexual activity with staff does NOT constitute “consent” in the legal sense nor does it make such behavior by staff acceptable. Whenever there is a power difference – as in the difference between the power of a prison employee versus a prisoner – such seemingly willing behavior can never be viewed as consensual. Sexual behavior by staff with prisoners is unethical, unprofessional and illegal. **[Handout 2C]**

- D. Specifically, MDOC Employee Work Rule #50, 51, and 52 includes very clear language prohibiting sexual behavior between employees and prisoners.

Trainer Note: it is a criminal offense (criminal sexual conduct in the second degree) if an employee of the Department engages in sexual contact with a person under the jurisdiction of the Department.

- E. In addition to being a crime, sexual contact between staff and women prisoners can revictimize the prisoners involved. Staff who fail to conduct themselves professionally in this regard not only risk criminal prosecution, they also can further damage the prisoners under their charge – even in those circumstances where the prisoner(s) may truly have initiated the contact.

Trainer Note: If there is time left, use it for questions and answers. Make sure that all students clearly understand the demands of professional behavior both in situations where the woman prisoner may be the sexual initiator as well as the staff person initiating sexual behavior with the prisoner.

V. Effects of Domestic Violence on Children

- A. Whether they witness the abuse or are abused themselves, children suffer from growing up in homes where there is domestic violence. In addition to causing physical injury, domestic violence can have a profound impact on children's core belief about themselves, authority figures and those with whom they have intimate relationships. The trauma and anxiety the abuse produces can impede children's development by preventing them from forming 'healthy' emotional attachments with others, and sabotaging their efforts to learn basic social skills.

VI. The Extent of Childhood Abuse Among Women Prisoners

- A. Informal evidence has always existed supporting the idea that many women in prison were abused in some form prior to incarceration. Empirical research now confirms that women in prison are highly likely to have experienced some form of violence during their childhood or adult lives, or both. **Refer to Handout 2D.**
1. 40% had been physically abused either by a family member or other relative;
 2. 37% of state prisoners and 23% of federal prisoners reported abuse before the age of 18;
 3. Nationwide more than 57% of women in state prisons and 40% in federal prisons reported physical or sexual abuse prior to their sentence.
- B. In short, at least half or more of the prison population had been severely victimized in some way, and some prisoners were victims of all three kinds of assaults.
- C. This is a much higher rate of victimization than is true for the general public.
- D. It is clear that women prisoners are highly likely to have been the victims of all kinds of abuse, especially as children, and we can assume that these traumatic experiences might affect their adult behavior, both in society and prison.

- E. Of course, not all children who are severely abused grow up to be troubled and deviant. Many factors – including the child’s age, the extent of the abuse, the availability of therapeutic intervention, and the child’s own innate resilience – influence the effect and impact of traumatic violence.
- F. In short, this and other studies now provide clear evidence that women in prison are highly likely to have been subjected in childhood to one or more kinds of abuse or violence which we have already seen can have serious long-term effects.
- G. Consequently, there is every reason to believe that many women in prison will display some of the long-term symptoms of these abuses since it may be unlikely that many of them received any kind of therapy for these traumatic events.

VII. Women Prisoners and Intimate Partner Violence

- A. Historically called “domestic violence”, intimate partner violence describes physical, sexual, or psychological harm by a current or former intimate partner or spouse. This type of violence can occur among heterosexual or same-sex couples (National Institute of Justice).
- B. The Centers for Disease Control and Preventions (CDC) National Center for Injury and Prevention and Control, which spotlights injury violence prevention topics, defines four main types of intimate partner violence:

1. Physical Violence – The intentional use of physical force with the potential for causing death, disability, injury, or physical harm.
2. Sexual Violence – Can be divided into three categories:
 - a. The use of physical force to compel a person to engage in sexual activity unwillingly.
 - b. An attempt or complete sexual act involving a person who is unable to understand the nature or condition of the act, decline participation, or communicate unwillingness to engage in the act.
 - c. Abusive sexual contact.
3. Threats of Physical or Sexual Violence – Communicates the intent to cause death, disability, injury, or physical harm through the use of words, gestures, or weapons.
4. Psychological/Emotional Violence – Traumatizes the victim by acts, threats of acts, or coercive tactics. In most cases, emotional violence has been preceded by acts or threats of physical or sexual violence.

Stalking is often included among types of intimate partner violence. Stalking generally refers to harassing or threatening behavior that an individual engages in repeatedly (Tjaden and Thoennes, 2000).

As with perpetrators of physical and sexual violence, stalkers may be motivated by a desire to exert control over their victims. Stalking and intimate partner violence may co-occur.

C. Statistics

- Approximately 1.3 million women are physically assaulted by an intimate partner annually in the United States (Tjaden and Thoennes, 2000).
- Women are significantly more likely than men to be injured during an intimate partner assault (39% compared to 24.8%) (Tjaden and Thoennes, 2000).
- Intimate partner homicides make up 40-50% of all murders of women in the United States. In 70-80% of intimate partner homicides, no matter which partner was killed, the man physically abused the woman before the murder (Campbell et. al, 2003).
- Sexual assault or forced sex occurs in approximately 40-45% of battering relationships (Campbell and Soeken, 1999).

Class Discussion: Ask the group to suggest ways that battered women might try to protect themselves and their children. (Placate, comply, lie, leave, return, avoid the perpetrator, send kids away, search for help, drop search for help, encourage perpetrator to drink, reason with the perpetrator, try to improve relationship, have sex, drink and use drugs, hide resources, steal).

- D. Sometimes they respond with enough force to kill the assailant. Many women who are sentenced to prison for murder or manslaughter are there for killing an abusive intimate partner. In the past, many women who killed an intimate partner were deemed as either crazy or evil for such an act. In recent years changes in case law have made it somewhat easier for some women to successfully claim legal self-defense. Now women who kill their abusive mates are somewhat less likely to go to prison than they were before—but most still serve a significant prison sentence.
- E. Women who have lived in violent adult relationships often display many of the same symptoms we discussed earlier regarding the effects of child abuse and sexual assault. In particular, some survivors of adolescent or adult domestic violence experience various levels of post traumatic stress disorder (PTSD).
- F. Long-Term Effects of Domestic Violence on Survivors
1. For those who are physically or sexually battered, of course, the long-term effects include a list of physical injuries and traumas, which may have life-long consequences. Women who are abused emotionally and psychologically instead of or in addition to physically and sexually also suffer from long-term effects of such assaults. Battered women report a wide range of mental and emotional stresses: **(Handout 2E)**

2. Some of the feelings, which result from battery, may be expressed in physical complaints (such as headaches, ulcers or gastrointestinal complaints).
3. Other emotional responses to abuse include feelings of worthlessness, depression, or being overwhelmed. Assailants often tell their victims that they are worthless or ugly, and in combination with the isolation tactics assailants use, survivors may come to believe it.
4. Battered women are more likely than non-abused women to describe their general health as only 'fair' or 'poor,' and to report more days in bed due to illnesses than non-abused women are.
5. Battered women also report feeling that they are under much more stress than non-abused women (in part, that stress may come from not knowing when the violence will erupt again.)
6. The more severe the violence the more likely battered women are to report also having a drug or alcohol problem.

- G. It is important to point out that these effects can also result from violence in same sex relationships. Lesbian domestic violence does not receive a lot of media attention, but it certainly happens and the effects are just as traumatizing. Whether the abuser is male or female, the fact is that the physical, sexual or emotional violence is coming from one who claims to love the victim and whom she, in turn, may love very much.
- H. Even after women are safely out of an abusive relationship (one way or another), many of these effects may continue for some time. If battered women also grew up in violent homes or were abused as children, they may define their experiences and feelings as normal. Nonetheless, women in prison whose adult relationships have been abusive are very likely to display all sorts of physical and emotional symptoms of distress, and as a result of the battering may not have very high self-esteem. They may very well be in prison precisely because they killed their assailants. They may display contradictory emotions and behaviors in prison. Since women prisoners have a high rate of domestic violence compared to other women non-prisoner populations, it can be expected that many incarcerated women prisoners – including those who did not kill their assailants, and even those who still love their abusive mates – may be suffering from these effects. How do staff respond to women dealing with all of these emotions during incarceration? We will turn to that question next.

VIII. Dilemmas in Working with Victimized Women Prisoners

- A. Supervision of women prisoners is severely complicated by the fact that many of them have been the victims of child abuse, sexual assault and/or domestic violence. For this reason, along with others, strategies for prisoner supervision, which work well with men, may have very negative consequences or impacts when applied to women prisoners.

- B. It should be stressed that while these abuses have many long-term effects on behavior that staff needs to understand, such victimizations do NOT make prisoner misbehavior excusable or acceptable. The point here is neither to excuse either the crime prisoners committed nor their present prison behaviors. Rather, the point is to figure out ways of handling these behaviors more effectively in prison settings.

- C. Several observations may be made about working with abuse victims, especially in prison settings:
 - 1. First, some prisoner behaviors may be the result of underlying unresolved trauma, which the prisoner herself does not understand. For example, some abuse victims are so used to feeling badly that they do not really know how to handle feeling well. This can result in the following examples:
 - a. women deliberately picking fights because they know how to deal with anger but they do not know how to deal with love or acceptance; and

- b. they may deliberately mess up in some way with staff because they know how to handle punishment but they do not really know how to handle praise.

- D. As we noted earlier with the stages of recovery from trauma, until the traumatic event is emotionally resolved all sorts of unconscious “baggage” may be left behind and may still effect a person’s behavior. Prisoners may be just as bewildered by such behavior as staff is. Staff who see these sorts of behaviors need to realize that the prisoner may not know how to change on her own, even if she wants to. Staff recommendations that the prisoner participate in mental health counseling or a domestic violence support group or some other support group might help her to find some causes – and therefore solutions – to her pain and subsequently her behaviors.

- E. Second, posttraumatic stress disorder, which we discussed earlier, may have consequences that are important. Like the Vietnam Vets who returned home and then experienced periodic “flashbacks” of being in the war, abused persons sometimes have “flashbacks” as well. Something usually triggers an emotional memory of the violence and this memory can consume the victim for an indefinite amount of time. During flashbacks, it is common for the person to feel as if the violence is recurring and she may temporarily forget where she actually is. She responds to the abusive memory, not to the real action going on in front of her.

IX. Implications for Investigators of Gender-Based Employee Misconduct

Class Activity: Break participants into small groups and ask the class to brainstorm the following questions:

1. How may a victim of intimate partner violence respond to an investigator during an interview?
2. Also, ask participants to develop some strategies to place the victim/witness at ease and avoid triggering an emotional response. Record responses on a flip chart and discuss.

Some possible responses to the first question regarding how a victim/witness may respond include: fearful, aggressive, withdrawn, reluctant to disclose information, denial of the incident. Some victims/witnesses may be delayed in reporting incidents due to fear of retaliation or not being believed and embarrassment.

In response to the second part of the activity -possible answers include selecting a non-threatening environment to conduct the interview, appear as friendly and courteous, maintain a professional demeanor, allow the victim/witness to speak freely, and reinforce the Department's position prohibiting retaliation for reporting gender-based employee misconduct.

X. False Allegations

- A. Certainly investigators must keep an open mind as to not rush to judgement regarding the validity of a complaint until all of the evidence is collected and analyzed. However, false allegations are a serious matter that require an appropriate and swift administrative response.
1. Effective investigators can arrive at the following investigative conclusions:
 - a. Sufficient Evidence - evidence proves that the allegation occurred.
 - b. Insufficient Evidence - it cannot be proved that the allegation happened or didn't happen.
 - c. No Evidence - evidence proves that the allegation did not occur.
 - d. Other - evidence does not support the allegation however, it is found that another work rule or policy was violated.
 2. In cases where prisoners or staff have filed complaints and the investigator finds the person, who is mentally capable, knowingly made a false report , the following options are available:

- a. The prisoner disciplinary process or staff disciplinary process if the false allegation was made by an employee.
- b. The education of prisoners as to the potential penalties for filing a false report is essential. The prisoner guidebook provided to prisoners at orientation includes information regarding such penalties.

Source: Center for Innovative Public Policies, Inc. (2000). Training Curriculum for Investigating Allegations of Staff Sexual Misconduct with Inmates. Tamarac, Florida: McCampbell, S., Layman, E.

Unit 3: Behavioral Aspects of Gender-Based and Sexual Misconduct

I. BEHAVIORAL ASPECTS OF GENDER-BASED AND SEXUAL MISCONDUCT

- A. Sexually motivated crime has shown a marked increase into the 1990's. While the number of cases has increased, the percentage of cases solved by arrest has decreased. The increase in the number of reported cases is due, in part, to a better understanding of sexually motivated offenses and a better reporting system.
- B. To investigate sexually motivated offenses it is important to understand the dynamics of these types of violations. The most important aspect is that sexually motivated offenses are emotionally entangling for the victim, for the accused, for families, for friends, and for the investigators.
- C. It is important for investigators to understand that most cases of sexual assault, gender-based misconduct, and other sexually motivated crimes are not about lovemaking. They are about power and control. Sex is used as a weapon. As a nation, the United States uses sex to sell everything from clothes to cars. However, sexuality is not openly discussed. For this reason, sexually motivated violations are difficult to report, difficult to investigate, and difficult for society to understand.

- D. Sexual misconduct is generally found in situations where an offender is in a position of power/authority over the victim, and/or where the offender uses physical power or the threat of that power over the victim. This can include within a family (father/daughter), a church (priest/altar boy), a school (teacher/student), a sports team (coach/player), a situation of power imbalance (an acquaintance betrays the trust of the victim by assaulting her while she is incapacitated by alcohol, drugs, or sleep), the more rare instance of stranger assault through force (such as a rapist who finds a lone female late at night in a park), and in correctional facilities.
- E. The majority of sexual offenders are males and the majority of their victims are females. Up until the 1980's a female sex offender was virtually unheard of. This was not because there were no female sex offenders. It was because society, largely, did not believe females could be sex offenders. This attitude made it almost impossible for male victims or children to be heard, let alone believed. By the end of the 1990's female sex offenders were being identified on a regular basis and adult male victims (female offender) were challenging rape crisis centers in general, and the criminal justice system specifically.
- F. The public attitude toward sexual assault has slowly changed and evolved over the past 30 year, although there is still room for considerable improvement. Sexual complaints are investigated in a more proactive manner by law enforcement. Coaches and Boy Scout leaders are more closely scrutinized. Sex Offender Registration Programs have been enacted. Sexual harassment in the workplace is the subject of training seminars and numerous civil suits.

- G. Few environments have as much potential for sexual misconduct and criminal sexual offenses as exist in correctional facilities. The prisoner population is literally captive, and the staff is in a position of nearly absolute power and control. While society may have determined that prisoners have forfeited their right to freedom, that does not mean they have forfeited their right to bodily integrity and safety.

- H. When sexual misconduct by staff occurs in a correctional setting, the ramifications are staggering. Most importantly, a prisoner has been victimized. Other consequences include the fact that public confidence in the prison system may be damaged; the security of the facility may be affected, legislative support may weaken, and criminal and civil action may reflect negatively on all staff members. The work environment may become hostile, and stress levels of staff and prisoners may escalate.

- I. Individuals who commit sexual assaults, sexually motivated and gender-based offenses, can be categorized in terms of their behavior. The largest category of offender is referred to as Power Reassurance (Compensatory). This type of individual is motivated by reassuring himself of his masculinity.
 - 1. He is considered pseudo-unselfish and is characterized by:
 - a. Minimal to moderate force

- b. Sometimes referred to as “gentleman” as he is often apologetic and will do only what victim will allow
- c. Selects victims ahead of time
- d. Likely to expose himself or peek at victim
- e. Usually offends during evening or early morning
- f. Not verbally skilled
- g. Approach is one of surprise
- h. May have (or claim) to have a weapon (primarily defensive)
- i. Victims are the same age or younger
- j. May ask victim to remove her own clothing
- k. May take a souvenir
- l. May re-contact the victim
- m. If unsuccessful, will try again in a short period of time

- n. Likely to have pattern of attack, i.e. same time of day, same day of week, at a time when has greatest access to victim
 - o. May keep records
- J. The second category is the Power Assertive (Exploitive). The motivation of this type of individual is to exercise his right as a man to have a woman when and if he desires.
- 1. He is selfish and characterized by:
 - a. Moderate to excessive force
 - b. Con or manipulative approach
 - c. Selects victims close to own age
 - d. Rips or tears clothing
 - e. Repeated acts
 - f. Will commit offense when he feels he needs to
 - g. More difficult to establish pattern of behavior
 - h. Not concerned with feelings of victim
 - i. Will do what he wants, when he wants

- j. If weapon is used it is one of choice
- K. The third category is the Anger Retaliatory (Displaced). The motivation of this type of offender is to get even with women. He blames women for everything that goes wrong in his life and wants to punish and degrade his victims.
- 1. He is selfish and is characterized by:
 - a. Excessive force
 - b. Frenzied attack
 - c. Emotional outburst
 - d. Impulsive, little planning
 - e. Blitz style of approach
 - f. Assault usually of short duration
 - g. Selects women of opportunity, usually his age or older
 - h. May attack women who symbolize someone in their life (mother)
 - i. Tears, rip clothing
 - j. Can occur any time

- k. Uses weapon of opportunity
- L. The fourth category is the Anger Excitation (Sadistic). The motivation of this type of offender is to inflict pain and to see fear in the eyes of the victim. Fortunately, this is the least common type of offender.
- 1. This type of offender is selfish and characterized by:
 - a. Sexual stimulation comes from infliction of pain and terror
 - b. Every detail carefully planned
 - c. Uses brutal force
 - d. May utilize restraint devices
 - e. Victim is usually a stranger, but may meet certain criteria
 - f. Usually results in death
 - g. Con or manipulative approach
 - h. Incident usually of long duration
 - i. May bite victim
 - j. May involve insertion of a foreign object

- k. Very ritualistic
 - l. May involve non-sexual activity
 - m. Age, race, and pattern may vary
- M. There is another category of offender that, although rare, an investigator may run across. This type of offender is opportunistic. Sex misconduct occurs more impulsively, often during the commission of another act. The primary motivation of this type of offender is sexual rather than anger or power.
- 1. An example of this type of sexual misconduct would include an armed robbery where the offender(s) find(s) a vulnerable female clerk and decides, after the robbery, to take advantage of the situation.
 - 2. Another example would include a college fraternity party where the offender(s) take(s) advantage of a female who is highly intoxicated or even passed out. This type of assault is commonly seen in war and often in riot situations.
 - 3. The unusual component of this type of offender is that they may not have a history of sexual misconduct. They will, however, have a history of abusing others, impulsivity, and/or being easily led by others. If there is more than one offender, the behavior of the more dominant offender will be reflected in the offense. This type of offender is selfish and characterized by:

- a. Level of force dependent upon situation
 - b. Incident usually of short duration
 - c. May have been drinking, using controlled substance
 - d. May occur at a location where the offender feels he (she) cannot be identified, such as at an out of town convention, in a foreign country, large celebration (Mardi Gras), etc.
 - e. May involve gang rape
- N. Understanding this behavior will greatly assist an investigator. In most investigations of sexual misconduct a pattern of behavior will be present. The Corrections Officer that is accused of failing to knock and announce his presence may have a history of “forgetting” or just “accidentally” finding himself in a position to observe a woman prisoner who is nude or partially nude. An individual who is accused of sexual harassment often has a history of harassing others.
- O. A hurdle faced by all investigators involves talking about a subject that many feel uncomfortable talking about, namely sex. If one wants to test this theory simply, ask someone to explain, in detail, his or her most recent sexual encounter. This is what a victim is asked to do. It is difficult to talk about a personal violation of their body, their privacy, and their dignity.

II. Sexual Abuse

- A. Sexual abuse often goes hand-in-hand with other forms of abuse. Someone who will sexually abuse their wife may also be abusing her children. An individual who is accused of “date rape” may have a history of manipulating females into a position of vulnerability and sexually assaulting them. Often, a victim may not report the incident because she is embarrassed, may blame herself, or simply wants to forget the incident. The problem is one does not forget a sexual assault. Sexual assault is a violation of the worst kind. Not every child that is sexually abused becomes a child molester. However, most individuals who do sexually abuse children report that they were abused as children.
- B. Historically, society’s view of sexual abuse involved offenders who were all bad and victims who were all good. The truth is offenders and victims are no different from the rest of society. An offender may be a highly regarded employee or someone who otherwise appears to be an upstanding member of a community. A victim may be a prostitute or someone with a criminal record (in fact, victims who are sex workers or who have criminal record may sometimes be more vulnerable to sexual assault by virtue of that occupation or history, because they are less likely to be believed about the assault or to be seen as worthy of criminal justice response) .

- C. In every sexual assault, sexual misconduct, and gender-based misconduct there are at least two personalities involved, the offender and the victim. An investigator is required to interview both victim and offender, and any other persons who may have information pertinent to the investigation, and then try to determine what really happened. It is important to understand that not all offenders are alike and not all victims are alike. Offenders may lie. Victims may lie.

- D. Despite forensic evidence, a victim may not immediately disclose all that occurred, and sometimes may never disclose everything. This could be because the immediate shock and trauma of the event caused her not to remember every detail, or it could be that what was done to her is simply too painful for her to disclose or discuss with an investigating officer. For example, in one real-life situation, an elderly woman who was raped in her home would not admit, or even discuss, the fact that the offender made her perform oral sex. Detectives had evidence that the act occurred and a confession from the offender, however the victim would not discuss the matter.

- E. Offenders may not admit to every aspect of an offense. They may not recall every detail because they were under the influence of alcohol or a controlled substance. They may not recall information because their sympathetic nervous system (adrenaline, “fight or flight”) has distorted their recollection. As with victims, offenders may not admit to certain aspects of an offense because they are embarrassed (unable to attain an erection) or ashamed of what they have done. Of course, an offender may lie in order to avoid consequences for what he/she has done.

- F. A person who has been the victim of sexual assault, sexual harassment, sexual misconduct, or gender bias may need time and help (medical and/or mental health) before they are able to discuss the matter with investigators. This can be frustrating to an investigator who is under pressure to resolve the matter.
1. It is extremely important that investigators and their supervisors understand that the health and welfare of the victim is vital.
 2. It is also important to understand that there is no magic formula as to when a victim can be interviewed. It is a balancing act, which consists of the welfare of the victim, fairness to the accused, duty to the agency to investigate as accurately as possible, and the threat of contamination (victim/witness testimony, evidence) as time elapses.

Unit 4: Contractual and Legal Issues

I. Introduction - Contractual and Legal Issues

A. Investigators must adhere to all contractual requirements while conducting investigations. However, there are several recognized bargaining unit agreements within the Michigan Department of Corrections. Contractual language regarding representation, time limits, and the use of written questionnaires vary depending on the employee's union membership or Non-exclusively represented (NERE) status.

B. Investigators must consult the appropriate union contracts *prior* to conducting interviews or issuing questionnaires. A review of the specific contract language regarding investigations is essential. An investigator should not rely solely on her/his memory of contractual requirements. Take the time to review all relevant labor contracts as to not violate any conditions specified in the collective bargaining agreement.

II. Cross Reference for Procedural Requirements Relating to Investigations

A. The following is a list of frequently asked questions (FAQ) concerning investigations. This information was provided by the Department's Labor Relations section.

Trainer note: Inform participants that the FAQ list is provided in the participant **Handout 4A**. Excerpts from various labor contracts and Civil Service rules are also included as a reference. Review each FAQ with participants and encourage class discussion regarding the similarities and differences among the various collective bargaining agreements.

Cross Reference for Procedural Requirements Relating to Investigations	
How soon after an allegation has been made must an investigation commence?	
AFSCME	The collective bargaining agreement (CBA) is silent; therefore, PD 02.03.100 applies.
MCO	“within 21 calendar days following the date on which the Employer had reasonable basis to believe that such action or investigation should be taken.” Art. 10, Sec. A, 1 st ¶.
MSEA	Investigation “is timely when commenced within twenty (20) week days following the date on which the Employer had reasonable basis to believe that such investigation should be undertaken”: Art. 9, Sec. A, 1 st ¶.
UAW	Investigation “is timely when commenced within twenty (20) week days following the date on which the Employer had reasonable basis to believe that such an investigation should be undertaken”: Art. 9, Sec. B, 1 st ¶.
NERE (non-exclusively represented employees)	Civil Service (CS) rules and regulations do not address investigations, except for situations involving discriminatory harassment (CS Reg. 1.03). However, PD 02.03.100 sets forth the department’s policy which would govern the process for non-exclusively represented employees (NEREs).
Are there specific timelines required for completion of investigations?	
Note: In general, all investigations need to be completed as soon as administratively possible given the specific circumstances (such as unavailable witnesses due to absences, difficulty in obtaining physical evidence, etc.).	
AFSCME	CBA is silent.
MCO	“investigations shall not be unduly prolonged.” Art. 10, Sec. B, 1 st ¶.
MSEA	CBA is silent.
UAW	“as expeditiously as possible”: Art. 9, Sec. B, 1 st ¶.
NERE	The policy directive, as well as CS rules and regulations, are silent on this issue.
Can staff have union or other representation during an interview?	
AFSCME	Yes: The employee who is the object of the investigation is entitled to representation during an interview. Art. 8, Sec. D, 1 st & 2 nd ¶.
MCO	Yes, when “employee’s own conduct is the direct object of the investigation”: Art. 10, Sec. B, 1 st ¶ & Sec. G.
MSEA	Yes, at an investigative interview “regarding allegations or charges of misconduct against the employee which if substantiated could result in any disciplinary action”: Art. 9, Sec. A, 6 th ¶.
UAW	Yes, during an investigatory interview “regarding allegations or charges of misconduct against the employee. The Employer must also advise the employee of the nature of the investigatory interview before the meeting begins: Art. 9, Sec. B, 2 nd ¶.
NERE	Yes, upon request (see PD 02.03.10, Section I).

If so, does the investigator have to offer this or does the staff member have to request representation?	
Note: The department's practice is to advise employees that they are entitled to union representation in the notice of the investigatory interview.	
AFSCME	Entitled upon employee request: Art. 8, Sec. D, 1 st ¶.
MCO	Upon employee's request: Art. 10, Sec. B 1 st ¶.
MSEA	Upon employee's request: Art. 9, Sec. A, 6 th ¶.
UAW	Written notice of the employee's right to union representation must be given to the employee by the Employer: Art. 9, Sec. B, 2 nd ¶.
NERE	This issue not addressed in CS rules or regulations, but PD 02.03.100 states upon employee request.
May a written questionnaire be used?	
Note: Questionnaires should advise employees that they may consult with their representative before responding.	
AFSCME	Yes: Art. 8, Sec. D, 3 rd ¶;
MCO	Yes: Art. 10, Sec. B, 2 nd ¶;
MSEA	Yes: Art. 9, Sec. A, 5 th ¶;
UAW	Yes, but the employee must be advised that he/she may consult with a union representative before responding to the written questionnaire: Art. 9, Sec. B, 3 rd ¶;
NERE	Written questionnaires may be used. However, in situations involving discriminatory harassment, the person making the report "shall" be required to sign a statement regarding the allegation: CS Regulation 1.03, Sec. 4.C.1.b. (reference CS Rule 1-8, 2-10). The issue is not further addressed in the CS rules or regulations or PD 02.03.100.
Are time frames required regarding the return of questionnaires?	
AFSCME	"...a reasonable time to respond without undue delay": Art. 8, Sec. D, 3 rd ¶;
MCO	"...a reasonable time to respond without undue delay": Art. 10, Sec. B, 2 nd ¶;
MSEA	None cited in CBA but employee should be given reasonable time in the same manner as noted in other CBAs.
UAW	Yes, the employee is allowed "a reasonable time to respond without undue delay" but the response cannot be required sooner than 24 hours: Art. 9, Sec. B, 3 rd ¶.
NERE	The policy directive, as well as CS rules and regulations, are silent on this issue, but employees should be given a reasonable time in the same manner accorded bargaining unit members.
May staff change answers on a written question once it has been submitted?	
AFSCME	Yes, no later than the end of the employee's next regularly scheduled work shift: Art. 8, Sec. D, 3 rd ¶. All questionnaires and responses should be included in the investigative packet.
MCO	Yes, within 24 hours: Art. 10, Sec. B, 3 rd ¶. All questionnaires and responses should be included in the investigative packet.
MSEA	Yes, prior to the end of their next regularly scheduled shift: Article 9, Sec. A, 5 th ¶, requires

	that the Employer avoid duplicating questions on any follow up questionnaires. If an employee requests to change an answer, the changed information should be accepted by the investigator. All questionnaires and responses should be included in the investigative packet.
UAW	Yes, no later than the end of the employee's next regularly scheduled work shift: Art. 9, Sec. B, 3 rd ¶. All questionnaires and responses should be included in the investigative packet.
NERE	The policy directive, as well as CS rules and regulations, are silent on this issue. However, if an employee requests to change an answer, the changed information should be accepted by the investigator. All questionnaires and responses should be included in the investigative packet.
If so, what is the time frame in which this must be done?	
AFSCME	Review and revisions must be made "no later than the end of the employee's next regularly scheduled work shift": Art. 8, Sec. D, 3 rd ¶.
MCO	Review and revisions to any written statement must be made: Art. 10, Sec. B, 2 nd ¶. Revision of statements made during recorded, videotaped or transcribed investigatory interviews are made by filing "a statement amending his/her statements: Art. 10, Sec. B, 3,b ¶.
MSEA	CBA is silent.
UAW	Review and revisions must be made "no later than the end of the employee's next regularly scheduled work shift": Art. 9, Sec. B, 3 rd ¶.
NERE	The policy directive, as well as CS rules and regulations, are silent on this issue.
What should be done (i.e.: is written documentation required) if staff indicate they do not want union representation?	
AFSCME	CBA is silent but Employer must have employee sign a waiver of representation. If the employee refuses, representation must be obtained. (Contact Labor Relations).
MCO	CBA is silent but Employer must have employee sign a waiver of representation. If the employee refuses, representation must be obtained. (Contact Labor Relations).
MSEA	CBA is silent but Employer must have employee sign a waiver of representation. If the employee refuses, representation must be obtained. (Contact Labor Relations).
UAW	CBA is silent but Employer must have employee sign a waiver of representation. If the employee refuses, representation must be obtained. (Contact Labor Relations).
NERE	The policy directive, as well as CS rules and regulations, are silent on this issue. Since there is no contractual obligation, a waiver is not necessary.
If staff initially decline union representation and then during the course of the interview request it, what action should be taken?	
AFSCME	CBA is silent for this specific scenario. However, the interview should be ended and the employee allowed an adequate opportunity to obtain representation.
MCO	CBA is silent for this specific scenario. However, the interview should be ended and the employee allowed an adequate opportunity to obtain representation.
MSEA	CBA is silent for this specific scenario. However, the interview should be ended and the employee allowed an adequate opportunity to obtain representation.
UAW	CBA is silent for this specific scenario. However, the interview should be ended and the

	employee allowed an adequate opportunity to obtain representation.
NERE	This issue is not addressed in CS rules or regulations but PD 02.03.100 provides that an employee is entitled to representation upon request once the employee's own conduct is the direct object of a disciplinary investigation. Therefore, the interview should be ended and the employee allowed an adequate opportunity to obtain representation.
What should be done if the staff member refuses to complete a written questionnaire?	
Note: Contact Labor Relations.	
AFSCME	CBA is silent.
MCO	CBA is silent.
MSEA	CBA is silent.
UAW	CBA is silent.
NERE	The issue is not addressed in CS rules or regulations.

Trainer note: The following excerpts regarding investigations were taken from various labor contracts and Civil Service rules. However, investigators should consult current copies of each relevant labor contract prior to beginning an investigation. The material contained in this document may become outdated and should **not** be used for purposes other than this training session.

III. Class activity - Contractual Language

Trainer Note: Assign a contract to each group to review found in their handout materials. After allowing ample time for the groups to read the material generate a class discussion by asking the groups to list the similarities and differences they discovered within the various labor agreements. Record the responses on a flip chart and discuss.

The purpose of this exercise is to emphasize the subtle differences that exist among each contract. Investigators must prepare by consulting each contract before beginning the investigatory process to avoid violating collective bargaining agreements.

AFSCME

Article 8—UNION REPRESENTATION

Section D. Right to Representation.

An employee shall be entitled to the presence of a designated Union representative at any meeting at which disciplinary or any adverse action may or will take place, or at an investigatory interview of the employee by the Employer related to one or more specific charges of misconduct by the employee, if he/she requests one. If an employee is to be represented at a scheduled meeting by an attorney, the employee or the Union shall give as much notice as possible to the Employer. It is agreed that where disciplinary or adverse action is intended as the subject of a meeting, or where such action will result directly and immediately depending upon the content of the meeting, representation is allowed.

In any investigatory interview with an employee where the employee has been suspended (with or without pay) or transferred from the employee's regular job assignment, the employee shall have the right to representation.

When, in the course of any investigation, a written statement of any kind, other than a critical incident report, is requested from an employee, the employee shall be given the request and questions in writing, a reasonable time to respond without undue delay, a copy of the written response and an opportunity to review, amend, change or correct said statement which shall be done no later than the end of the employee's next regularly scheduled work shift. Said statement shall not be used or considered as a complete statement of fact until the time period set forth herein has lapsed. No disciplinary action or suspension without pay pending investigation shall be taken on the basis of such statement until the end of the period allowed for modification. Transfer or suspension with pay pending the outcome of an investigation shall not be considered disciplinary action. Where an employee is required to report on his/her conduct to a trial board, board of inquiry, patient abuse committee, or similar fact-finding inquiry making any

determination prior to imposition of discipline on him/her, he/she shall have the right to appear, to have representation, and to have an opportunity to call witnesses. He/she shall receive a copy of the findings and have an opportunity for post-hearing appeal to his/her Appointing Authority before imposition of discipline.

When a Recipient Rights Office or other preliminary investigation results in a report containing information derogatory to an employee or which would constitute a basis for disciplinary action, an employee shall be entitled to representation in any follow up investigation or discussion.

Whenever, as a result of an investigation, disciplinary action is or may be appropriate, a disciplinary conference shall be held with the employee who shall be entitled to representation. The employee shall be informed of the nature of the complaint or allegations against him/her and the reasons that disciplinary action is contemplated or intended. The employee shall have an opportunity to respond and discuss such information prior to the imposition of disciplinary action.

It is agreed that the imposition of charges and/or discipline shall be within a reasonable and timely fashion. Where an investigation does not result in discipline, the findings of the investigation shall be timely communicated in writing to the employee under investigation, with a copy to the Local Union.

None of the above is intended to circumvent the normal relationship between supervisor and employee as it pertains to discussions and counseling, during which the right to representation shall not apply.

MCO

Article 10----DISCIPLINARY ACTION

Section A. General.

The Union recognizes the authority and responsibility of the Employer to take timely and reasonable disciplinary action against employees for just cause. Discipline will normally be progressive in nature, however, the employer shall have the right to invoke a penalty which is appropriate to the seriousness of an individual incident or situation. For purposes of this Article, disciplinary action or investigation to determine whether disciplinary action should be taken is timely only when commenced within 21 calendar days following the date on which the Employer had reasonable basis to believe that such action or investigation should be taken. Disciplinary action includes: written reprimand; involuntary demotions; suspension without pay; forfeiture of accrued annual leave in lieu of suspension; payment of fines in lieu of suspension; and discharge. The suspension without pay of a probationary employee during or at the end of the pay period in which the initial probationary period expires, pending separation for unsatisfactory service, as well as the separation itself in such circumstances, shall not be considered disciplinary action for purposes of this Article.

A demotion will not be considered disciplinary action if it is a result of the employee failing to satisfactorily complete a required probationary period upon promotion or transfer; in conjunction with the layoff or "bump" of the employee; or the voluntary or contractually required transfer or reassignment of the employee to a position allocated at a lower level, if voluntary, or required by Civil Service merit-based rules, or this contract, if unaccompanied by disciplinary action of some other kind.

Placing an employee on "lost time" (leave without pay) for the period of an employee's unauthorized absence from work shall not be considered disciplinary action. However, if the employee has requested authorization to use accrued leave credits for such time and it is denied, the denial shall not be exempt from the scope of the grievance procedure solely on the basis that the denial is not disciplinary action.

The decision whether to offer an employee the option to forfeit accrued annual leave, or assess the suspension, shall be in the sole discretion of the Employer, and is not grievable.

Just cause for disciplinary action will include, but not be limited to:

- a. Failure to carry out assigned duties and responsibilities required by the Employer;
- b. Conduct unbecoming a state employee;
- c. Unsatisfactory service;
- d. Violation of Employer work rules, policies, regulations or directives pertaining to performance, conduct or safety.

Section B. Investigation.

The parties agree that disciplinary action must be supported by timely and accurate investigation, but investigations need not be unduly prolonged. The Employer has the right to receive prompt, truthful answers to questions put to the employee concerning any matter regulated by the Employer, related to conduct or performance, or which may have a bearing upon the employee's fitness, availability or performance of duty.

When, in the course of any disciplinary investigation, a written statement of any kind is requested from an employee, the employee shall be given the request in writing and the employee shall to the best of his/her ability provide an accurate and truthful written statement on the matter being investigated, including answers to any specific questions included in the request. The employee shall be afforded a reasonable time to respond without undue delay. A copy of the written response shall be provided to the employee who shall have the opportunity to review, amend, change or correct said statement no later than the end of the employee's next regularly scheduled work shift. Such statement shall not be considered or used until the time period set forth herein has elapsed. However, when the employee's own conduct is the direct object of the investigation, the employee shall have the opportunity to confer with a Union representative, if readily available, before submitting such statement.

In the event the investigatory interview is recorded, videotaped, or a verbatim transcribed record of the interview is created by the Employer, the employee shall be permitted a Union representative during the interview. The Employer will provide a copy of the recording, videotape or transcript to the employee when it becomes available to the Employer. The employee may file a statement with the Employer requesting amendment or correction of his/her statements reflected in the record of the interview no later than 24 hours following receipt of the record of the interview from the Employer. Such employee statement, if timely filed, shall become part of the record of the interview to the extent it pertains to the subject matter of the interview.

[NOTE: When a critical or unusual incident report is required, the employee may be required to provide a narrative statement of events without the necessity of specific written questions. Such report shall be provided promptly and accurately to the best of the employee's ability.]

Where, as a principal in an investigation, an employee is directed to report on his/her own conduct to a patient or resident abuse committee or Fact Finding investigation by an appointed Fact Finder, making any determination which may result in disciplinary action for the employee, the employee shall have the right to appear, to have Union representation, to suggest witnesses to be interviewed and to submit relevant documents. If a formal hearing is conducted in addition to the above, the employee shall also be entitled to call and question any witnesses. The employee and the Union, through the employee, shall receive a copy of any findings, and have an opportunity to rebut the findings and reports to his/her Appointing Authority, within five (5) weekdays, before a decision is issued concerning any disciplinary action.

When a recipient rights investigation or other preliminary investigation results in a report or finding containing information detrimental to an employee's good standing, or which would constitute a basis for disciplinary action, the right to a subsequent disciplinary conference as provided by Section D. of this Article shall still apply, at which the right to Union representation shall also apply.

The Employer shall not require or attempt to persuade an employee to take a polygraph examination, lie detector test or similar test of the employee's veracity in the course of a disciplinary investigation, nor discipline or discriminate against an employee solely on the basis that the employee refused or declined to take the examination/test.

It shall be the policy of the Employer to not take disciplinary action in the course of an investigation, except as provided in Section C. below.

Whenever, as a result of an investigation, disciplinary action is or may be appropriate, a disciplinary conference shall be held with the employee in accordance with Section D. of this Article.

Whenever an investigation does not result in disciplinary action, the finding of the investigation shall be communicated to the employee(s) under investigation. Upon request of the employee under investigation, such findings will be confirmed in writing.

Section G. Right to Representation.

Bargaining Unit members are entitled to be accompanied by the designated Union Representative for his/her work area, or by an MCO staff person, or other individual approved by MCO Central Office if representation is requested, in the circumstances described in Subsections 1 and 2 below:

1. A disciplinary conference conducted pursuant to Section D. above; and
2. A pre-disciplinary investigatory interview where--
 - a. The employee has been suspended or removed from the work premises pursuant to Section C. of this Article; or
 - b. The employee has been suspended (with or without pay), or reassigned from the employee's regular job assignment; or
 - c. The employee has been specifically charged in writing with one or more instances of misconduct; or
 - d. The employee is directed to report on his/her own conduct (as a principal in an investigation) to a patient or resident abuse committee or Fact Finder; or

- e. The interview is attended by more than one supervisor or Employer Representative; and, the employee is not represented by a Union Staff Representative; in the event that a staff representative is to attend, the Employer shall be given as much advance notice of such fact as possible.

It shall be the responsibility of the Employer, upon the employee's request, to secure the release of the Union Representative. The representative may assist the employee in presenting his/her evidence and/or argument, and point out other relevant matters. The Employer may, however, insist upon communicating directly to and with the employee regarding the matters under discussion during the conference or interview.

None of the above is intended to circumvent the normal relationship between the supervisor and employee as it pertains to discussions and counseling. The right to Union representation shall not apply to conversations between an employee and the supervisor for the purpose of giving instruction concerning work performance, providing training or retraining, or correction of work habits or techniques.

When an employee is entitled to request and be accompanied by the Union Representative at a conference under this Section, the employee and the designated Union Representative may be allowed time, not to exceed one-half hour, immediately prior and contiguous to the scheduled conference, to permit them to confer about the subject matter of the conference. Such time shall be without loss of pay. Such one-half hour conference time shall not be required unless requested by the employee or the Union Representative, nor shall it be required if the amount of time elapsed between the time the employee received notice of the conference and the start of the conference is 48 hours or more.

MSEA

ARTICLE 9---DISCIPLINARY ACTION

The parties recognize the authority of the Employer to reprimand in writing, suspend, discharge or take other appropriate disciplinary or corrective action against an employee for just cause.

Discipline, when invoked, will normally be progressive in nature, however, the Employer shall have the right to invoke a penalty which is appropriate to the seriousness of an individual incident or situation.

A. Investigation and Representation.

Allegations or other assertions of failure of proper employee conduct or performance are not charges, but constitute a basis for appropriate investigation by the Employer. The parties agree that disciplinary action must be supported by timely and accurate investigation. For purposes of this Article, investigation to determine whether disciplinary action should be taken is timely when commenced within twenty (20) week days following the date on which the Employer had reasonable basis to believe that such investigation should be undertaken.

An employee is required to give prompt, full and accurate answers, to the extent possible, to questions put to him/her by the Employer concerning any matter regulated by the Employer, related to conduct or performance, or which may have a bearing upon the employee's fitness, availability or performance of duty. Written questionnaires may be used to initiate or further an investigation. The Employer will avoid duplicating questions contained on the initial questionnaire on any follow-up questionnaire given to the employee under investigation.

An employee shall be entitled upon request to the presence of a Union Representative at a meeting at which discipline or a less than satisfactory service rating may or will take place, or at an investigatory interview of the employee by the Employer regarding allegations or charges of misconduct

against the employee which if substantiated could result in suspension or dismissal. It shall not be the policy of the Employer to take disciplinary action in the course of an investigation unless an emergency suspension or removal from the premises as provided in this Article is warranted. If the MSEA Representative is to be an attorney certified by MSEA, the employee or MSEA shall give as much notice as possible to the Employer.

UAW

ARTICLE 9----DISCIPLINARY ACTION

Section B. Investigation.

Allegations or other assertions of failure of proper employee conduct or performance are not charges, but may constitute a basis for appropriate investigation by the Employer. The parties agree that disciplinary action must be supported by timely and accurate investigation. For purposes of this Article, investigation to determine whether disciplinary action should be taken, is timely when commenced within twenty (20) weekdays following the date on which the Employer had reasonable basis to believe that such an investigation should be undertaken. The Employer will agree to conclude an investigation as expeditiously as possible. Where an investigation does not result in discipline, the findings of the investigation shall be communicated to the employee under investigation. Upon the employee's request, such findings will be confirmed in writing.

An employee shall be given written notice of the right to the presence of a Union Representative at a meeting at which discipline or a less than satisfactory service rating may or will take place, or at an investigatory interview of the employee by the Employer regarding allegations or charges of misconduct against the employee, which, if substantiated, could result in suspension or dismissal. The Employer must advise the employee of the nature of any disciplinary or investigatory meeting before the meeting commences.

The parties agree that when, in the course of any investigation, a written statement of any kind is requested from an employee eligible for representation under this Article, the employee shall be given the request in writing with notice that the employee may consult with a union representative prior to responding. The employee shall be afforded a reasonable time to respond without undue delay but in no event shall the response be due prior to 24 hours. A copy of the written response shall be provided to the employee who shall have an opportunity to review, amend,

change or correct said statement no later than the end of the employee's next regularly scheduled work shift. Such statement shall not be considered or used until the time period set forth herein has elapsed.

IV. Contractual Summary

- A. It is not important for investigators to remember each subtle difference among the various contracts. However, it is essential that investigators know where to find the appropriate information contained within each contract as it relates to employee rights during the investigation process.

- B. An investigator must make every effort to avoid violating terms of any collective bargaining agreement. Investigators who are conscientious of employees' rights and are well informed regarding contractual issues add credibility and legitimacy to the investigatory process.

- C. In summary, investigators must consult the most current collective bargaining agreement(s) **before** starting an investigation.

V. TYPES OF INVESTIGATIONS: ADMINISTRATIVE ~ CRIMINAL

- A. Investigations are often categorized by whether the allegation is a violation of an administrative rule or a criminal law. An **administrative** investigation is based upon an allegation that there has been a violation of department policy and/or work rules. Administrative investigations are generally not intended to result in criminal prosecutions. The standard of proof for an administrative rule violation is generally less than that required for a criminal law conviction. To prove an administrative rule violation the investigation need only show that the *preponderance of evidence* (51% or more) indicates that the rule was violated.
- B. A **criminal** investigation can be initiated when information has surfaced that a violation of a criminal law may have occurred. The standard of proof in a criminal investigation is *beyond a reasonable doubt*. A defendant is presumed innocent. The law does not require that there be no doubt only that in assessing the evidence and information, and by applying common sense and reasonableness, a determination can be made as to guilt or innocence.

- C. Every crime is made up of parts called elements. A successful prosecution requires not only that the crime be proven beyond a reasonable doubt, but also that each element of that crime be proven beyond a reasonable doubt. A criminal investigation thus requires that information and/or evidence about each element must be investigated. Evidence that an individual shot and killed another person does not prove that a murder occurred. Without a thorough investigation that addresses all the elements required to prove a murder, the death could be attributed to an accident, self-defense, etc.

- D. In some instances, a violation will in fact be both criminal and administrative. Generally, the criminal investigation will take precedence over the administrative investigation. In such cases, the administrative action may be put on hold, pending the outcome of the criminal investigation.

- E. Although a criminal investigation may require a higher threshold of proof, the process itself is the same, whether criminal or administrative. Information must be obtained in a fair, unbiased manner. Evidence must be collected in the proper manner and interviews conducted appropriately. The report must accurately reflect the circumstances surrounding the allegation. It is imperative that the investigator be objective, impartial, comprehensive and competent.

- F. The MDOC has proof formulas for Employee Handbook Rule Violations. **(Handout 4B)** Investigators must gather facts surrounding the allegation using the elements for the corresponding rule(s).

VI. EVIDENCE

A. Evidence is something that furnishes proof. It is the means by which an issue, fact, or truth is established or disproved. Whether administrative or criminal the issues surrounding any allegation require the introduction of evidence. The purpose of evidence is to reconstruct events that occurred sometime in the past to determine if a violation did or did not occur.

1. There are various types of evidence:

- a. Testimonial
- b. Real/Physical
- c. Circumstantial
- d. Demonstrative

B. **Testimonial** evidence is any evidence received from a witness or participant. This type of evidence can be either direct or indirect.

1. Direct evidence generally implies sensory involvement, i.e. saw, heard, or smelled something that specifically relates to the allegation.
 - a. An example would be a witness who observed the offender shoot the victim.

2. Indirect evidence suggests that the witness did not see or hear the actual offense, but has knowledge related to the allegation.
 - b. An example of indirect testimony would involve a witness who saw an individual running from the scene of a shooting.
- C. ***Real*** or ***physical*** evidence is tangible evidence that is directly related to an incident and generally “speaks for itself”.
1. Examples of this type of evidence include:
 - a. fingerprints
 - b. DNA
 - c. castings and moldings
 - d. tool marks
 - e. soil
 - f. glass
 - g. serial numbers
 - h. weapons
 - i. documents

- j. voice identification
 - k. drugs
 - l. chemicals
 - m. trace evidence
2. The relevance of this type of evidence may require expert interpretation, i.e. a crime laboratory scientist.
- D. ***Circumstantial*** evidence is a group of facts that, when linked together, give rise to a certain conclusion.
1. Examples of this type of evidence include:
- a. inferences
 - b. presumptions
 - c. habits
 - d. custom
 - e. many types of physical evidence
- E. ***Demonstrative*** evidence is used to illustrate something.
1. Examples of this type of evidence include:

- a. maps
 - b. diagrams
 - c. models
 - d. sketches
2. While this type of evidence does not directly prove that a crime or rule violation occurred, it does provide a better understanding of the circumstances surrounding the investigation.
- F. A major responsibility of an investigator is to properly collect and preserve evidence.
1. If the investigation is of a criminal nature, the primary responsibility may be to protect the evidence until it can be properly collected by law enforcement personnel.
 2. If the investigation is administrative then the investigator must properly document and collect the evidence in such a fashion as to maintain the integrity of the investigation.
 3. Evidence that disproves an allegation is as important as evidence that supports an allegation. The investigator has a duty to seek the truth and must understand that as time passes evidence might be lost or contaminated and recollections may change.

- G. There are times when circumstances beyond the control of an investigator may significantly influence an investigation. Rendering first aid may destroy or contaminate evidence. Other, unrelated incidents, may affect witness testimony. The secret to a successful investigation is to be able to prioritize and focus on those tasks that need to be done immediately. Collecting physical evidence or conducting eyewitness interviews may be more urgent than checking visitor logs.

VII. COLLECTING AND PRESERVING PHYSICAL EVIDENCE

- A. Evidence can be anything associated with an investigation. Some items, like a house cannot realistically be collected and stored. Other items are microscopic and easily missed. Still other items, like footprints in the snow, must be preserved in a different fashion. Taking photographs, videotaping, and making plaster casts are methods used to preserve evidence that is fragile and not easy to collect.
- B. Establishing a procedure for the collection of physical evidence
 - 1. The value of any piece of evidence is based upon its connection to the allegation. It is important that the staff understand who is responsible for collecting evidence. This will avoid confusion, enhance the evidence collection process, and establish consistency and credibility to the investigative process.

2. It is important, however, that staff members understand that there may be times when it is necessary to collect evidence before an investigator arrives, particularly when there is a risk of losing that evidence.
 - a. An example is a police officer responding to a burglary and discovering footprints in the snow. The detective has not yet arrived and the sun is beginning to rise. It is better that the responding officer attempt to collect the evidence (photographs, plaster cast) and fail than to not try at all.
- C. Documentation - It is important that the collection of evidence be accurately documented.
1. Record information as to who discovered the evidence, where it was located (measurements), the exact date and time, who collected, and how it was collected.
 2. Each item should be described in the report as accurately as possible (not just “a shirt”) ie, color, type, etc.
 3. Many evidentiary items will be packaged in some fashion. Each package (or items which are not packaged) should be separate, clean, proper-sized, and labeled as to what evidence is contained within.
 4. It is also good practice to photograph and/or videotape evidence before it is disturbed.

5. A crime scene sketch is a good investigative tool.
- D. Preserving documents, logs, records, etc. It may be necessary to collect documents as evidence.
1. Documents should be collected and preserved like other evidence. Documents may contain forensic evidence (fingerprint, DNA, handwriting, etc.).
 2. If necessary, an investigator can make a copy of a document. It is important not to mark or write on original documents.
- E. Preserving electronic information: With the use of computers and other electronic devices it may be necessary to confiscate and/or obtain copies of electronic information.
1. If it is necessary to collect electronic information or devices it is important that it be done by someone who is qualified to do so.
 2. Collection of this type of evidence is similar to collection of other forensic evidence (fingerprints, DNA, etc.).
- F. Medical evidence - Allegations of sexual misconduct may involve medical evidence. Although the evidence may be collected by medical personnel, the rules of evidence still apply.

Trainer Note: Inform participants that a signed medical release form is required before using any information in a prisoner's medical file. If information from a prisoner's medical file is needed, contact the Warden/Deputy Warden and health care staff for guidance in obtaining this confidential information.

1. Documenting who collected the evidence, when it was collected, where it was collected, from whom it was collected, etc. are extremely important.
2. It is also important to list individuals who are present when medical evidence (bodily fluids, hairs, fibers, etc.) is collected.
3. Investigators must understand that certain medical evidence (bodily fluids) is perishable and must be preserved for laboratory analysis. Although an allegation of sexual misconduct is a serious investigation, persons involved in the chain of medical evidence (bodily fluids) must be cognizant of the potential health threat they pose.

- G. Chain of Custody - It is important that it be collected properly and that the number of people who are involved in the process be kept to a minimum. The term *chain of custody* refers to the process by which everyone who handles a piece of property is recorded. The significance of a piece of evidence is based upon its linkage to an individual or an event. A break in the chain of custody may make it impossible to link a piece of evidence to the incident. Too many people in the chain may dilute its importance. An investigator must accurately document (log) the custody of every piece of evidence (name, date, time, and location) to eliminate the possibility that evidence was tampered with or damaged.

VIII. Miranda and Garrity Warnings

- A. Certain interviews require that the person being interviewed be warned about their rights before any substantive questions can be asked. The determination as to which warning may be appropriate will be based upon they type of investigation and the punitive action that could be taken.

B. The **Miranda** warning is required in cases involving potential criminal prosecution. Miranda was arrested on March 13, 1963, at his home on charges of kidnapping and rape. He was taken to the Phoenix Police Department where he was interviewed by two detectives. Two hours later, Miranda signed a written confession. At the top of the statement was a paragraph that stated that the confession was made voluntarily, without threats or promises of immunity, with full knowledge of his legal rights, and with the understanding that any statement could be used against him in court. The US Supreme Court ruled that the police could not use the confession because investigators did not advise Miranda of his constitutional rights and Miranda did not knowingly waive these rights before he confessed.

1. The Miranda warning requires an individual be advised that:
 - a. Warning:
 - ☞ You have the right to remain silent
 - ☞ Anything you say can and will be used against you in a court of law
 - ☞ You have the right to talk with a lawyer and to have one present with you before or during any questioning
 - ☞ If you want a lawyer and cannot afford one, one will be appointed to represent you at public expense

☞ If you waive your right to remain silent and later wish to stop answering questions, the questioning will stop

☞ If you waive your right to have a lawyer present, and later change your mind, the questioning will stop until you have talked with a lawyer

b. Waiver:

☞ Do you understand each of these rights that I have explained to you?

☞ Are you willing to waive these rights and answer my questions at this time?

C. The **Garrity** warning is applicable when an employee is questioned about a job-related incident and any self-incriminating statements the employee makes will not be used against them in a criminal prosecution. Garrity is a 1967 US Supreme Court decision in which New Jersey police officers were told that if they did not make a statement they would lose their jobs. The officers made statements that were later used in criminal proceedings against them. The court held that states have the right to compel statements as a condition of employment, but such statements could not be used against them in criminal proceedings.

1. Garrity Warning:

- a. If the employee is not given immunity from criminal prosecution, any statement given under threat of adverse personnel action is unconstitutional and considered coerced. Such statements can only be compelled as a condition of continued employment and if there is immunity from using the statements in a criminal court.
 - b. If the employee is granted immunity, but refuses to answer specific questions as part of an administrative inquiry, directly related to official duties, the employee may be dismissed or suffer disciplinary consequences.
 - c. If the employee is granted immunity, and the answers to the questions as part of an administrative inquiry specifically related to official duties provide cause, the employee may be dismissed or suffer disciplinary consequences.
 - d. Prior to a Garrity interview employees should be advised that they are hereby given a direct order to fully and truthfully answer questions. Failure to do so may constitute an act of insubordination for which they could be disciplined up to and including discharge.
- D. Garrity warning -This questioning concerns administrative matters relating to the official business of the Department of Corrections. I am not questioning you for the purpose of

instituting a criminal prosecution against you. During the course of this questioning, even if you disclose information that indicates you may be guilty of criminal conduct, neither your self-incriminating statements nor the fruits of any self-incriminating statements will be used against you in any criminal legal proceedings. Since this is an administrative matter and any self-incriminating information you may give will not be used in a court of law, you are required to answer my questions fully and truthfully or be subjected to discharge.

1. Do you understand what I have just explained to you?
 2. Do you have any questions concerning what I have just explained to you?
 3. At the conclusion of the interview the employee should be asked if he/she has any additional comments or information.
- E. Miranda and Garrity warnings cannot both be given to an employee during the same interview. If this is done a defense may be raised that the employee was confused. It could also compromise the results of the interview.

1. Prior to Miranda and/or Garrity the interviewer should familiarize themselves with the appropriate criminal statute(s) and/or any applicable labor contracts. In most instances administrative guidance will be necessary. It may also be necessary for Internal Affairs to consult with law enforcement officials and the Attorney General or local Prosecutor's office.
- F. Finally, an interview is but one process involved in an investigation. An investigator is a collector of information. There may be incidents in which there is a great deal of pressure to resolve an investigation quickly. Interviews that are done too quickly or conducted from an emotional standpoint are likely to fall short of desired results. Investigators may only get one opportunity to interview someone. Actions of an investigator, including interviews, may be the subject of criminal proceedings or civil suits that take years to resolve.

Trainer Note: If while conducting a gender-based employee misconduct investigation, the focus changes from a Departmental rule violation to potential criminal behavior, the investigator must cease the investigation and immediately report any suspected criminal activity to the warden or deputy warden. It is the deputy warden's responsibility to contact internal affairs and disclose the newly discovered information by making a referral as specified in PD 01.01.140 (included in participant handouts). Internal Affairs will determine if *Miranda* or *Garrity* warnings are applicable and provide direction and assistance as needed throughout this process.

Remember - *Miranda* and *Garrity* only apply to criminal investigations which are outside of your investigatory responsibilities. Once the investigation changes from a Departmental rule violation to a potential crime - your duty is to immediately report the suspected criminal activity to the warden/deputy warden and await further instructions.

Unit 5: Developing an Investigative Strategy

I. INVESTIGATIVE STRATEGY

A. Investigations do not just happen. An investigative plan must be initiated to:

1. determine if a violation occurred;
2. identify who is responsible;
3. determine the direction the case should move;
4. decide when certain aspects of an investigation should be performed;
5. identify resources that will be needed to complete the task.

B. An investigative plan is the key element to a successful investigation. The purpose of an investigative plan is to allow the investigator to move from allegation to conclusion. Investigative strategy consists of four components.

1. The first component identifies the investigator responsible for conducting the investigation and names those other individuals who will assist in that effort. An immediate supervisor should be identified at the onset of an investigation. The Warden/Deputy Warden will be responsible for reviewing the report and making sure that the investigation is progressing properly. The more serious the allegation, the greater the need for close supervision.
2. The second component of an investigative plan describes

the strategy that is to be employed in the case. The strategy will be developed according to the experience of the investigator and the specific facts of the case. As information is assembled, new strategy may be required.

3. The third component of an investigative plan identifies the specific steps to be followed. These steps will include:
 - a. persons to be interviewed
 - b. records to be examined
 - c. other agencies to be contacted
 - d. resources to be utilized, etc.

4. The final component involves viewing the investigation from a larger perspective. Administrative staff members may want to determine if other investigations are warranted. There may also be a concern over emerging patterns of behavior. This information can be gleaned from the report and help to determine:
 - a. if prosecution is warranted;
 - b. if there are policy and procedure issues;
 - c. if other professionals need to become involved (law enforcement, mental health, etc.);

- d. if there are training implications;
 - e. if there may be civil liability issues.
- C. Investigative strategy includes the role of each individual involved in the investigation. Determining who is to be interviewed, the order in which people will be interviewed, and what questions will be asked are critical concerns. Those who are responsible for the collection of evidence and the submission of that evidence for analysis may require technical training. Other personnel questions involve who is to supervise the investigation, what other professionals may be needed, and any other steps that will be required.

II. INVESTIGATIVE STEPS

- A. It is imperative that the investigator has a clear understanding of the investigative strategy. While the investigative strategy should involve specific steps, it is often necessary to make small alterations as new information is developed. It may be necessary to interview someone more than once. Additional crimes or violations may be uncovered during the course of an investigation. The foundation for a professional report rests on a thorough investigative strategy.
- B. The purpose of an investigation is to determine if a violation of a rule or law has occurred, and if so, who is responsible. The investigative process carries with it a secretive aspect. Even individuals who are not involved in an investigation may be

somewhat defensive.

- C. It is important for investigators and their supervisors to “demystify” the investigative process. An information void can be just as easily filled with rumor as it can be with truth. A balance between keeping staff members informed and confidentiality is often difficult, but necessary.
1. It is important to educate and convey to staff members that:
 - Allegations are a necessary part of maintaining the public trust
 - Fair and professional investigations into allegations protect staff from malicious accusations
 - There will be zero tolerance about gender based misconduct including sexual misconduct
 - Gender-based misconduct threatens facility security and staff morale
 - Understanding the investigative process will dispel anger and hostility
 - Investigators are professional, fair, and unbiased
 - All staff members are representatives of the department

are required to report information involving gender-based misconduct, and/or sexual misconduct

- ☞ To be thorough, an investigation may be time consuming and not resolved quickly
- ☞ False allegations will be as aggressively pursued as confirmed violations
- ☞ Individuals who report violations, or their suspicions, will be protected

- C. The basics of any investigation can be reduced to two main components: documentation and preservation. Conducting an investigation is an extension of these components through supervision. Everyone involved in an investigation must be time-conscious. Time may become an important factor later in an investigation; therefore, it is important that the time of relevant incidents be reported as accurately as possible when circumstances permit. The accurate recording of time will make for a more precise investigation and also a more professional report.
- D. No one can be sure as to the significance of a single piece of evidence, statement, or other factor at the beginning of an investigation. Therefore, documentation in the form of note taking is essential. Over the course of an investigation more information will be developed than will be reduced to writing in the form of a report. This unrecorded information may prove to

be crucial at a later date. Notes should be kept in a comprehensive and accurate manner, reflecting accurate periods. It is imperative that everyone involved in an investigation keep her or his notes.

- E. The preservation of evidence is paramount. Evidence is in fact proof that an incident or a crime occurred. It is important that nothing be disturbed until the evidence is properly collected. Taking photographs or using a video recorder may be extremely valuable. There may be evidence at a scene that does not lend itself to being collected. Evidence of anger, rage, or crime scene manipulation are examples. There may also be evidence that is outside of a scene that is significant.
- F. Evidence must be packaged and maintained until there is a resolution to the investigation. Failure to do so may jeopardize the entire investigation. In all likelihood the investigator will not witness nor be the first one at the scene. It is important that every staff member understands that they, along with the investigator, bear responsibility. It is also important that other staff members have an understanding as to what their role is prior to the arrival of the investigator.
- G. The first step in an investigation is to review the information involving the allegation. An allegation of misconduct is not a statement of fact. It is merely the initiation of an inquiry. It is not uncommon for an allegation to be multi-faceted. The allegation may involve both criminal and administrative violations. It may involve several issues, several accusations, or several incidents.

It may also involve several individuals. It is critical that the investigator understand the allegation before the investigation can begin.

- H. The next step in the investigative process is to review the applicable departmental rule and/or criminal law. To prove or disprove if a Departmental rule and/or criminal law was violated, it is necessary to show which specific elements of the rule or law were violated. Understanding the elements of the alleged violation will also better prepare the investigator for the interview process. If a questionnaire is to be used it must also focus on the elements of the violation. A complaint should never be taken at face value. Prior to discussing the matter with the principle parties involved, the investigator should attempt to obtain and verify as much information as possible.

- I. Interviewing is a key component of the investigative process. The investigator must first establish his/her authority to conduct the investigation. It is important that the person conducting the interview be up-front when conducting an interview. It is not necessary to divulge all the information developed or the specifics of the allegation. For example: “I am Captain Brown and I have been assigned by Warden Smith to investigate an allegation

- J. Whenever possible, an investigator should only interview someone when they are prepared to do so. Impulsive or unprepared interviews rarely succeed. It is also important to ask the interviewee if there is anything else they wish to say. An individual may not offer information unless asked. Developing good investigative habits, including taking meticulous notes, will greatly assist the investigator in determining what questions are to be asked, when they are to be asked, what follow-up questions need to be asked and when those questions are to be asked. Understanding good report writing enables the investigator to gather the information that deals with the allegation (even false allegations).
- K. Investigative activities should be prioritized from most important to least important. Gathering physical evidence may be more important than checking records. It is also important to determine as early as possible everyone who may have either witnessed the allegation or participated in the offense. If witnesses do not know names then physical descriptions may help identify others. Although several individuals may have witnessed the same event, it is natural that each individual recollection may be slightly different. An investigator should be suspicious of statements that are identical. The veracity of a statement can be checked by asking questions that deal with peripheral issues, such as the weather, lighting, temperature, or other activities that occurred about the time of the incident.

- L. Although tedious, it may be necessary to sift through records and other documents. The investigative process is about accuracy, and being thorough. In many cases it may be as significant to the investigator what “wasn’t there”, as what “was there”. Medical records may indicate that the injury attributed to an assault was in fact an old injury and could not have occurred as reported.

- M. Once the information has been collected, the interviews have been completed, and the report written, the investigator will submit the investigation for review. Reports that are incomplete, disorganized, opinionated, or missing important information are difficult if not impossible to review. An investigator must be mindful that an individual’s career may be at stake. There is the potential that based upon an investigator’s report, someone may be punished or a prisoner may go unpunished. If a prisoner goes unpunished, there is likelihood that others may be victimized.

- N. If criminal or administrative proceedings are initiated the investigator will be required to recount details of the investigation. Often, this involves preparing for the proceeding by carefully reviewing the investigation. An investigator’s reputation may be tied to their preparedness for these proceedings. In a criminal action the role of the defense attorney will be to discredit the investigation and ***the investigator.***

- O. The final step of an investigation is to review the information to determine if there may be other related violations, training issues, or issues involving rules and regulations. The potential for civil litigation is an important and legitimate administrative concern. The safety and security of the facility is the responsibility of every staff member.

III. VICARIOUS VICTIMIZATION

- A. The role of an investigator continues to become more demanding, complex, and emotionally draining. It is not uncommon to hear about investigators who are “burned out”. This “burn out” condition is actually a survival technique. When we are cold we put on more clothes to protect ourselves. The same thing is true psychologically and emotionally.
- B. Dealing with allegations of sexual misconduct over time can cause the same responses in an individual as one traumatic incident.
 - 1. The responses include:
 - ☞ a heightened sense of danger
 - ☞ anger
 - ☞ nightmares
 - ☞ flashbacks
 - ☞ isolation
 - ☞ withdrawal
 - ☞ numbness

- ☞ startle responses
- ☞ alcohol and substance abuse
- ☞ marital problems
- ☞ perceptions of going insane
- ☞ fatigue
- ☞ depression
- ☞ guilt
- ☞ trouble remembering
- ☞ trouble concentrating
- ☞ anxiety
- ☞ difficulty sleeping
- ☞ headaches
- ☞ muscle aches
- ☞ stomach aches
- ☞ high blood pressure
- ☞ and a host of other reactions.

C. While we stress teamwork, there is still an element of individuality ingrained in each of us. We are expected to be strong, unemotional, professional, and calm in the face of a challenge. Although an investigation may officially be closed, there may still be an emotion connection. There are times when it may take a great deal of effort to mask our reaction to stress, yet we feel we must do so or lose the respect of supervisors or peers.

- D. Eventually, anyone who investigates a number of sexually motivated offenses may become involved in a false allegation. This is particularly difficult if the investigator believes the victim and ultimately learns that the victim lied to them. This can leave one feeling betrayed. It is important to understand that occasionally someone does allege something that did not happen. Caution must be taken to avoid assuming that every allegation is a false allegation.
- E. Those who supervise employees who deal with investigations involving sexual misconduct need to understand the symptoms of stress and burnout and actively look for them. Counseling services are available. An important element involves peer support. Many times, we are afraid to offer help because the emotional price might be too great for ourselves.
1. The following are guidelines to provide support:
 - ☞ Learn about stress and know that people respond differently.
 - ☞ Be available. Initiate contact, but avoid intruding.
 - ☞ Be empathetic and supportive. Accept the response you get without judging.
 - ☞ Actively listen. Reflect back what you hear as being told without criticism.

- ☞ Be a resource. Sharing your feelings will help to see that others feel the same way. Do not tell them how you would “handle” it, so they should too.
- ☞ Share what has worked for you, but do not be condescending.
- ☞ Be sensitive to changes in behavior.
- ☞ Remember that you are there for support and encouragement, not treatment.
- ☞ You are not responsible for how another person handles stress, that person is.
- ☞ Know your limits. It is appropriate to steer someone to professional help or alert those in supervisory positions that there may be a problem.

F. The best support often comes from those who have traveled that path themselves. The best defense comes from personal growth. Having strong support systems at work, at home, and in the community are the antidotes for stress and burnout. Remember, you are a member of a support system, but do not neglect your own support systems. Hobbies, athletics, church, and family activities provide a counterbalance to work related stress. Be cognizant of someone who seems to lose his or her sense of humor for an extended period of time. That may be a symptom of stress, and as an investigator, that is considered a clue.

Unit 6: Interview and Interrogation

I. INTERVIEW AND INTERROGATION

- A. Most of what is known about an allegation will be learned from asking questions and listening to answers. An ***interview*** is a conversation with a purpose. It is non-accusatory and designed to develop information. An ***interrogation*** is a conversation, which is more pointed and follows an accusation. Its purpose is to get an individual to confess or admit to an activity that is illegal or a violation of departmental rules.

- B. There are times when investigators are required to interview someone, even though they themselves may not have much information about an incident. In most cases, however, there is time to develop sufficient information before an individual is interviewed or interrogated. It is important to understand that the purpose of an interview is to gather information, not reveal information. It is also important to know that by the end of any interview the interviewee will have an understanding of what information an investigator does, or does not have.

- C. Successful interviewing procedures depend upon the following:
 - 1. **Planning the interview**
 - a. If time allows an investigator should prepare as thoroughly as possible. This preparation includes gathering information about the allegation, the victimology, alleged prisoner, witnesses, and other pertinent facts.

2. Know what information is needed

- a. An investigator must keep in mind the purpose of the interview. It is a good idea to write down the questions ahead of time to stay focused on the matter at hand.

3. Timeliness of an interview

- a. It is important to interview an individual as soon as practical. A person's recollection may fade over time. While certain events are so traumatic that they can be recalled years later, the peripheral information (what they were wearing, what they ate prior to the event, who was present, etc.) may be lost.
- b. The exception to this rule involves victims or individuals involved in traumatic or stressful events. It is possible to interview them too soon. A woman who was just raped may not be able to talk about the assault. An officer who was just involved in a shooting may not know how many shots they fired. The recovery process takes time. An investigator must determine the appropriate time to interview individuals who have been traumatized.

4. Conducting the interview

- a. If possible, the interview should be conducted in private. This will eliminate most distractions and provide a more comfortable setting for both victims and individuals against whom allegations have been made. The location of an interview may significantly influence an interview (e.g. Internal Affairs vs. the office of a supervisor). Victims should be interviewed at a location in which they feel comfortable.
- b. Alleged offenders should be interviewed at a location where the interviewer is in control.

5. Be considerate of an individual's feelings

- a. It is important to understand what it means to be a victim and the various stages a victim goes through during the recovery process. Victims often need time to respond. Individuals who have been accused of sexual misconduct may be upset and emotional as well.
- b. It is important to allow individuals time to calm down. As emotion escalates, memory decreases. It may become difficult, if not impossible, to conduct an interview.

6. Maintain friendly attitude

- a. Despite one's personal opinion about an individual or the alleged incident, investigators must remain professional and behave in a friendly manner.

7. Avoid physical barriers if possible

- a. Interviewing an individual across a desk or counter may inhibit conversation.

8. Sit rather than stand

- a. Individuals become naturally defensive if they are required to look up at someone during an interview.

9. Posture

- a. Maintain an upright, frontally aligned, open posture. It is important to make eye contact with interviewees and to show interest in what they are saying.
- b. It is critical that the person conducting the interview avoid expressions of disbelief, shock, anger, skepticism, smirks, or laughing at someone's responses.

10. Tone of voice

- a. The interviewer should maintain a medium, smooth, and conversational tone to their voice.

11. Encourage conversation

- a. Little information is gained when the person doing the interview is also doing most of the talking. An interview should move from the general to the specific. Initially, conversation should involve topics that are non-threatening or easier for the interviewee to talk about.
- b. This could include everything from the weather to one's hobbies. Once a conversational atmosphere is established the interview can move toward specific aspects of the investigation.

II. Interview Strategy

- A. Investigators should develop an interview strategy based upon the information that has been developed through the investigation.
 - 1. This strategy will include who will be interviewed, in what order, what questions will be asked, and what is the desired outcome of the interview.

2. As a rule, an investigator interviews the suspect of an allegation last. As additional information is developed it may be necessary to interview an individual more than once.
- B. Whenever possible, open-ended questions should be used. Yes or no responses provide very little information. There is no list of “secret” questions for any investigation. Questions are dependent upon the circumstances of the alleged incident.
1. At the beginning of an interview the investigator should establish the purpose of the investigation and his/her authority to conduct the interview.
 2. Questions should also be simple and direct, focusing on one point at a time. In addition, questions should be non-judgmental, i.e. “You didn’t entice him in any way, did you?”
- C. An investigator must understand the elements of the alleged crime or violation, the language of the policy or rule violation, constitutional rights, and labor contractual issues before an interview is conducted. A confession or admission may be of little value if proper procedures were not followed or the specifics of the allegation are not addressed.
- D. The most critical component of an interview involves listening. An individual who says, “I did not rape her 5 times” did not say he did not rape her. It is a difficult process to interview victims,

suspects, and witnesses.

1. In addition to asking questions, it is often necessary to take notes, think about the next question, and watch for non-verbal responses. Listening requires a great deal of concentration. This skill will improve with experience. Deceptive responses may be very subtle.
 - a. For example, when asked if he inappropriately touched the victim, the offender stated, “Why would I do that, I’m a married man”. This response reflects avoidance, not a denial.
- E. Listening carefully will provide important information. The use of pronouns, present versus past tense, changes in language, changes in “reality”, or avoiding information regarding the allegation may indicate deception.
1. The use of “we” may indicate a relationship (we went to the bar). “He and I” may indicate that the interviewee does not want to be considered in the same light as someone else (he and I left the bar about the same time).
 2. Someone who says, “I always tell him” does not mean the same thing as “I told him.” An interviewee who changes their language, such as “We walk into the bar and I told him he is drinking too much. We then walked out of the bar and he is telling me he drank too much”, may be indicative of deception.

3. A change in an individual's account of events "I drove north on Main Street and turned west on Elm....I actually drove south on Main Street and turned east on Oak" is a significant change in reality, an indicator of deception.
- F. Another critical component of any interview involves what is **not** said. Non-verbal responses may reveal more information than the verbal responses.
1. Truthful individuals generally want to help the investigator. They are more likely to look an interviewer in the eye, lean forward, and be more open in their posture.
 2. Deceptive individuals display uncooperative attitudes, avoid eye contact, lean away from the interviewer, close their posture (cross their legs, cross their arms, turn sideways, etc.), yawn, and/or keep their hands up around their face (rub their chin, play with their hair, etc.).
 3. Non-verbal responses may be very subtle. Increased breathing, sweating, constriction of an individuals pupils, eyes darting around the room, weakening of the voice, dryness of the throat, picking (invisible lint) from their clothing, grooming (fingernails, hair), or a growling stomach.
 - a. Deceptive individuals often try to do or say something to get out of the interview process as soon as possible. They may also try to derail the interview process by asking for a drink of water or a cigarette.

- G. If an investigator does not understand a response or is unclear as to what was said, it is appropriate to ask for clarification. A person being interviewed should not be interrupted; however, follow-up questions may be necessary. Whenever possible follow-up questions should be open-ended as well, i.e. “tell me more about...”
1. An effective technique for clarification is referred to as “mirroring”. This involves repeating information back to make sure that one is clear about what has been said. An example would be:
 - a. Interviewee - “I saw John Smith at the pool table when I entered the Dixie Bar around 11 o’clock.”
 - b. Interviewer - “So, you entered the Dixie Bar, on Main St., at approximately 11 o’clock PM and saw John Smith at the pool table.”
- H. In most cases, individuals will attempt to avoid a subject instead of lying about it. At the beginning of an interview the person being interviewed has an unlimited range of answers. Once they start to answer questions, they limit the number of possibilities. Open-ended questions allow an individual to establish the parameters of an event. If an individual says that they were at a particular restaurant at a particular time, they could not be anywhere else.

- I. Eventually, an investigator will need to deal with a lie. It is important to understand the reasons why an individual may lie. Reasons can include everything from criminal behavior to incidents that may simply be embarrassing. It is common for a person to lie about one issue because of another. A person may lie about witnessing a crime because they are married and were with someone else at the time. Admitting to the affair may be more important to an individual than the criminal investigation. The risk of losing one's job, implicating a friend, or religious consequences may outweigh the motivation to tell the truth.
- J. Some individuals may confess with little effort on the part of the investigator. Clearing one's conscience can be a powerful motivator. A husband may confess to killing his wife because emotionally he loved his wife. In essence he is both an offender and a victim. He killed his wife, but he also lost his wife.
- K. In most cases, a lie must be handled in a professional, methodical manner, laying the groundwork first. Instead of a frontal assault, information should be developed that slowly narrows the list of possibilities to the only probability. In effect, the person being interviewed slowly backs him/herself into a corner. The final question is not what happened, but why it happened.
 1. When an interview reaches this point, the person being interviewed should be allowed the opportunity to explain what happened. In child abuse cases, it is common for offenders to explain their actions as expressions of child love, not child abuse.

- L. Some individuals will never confess. They may fully understand the consequences of a confession (prison). They may not feel bad about what they did. An interview based upon remorse will not work with an individual like this.
1. The best that can be accomplished in some interviews is to get the interviewee to admit to certain actions. “Yes, I was there at the time but I didn’t” Individuals may also go on the offense as a defense.
 2. Responding to a question with a question, repeating a question, or pretending not to understand a question are all common ploys. These behaviors are in effect a stalling tactic. The offender is trying to think of a response that will not incriminate them.
- M. Incidents of sexual or gender-based misconduct have an element of emotion. Victims, offenders, **and** investigators may all have an emotional investment in the investigation. It is important for investigators to understand that there is an emotional aspect and that the interview process can be an emotional experience. It is also important for investigators to understand that certain individuals may feign an emotional response to avoid answering questions. Some individuals may attempt to use the excuse “I’m too upset to talk about this” to avoid questioning. Likewise, some individuals may use tears to avoid answering questions.

- N. An interview or interrogation should be recorded as accurately as possible. On some occasions, the interview will be videotaped. In other instances, there may be an audio recording. In most cases the interview will be reduced to a report by the investigator. The memory of an investigator is no different from the memory of a victim, witness, or offender. Over time memory may fade and details may be lost. For this reason, if an interview is to be reduced to a report, it should be done so as soon as possible.
- O. Generally, an interview will involve only two people, the person conducting the interview and the person being interviewed. On certain occasions there may be more than two people in the room.
1. If there is more than one investigator in the room, it is important that only one person ask questions. When more than one person asks questions, there is a high probability that the interview itself will not be successful. There is a tendency to cut off a line of questioning before it is complete. It is also confusing to the person being interviewed and easier for that person to deflect questions and answer only what he/she feels comfortable answering.
 2. If there is more than one investigator in the room, the role of those not asking questions is to record answers, and note behavioral or non-verbal responses.

- P. Under certain circumstances the interviewee may request/require another person in the room. This can include a lawyer, union representative, or counselor (rape crisis, etc.). It is important to note that the person conducting the interview controls the process.
1. The role of an interviewee representative is to counsel, not answer for the person being interviewed. If the proceeding is administrative, DOC policies and procedures may articulate what the representative can, and cannot do.
 2. If the proceeding is criminal, a lawyer can counsel their client, but cannot answer for them. A counselor is not an attorney and cannot interfere or obstruct an investigation. Their role is one of support.

III. QUESTIONNAIRES AND WRITTEN STATEMENTS

- A. Questionnaires are often used in investigations and can be valuable tools. They are especially useful when a large number of people need to be interviewed. When using a questionnaire the investigator should carefully consider whether a face-to-face interview would be more beneficial. If the decision to use a questionnaire is made, the investigator should carefully consider each question.

- B. Initial questions on a questionnaire are usually very general in nature, i.e. name, work location, etc. As in an interview, questions that can be answered yes or no do not provide much information. Open-ended questions not only provide the most information, they also may provide information that was not previously known (additional witnesses, other offenses, etc.).

- C. In examining responses to questionnaires, careful consideration should be given to the language used.
 - 1. Does the respondent deny the allegation?

 - 2. Does the respondent avoid answering the question?

 - 3. Does the respondent attempt to mislead or misdirect the investigation?

- D. Prior to the development of a questionnaire, the question should be asked, “What information am I trying to get?” Questions should be composed that are designed to gather the information needed. The questions must be easily understood and asked in the appropriate manner.
 - 1. For example, the question “Have you never not reported any gender-based misconduct that you witnessed?” contains a double negative (never, not) and may include a term (gender-based) that the respondent may not understand.

E. If the first question is accusatory, the remainder of the questionnaire may be useless. Questions should be constructed in the same manner as interview questions, moving from the general to the specific. Questions that deal with the incident(s) being investigated should be as open-ended as possible.

1. Instead of “Were you there when the alleged incident occurred?” A better question might be “Tell me about your shift on December 21, 2001, when Officer Smith was performing count.”
2. In asking a more open-ended question, the investigator may identify other witnesses, other offenses, and/or additional information. When the question is open-ended, respondents (including alleged offenders), are less sure as to what information an investigator has. It is also more difficult to lie.

a. An example would be:

Q- “Did you kill the President?”

A- “No.”

OR

Q- “Were you in the book depository building when the President was killed?”

A- “No.”

2. With these two questions, the investigators have not gained any information. They do not know if the accused is guilty of the crime and just denying the accusation, alternatively, if the accused is innocent and being truthful.
 - a. Better questions would be:

Q- “Describe in detail everything you did from the time you got up this morning until you were stopped by the police on I-94.”

OR

Q- “You’ve told us that you went to visit a friend at the book depository building. Tell us more about the time you spent there.”

- F. Questions that may provide a great deal of information are those that allow an offender the opportunity to rationalize their behavior.
 1. Examples would be:

Q-“What do you think was the true motive for this allegation?”

Q-“How would you conduct this investigation?”

Q-“What should happen to the person involved in this allegation?”

Q-“Would you be willing to pay for the victim’s medical expenses if this investigation was closed?”

Unit 7: Preparing a Written Report

I. PREPARING A WRITTEN REPORT - Introduction

- A. An integral part of any investigation involves reducing the information collected to a report. The report is the vehicle by which the investigation moves through the criminal and/or administrative systems. A thorough investigation may be lost if not accompanied by an accurate and well-written report. Conversely, a poor investigation cannot be made better through rhetoric or literary expertise.

- B. Each report should be organized and complete. Even those investigations that are still open or active should be prepared in such a manner that, if necessary, another investigator could pick up the investigation where the previous investigator left off. Even information that is easily recalled or “common knowledge” must be included in the report. Over time recollection may become fuzzy, factual information may merge with rumor, and the truth of what occurred could be lost.

II. REPORT WRITING PROCESS

- A. The reporting process begins when the investigation is initiated. The steps involved in preparing a professional report include:
 - 1. **Gather the facts**

- a. This includes interviews from those involved in the allegation, witness interviews, interviews with others that may have pertinent information, records, photographs, videotape, evidence from the scene, laboratory analysis, and any other pertinent information.
2. **Record the facts as soon as practical**
 - a. Over time memories fade, notes become lost, records are misplaced, etc.
 3. **Organize facts in a manner that can best reflect the truth**
 - a. Generally, facts are organized chronologically, that is in the order in which they occurred.
 4. **Write the report**
 - a. This process also includes dictation, typing, or using a computer.
- B. Effective reports, whether criminal or administrative, should be organized, factual, accurate, grammatically clear, complete, concise, impartial, and timely.
1. **Organized**

- a. Most reports are chronological in order. This means that information is reported in the order that it happened. Preparing a report in this fashion is often easier for the investigator to prepare and easier for those who will ultimately review the report.

2. **Factual**

- a. A fact is information presented as having objective reality. Collecting factual information is often difficult. Four people who witness the same car crash may offer very different information. This may be due to their having different vantage points, different levels of intelligence, what they were doing at the time (talking on a cell phone, etc.), or any of a host of other influences. Some information may be difficult to verify, such as “He looked at me in a lustful manner”. Intuitive information or “feelings” are important to an investigator, however they serve more as an investigative lead than a fact. The written report should focus on factual information, not opinion.

3. **Accurate**

- a. An investigator bears the responsibility of preparing a report that is accurate. The veracity of any statement, piece of evidence, or other information must be assessed. Despite one's own views it is important that an investigator report all pertinent information accurately, not just the information that proves one point of view over another.

4. Grammatically correct

- a. One never knows who may read a report. Supervisors, administrators, prosecutors, the Attorney General's office, law enforcement, defense attorneys, judges, or members of the media may one day read a report. The facts of an investigation may be debated in various forums for years. Decisions are made as a result of an investigation. People are punished, imprisoned, fired, or acquitted. Aside from the direct result of an investigation, individuals may divorce, commit suicide, or lose their career as a result of an investigation.

5. It is critical that a report accurately reflect the information developed in an investigation. Accuracy is not only based upon a solid investigation, but also on the clarity of the report. Misspelled words and grammatical errors make it difficult to understand a report and may potentially lead to an erroneous interpretation.

a. As an example:

“Mrs. Smith said she knew her daughter was being molested for quite awhile. When I spoke to him about this, the suspect in as much admitted to the whole thing.”

6. In analyzing this part of the report, there are several aspects, which are unclear. Have we fully identified Mrs. Smith? How did she know her daughter was being “molested”? What does the term “molested” mean to the investigator and the mother? Does “quite awhile” mean that the molestation occurred over a long period? Does it mean that Mrs. Smith knew about the molestation for a long period of time? Who is “him”? Specifically, what did he admit to? What is the “whole thing?”
7. An investigator will find that many of those interviewed may use slang, or do not possess strong language skills. Interviewing someone of another culture, or someone who may speak English as a second language, may prove to be very challenging for the investigator. It is important to understand the message. It is appropriate to ask someone what they mean by using a certain term. An investigator can ask questions which are worded differently, or from a different perspective. The term “cool” may have nothing to do with an individual’s skin temperature. The same person can be referred to as both “cool” and “hot”. The investigator may understand what the term “a roller on the rock” means, however someone who later reviews the report may not. Repeating back to the interviewee is often an effective way to make sure you understand what was said.

8. **Complete** - Not every word of every conversation or every action taken by an investigator is recorded in the report. A report however must be complete concerning all pertinent information related to an allegation.
 - a. A complete report requires that all the significant information be recorded, all the necessary steps be concluded, and a thorough examination of the allegation be provided to those who must make a judgment in the matter. Despite the best efforts of an investigator a “complete” report may not answer every question. Offenders may never confess. Witnesses may be uncooperative. There may not be sufficient physical evidence. An investigator can only do what an investigator can do. A complete report articulates a thorough inquiry even though there is no resolution.
 - b. It is not uncommon that the crucial component of a current investigation is the information developed in an older investigation. This is possible only if the previous case was well documented by a thorough and complete report.

9. Concise

- a. While it is important to prepare a complete report, a voluminous report may in fact hamper the investigative process. Superfluous information may make it difficult to determine what happened.

10. Impartial

- a. The role of an investigator is that of a fact finder. The facts and evidence collected will be reviewed and judged by others. The report must reflect an investigation that is objective, fair, and unbiased. Despite one's personal feelings about the individuals involved, or the allegation, the report should not be an editorial. It must be neutral and professional.

11. **Timely**

- a. An investigator is not able to control all the variables associated with an investigation. A witness may be on vacation. A victim may be too traumatized by an event to discuss the matter. A suspect may want to talk with an attorney or their union representative prior to an interview. Although some things may affect the reporting process, it is important that the investigation proceed and the report be submitted in a timely manner. An allegation, be it criminal or administrative, must be addressed. It is just as important to avoid rushing to judgment as it is dragging out an investigation. The investigator has a duty to submit a report as soon as practical.
- C. As important as recording information in a report is, being able to locate that information at a later time may be just as important. Whenever possible, a report should be divided into headings.

III. Components Required in Gender Based Misconduct Investigations

A. Refer to Handout 6A - Common headings include:

1. Allegation

☞ **What** is the allegation being investigation?

☞ Be specific as to date of alleged incident.

☞ Summarize the allegation and identify Principal (staff) and Complainant (prisoner).

☞ **Who** reported the incident?

☞ Be specific, i.e., Warden Jane Jones, Inspector Sara Smith, Prisoner Susan Young #123456, etc.

☞ **How** was the alleged incident reported?

☞ Be specific, i.e., 307 Complaint Against Employee, Prisoner Grievance, etc.

☞ If submitted as a grievance, provide date filed.

☞ **When** did the alleged incident occur?

☞ Be specific as to the date and time of alleged incident.

2. Venue/Jurisdiction

☞ **Where** exactly did the alleged incident occur?

☞ Include the county and state, e.g., Washtenaw County, State of Michigan.

3. Date/Time of Incident

- ☞ Where exactly did the alleged incident occur?
- ☞ If the time of alleged incident is available, record it.

4. Principal

- ☞ Identify the staff member against whom the allegation was made by: first and last name, position, facility, employee number, date of hire, shift, union, current status, i.e., working , stop order, etc..

5. AIPAS Inquiry

- ☞ Document that the AIPAS database was queried for past investigations which may have involved the prisoner who filed the grievance as well as the staff member against whom the grievance was filed.

6. Individuals Interviewed and Summary

- ☞ Identify by first and last name, and number all prisoners who were interviewed.
- ☞ Identify by job title as well as first and last name all staff members who were interviewed.
- ☞ Identify by job title as well as the first and last name of all who were present during interview, i.e., MCO Union Representative John Smith, Attorney Jane Jones, etc.
- ☞ Include the date, time, and location of the interview.

- ☞ Summarize statements from individuals interviewed.
- ☞ Obtain a written statement and/or written response to a questionnaire from relevant witnesses.

7. Confidentiality Warning

- ☞ Document that all individuals who were interviewed were advised of the importance of maintaining confidentiality.
- ☞ Note: this may be included in the individual summaries prepared for each individual who was interviewed, and may also be included at the beginning of a questionnaire.

8. Additional Information

- ☞ Identify all documents that were reviewed during the course of the investigation.
- ☞ If any of the documents provided relevant information, summarize them.

9. Conclusion/Disposition

- ☞ Summarize allegation and findings.
- ☞ One of the following conclusions must be reached: Sufficient Evidence, Insufficient Evidence, No Evidence, or Other.
- ☞ If any other finding is made, identify what policy, procedure, and/or work rule was violated.

10. **Attachments**

- ☞ List all documents which are being included with the report.

IV. **Common problems associated with report writing**

- A. **Time management problems** - It is important to prioritize tasks and schedule appointments in the order of importance. Certain individuals may have crucial information and should be interviewed as soon as possible. There will always be demands on one's schedule, however most reports should be written as soon as practical. The longer a report goes unwritten, the higher the probability that information may be lost, forgotten, or omitted.
- B. **Inexperience and/or lack of training** - Investigating allegations of sexual misconduct or gender-based misconduct may be an area unfamiliar to the investigator. Training programs that deal with sexual misconduct in correctional facilities may be hard to find.
- C. **Poor writing skills** - Not everyone is a proficient or talented writer. Often individuals are hired to perform other duties and one day find themselves involved in an investigation. With guidance and experience an individual can improve their report writing skills.

D. Inefficient report writing methods, forms, or procedures -

We are all creatures of habit. Over time an acceptable level of writing skill is established for the everyday activities that require a report. To facilitate these reports, standardized report forms are developed. They often have boxes that can be checked or spaces for yes/no or short answers. These practices and forms may not meet the needs of a sexually motivated offense.

E. Technically difficult and legally complex cases -

Individuals may be overwhelmed by the complexity of a sexually motivated complaint. Suddenly, the good guys are the bad guys and the bad guys are the good guys. Understanding the criminal code and the associated court decisions can be very difficult.

Understanding a court decision relating to a lawsuit may be even more confusing.

F. Investigators who are cynical or not motivated -

The stress associated with being an employee of the correctional system can be tremendous. It is not unusual that people develop a cynical attitude as a defense mechanism. This behavior is also referred to as “burnout”. They believe that everything is either black or white, good guys or bad guys, right or wrong. They will argue that they did not take their job to nail corrections officers. Individuals who believed that a prisoner was victimized and later found out that she was lying may also develop a cynical attitude.

- G. **Inexperience and/or lack of supervisor training** - It is difficult for an investigator to work their way through a sexual misconduct allegation. It is also difficult for a supervisor. If training for investigators is difficult to find, training for supervisors is even more difficult to locate. Gender-based misconduct and sexual misconduct in prisons has occurred for a long period of time, however only recently has it risen to the level of national attention. Much of the training in this area will be driven by judicial action.

V. Techniques for improving report writing skills

- A. An important first step toward improving one's report writing ability is to improve note taking. Information that is crystal-clear during an interview may fade away before the actual report is written. It is important that detailed notes be made so a thorough investigation can be initiated, and better interviews can be conducted. One never knows if a piece of evidence or an interview might become very important at some later date. By taking meticulous notes, an investigator can retrieve information and act upon it.
- B. A quality report does not just happen. It is well planned and organized. In most instances the report follows the chronological order in which events occurred.
- C. Clearly articulate all the elements of a crime or violation.

- D. Describe in detail how an investigation was initiated, what actions were taken, and the results of those actions.
- E. Adapt writing format to the requirements, noted in the Report Outline (see **Handout 6A**).
- F. Use more active writing when reporting an incident. This involves making the person doing the action the subject of the sentence.
 - 1. As an example: “Prisoner Jones punched Officer Smith” reflects an active voice whereas “Officer Smith was stabbed by Prisoner Jones”, reflects a passive voice.
- G. Clearly identify every person involved and his or her role in the event. This includes the investigator. In writing the report consider doing so in the first person “I”, “We”, “Me”, “Us”, etc. Historically, most reports have been written in the third person “Undersigned Officer”, etc. This style (3rd person) is awkward and less straightforward than simply stating, “Interviewed John Smith on February 2, 2000.
- H. Use accurate, concise, descriptive words and phrases.
- I. Control the length of sentences. A sentence represents one idea. Run-on sentences are often confusing.
- J. When quoting someone it is imperative that the quote be accurate and verbatim, and be designated with quotation marks.

- K. Limit abbreviations. Use only those abbreviations that are commonly known and introduce them the first time with parentheses, e.g. DOC (Department of Corrections).
- L. Use correct spelling. Use Spell Check if writing your report on a computer.
- M. When preparing a report, use language that is simple and easy to understand.
- N. Carefully use adjectives and adverbs, placing them next to the word that they modify.
 - 1. An example is “the hot stove” as opposed to “a stove which was hot”. In the first example the message is that the stove is at the time hot. In the second example, it is unclear as to whether the stove is now hot or at some other time was hot.
- O. A report should be unbiased. It is important to avoid presenting opinions or conclusions as fact. If an opinion is expressed it should be clearly identified as such.
- P. Information is best reported in outline or bullet form (such as **Handout 6A**), headings should be concise, logical, and easy to follow.

- Q. Make use of resources. This includes dictionaries, legal materials, policy and procedure manuals, Spell Check, Grammar Check, applicable software, and/or others who may have experience or knowledge.

- R. Critique. A report will be reviewed by others as a part of the investigative process. More often than not the review will be primarily based upon the information contained within the report and not on the quality of the writing, but poor writing can convey inaccurate information or make the report difficult to understand. Confidentiality issues must be kept in mind when asking someone to review your report. Have the person who assigned the investigation to review the report.

- S. It is not uncommon for an investigator to determine that the initial allegation was inaccurate. This can cover the gamut from being a false allegation to being a serious felony offense. Only through a professional investigation and a well-written report can the truth be determined. The role of the investigator is to record as accurately as possible the information necessary so that others can fairly judge an allegation.

Michigan Department of Corrections

Investigating Allegations of Gender-Based Misconduct

Inservice Training
Participant's Handout

July 2010

Office of New Employee Training and Professional Development

Objectives

At the completion of this training participants will be able to:

Unit 1 - Introduction

1. Summarize the significant events and history of the Michigan Department of Corrections involvement with women prisoners.

- ☞ **Litigation overview**

- ☞ **Training mandates**

- ☞ **Necessity for investigator training**

- ☞ **Inherent benefits of adhering to sound correctional practices**

2. Identify the types of complaints that are the focus of this investigator training.

- ☞ **Sexual harassment**

- ☞ **Retaliation**

- ☞ **Violation of knock and announce**

- ☞ **Improper pat down search**

- ☞ **Violation of 1:1**

3. List the effects that gender-based employee misconduct has on facility operations.

- ☞ **Jeopardizes facility security**

- ☞ **Illegal in 44 states including Michigan**

- ☞ **Violates the constitutionally guaranteed rights of prisoners**

- ☞ **Exposes the entire agency and staff to civil and criminal litigation**

- ☞ **Creates a hostile work environment**

- ☞ **Destroys trust among staff and the prisoner population**

- ☞ **Corrupts professionals by inviting compromise and dishonesty**

- ☞ **Undermines public support**

- ☞ **Diminishes public support for funding and reforms**

- ☞ **Victimizes those already vulnerable**

4. Review and discuss PD 03.03.140 Prohibited Sexual Conduct Involving Prisoners with an emphasis on issues relevant to investigators.

- ☞ **Definitions**
- ☞ **Prisoner allegations of prohibited conduct**
- ☞ **Investigation of allegations of prohibited conduct**
- ☞ **Confidentiality of complaints and investigations**

Unit 2 - Victimology

1. Identify signs and symptoms associated with posttraumatic Stress Disorder (PTSD).

- ☞ **Repeated, disturbing memories, thoughts or images of past trauma**
- ☞ **Flashbacks**
- ☞ **Feeling upset when memory of past trauma is triggered**
- ☞ **Irritable mood or angry outbursts**
- ☞ **Easily startled**
- ☞ **Develop phobias**
- ☞ **Inability to control rage**

2. Explain the stages of victimization and recovery.

- ☞ **Catastrophe**
- ☞ **Relief and confusion**
- ☞ **Avoidance**
- ☞ **Reconstruction**
- ☞ **Adjustment**

3. State the long-term effects of child abuse and sexual assault.

- ☞ **Depression**
- ☞ **Anxiety**
- ☞ **Eating disorders**
- ☞ **Isolation and stagnated feelings**
- ☞ **Poor self-esteem**
- ☞ **Difficulty trusting others**

- ☞ **Tendency toward re-victimization**
 - ☞ **Sexual problems**
 - ☞ **Substance abuse**
 - ☞ **Self mutilation and suicidal thoughts**
4. Discuss how a victim or witness with a past history of domestic violence may respond to an investigator.
- ☞ **Fearful**
 - ☞ **Aggressive**
 - ☞ **Withdrawn**
 - ☞ **Reluctant to disclose information**
 - ☞ **Denial**
 - ☞ **Delayed in reporting due to fear of retaliation**
5. Discuss strategies for interacting with witnesses or victims that may be suffering from posttraumatic stress disorder.
- ☞ **Conduct interview in a neutral non-threatening environment**
 - ☞ **Appear friendly and courteous**
 - ☞ **Maintain a professional demeanor**
 - ☞ **Allow witness/victim to speak freely without interruption**
 - ☞ **Reinforce the Department's stance prohibiting retaliation for reporting misconduct**
6. Identify and discuss the following investigative conclusions
- ☞ **Sustained**
 - ☞ **Not Sustained**
 - ☞ **Unfounded**
 - ☞ **Other**

Unit 3 - Behavioral Aspects of Gender-Based and Sexual Misconduct

1. Discuss the dynamics of sexually motivated violations.

☞ **Emotionally entangling for:**

☞ **Victim**

☞ **The accused**

☞ **Families**

☞ **Friends**

☞ **Investigator**

2. Identify the broad categories of sexually motivated behavior.

☞ **Power reassurance**

☞ **Power assertive**

☞ **Anger retaliatory**

☞ **Sadistic**

☞ **Opportunistic**

Unit 4 - Contractual and Legal Issues

1. Become familiar with portions of the various labor agreements pertaining to investigations.

☞ **AFSME**

☞ **MCO**

☞ **MSEA**

☞ **UAW**

☞ **NERE (non-exclusively represented employees)**

2. Review the Frequently Asked Questions (FAQ) list and contract excerpts from each bargaining unit and discuss

☞ **Contractual language varies among each bargaining unit**

☞ **Investigators must consult each contract prior to starting an investigation**

3. Differentiate between the two types of investigations.

☞ **Administrative**

☞ **Criminal**

4. Explain and give examples of the various types of evidence that may be collected during an investigation.

☞ **Testimonial**

☞ **Real/Physical**

☞ **Circumstantial**

☞ **Demonstrative**

5. Discuss the appropriate procedure for collecting various types of evidence including the proper chain of evidence.

☞ **Physical**

☞ **Documents**

☞ **Electronic evidence**

☞ **Medical**

6. Develop a basic understanding of both the Miranda and Garrity warnings.

☞ **Miranda - Criminal**

☞ **Garrity - Administrative**

Unit 5 - Developing an Investigative Strategy

1. Review the key elements necessary to conduct a successful investigation.

☞ **Develop an investigative plan**

☞ **Create a strategy**

☞ **Develop the steps necessary to complete the investigation**

☞ **View the finding from a larger perspective**

2. Gain a basic awareness of a condition known as vicarious victimization and some common symptoms that investigators may suffer following repeated exposure to sexual misconduct investigations.

☞ **Heightened sense of danger**

☞ **Nightmares**

☞ **Flashbacks**

☞ **Withdrawal**

☞ **Numbness**

- ☞ **Startle responses**
- ☞ **Alcohol or substance abuse**
- ☞ **Marital problems**
- ☞ **Perceptions of going insane**
- ☞ **Fatigue**
- ☞ **Depression**
- ☞ **Guilt**
- ☞ **Trouble remembering or concentrating**
- ☞ **Anxiety**
- ☞ **Sleeping disorders**
- ☞ **Headaches**
- ☞ **Muscle aches**
- ☞ **Stomach aches**
- ☞ **High blood pressure**

3. Identify support systems to combat the onset of vicarious victimization.

- ☞ **Learn about stress**
- ☞ **Be available to each other**
- ☞ **Be empathetic**
- ☞ **Actively listen**
- ☞ **Be a resource to other investigations**
- ☞ **Share your experiences**
- ☞ **Be sensitive to changes in behavior**
- ☞ **Be supportive**
- ☞ **Know your limits**

4. Participate in role play exercises utilizing the skills discussed and prepare written reports for review and critique during class.

Unit 6 - Interview and Interrogation

1. Explain the difference between an interview and an interrogation.
 - ☞ **Interview - Conversation to develop or seek information**
 - ☞ **Interrogation - More focused to gain a confession**

2. Identify the components necessary to have a successful interview.
 - ☞ **Planning**
 - ☞ **Location of the interview**
 - ☞ **Know what information is needed**
 - ☞ **Timeliness**
 - ☞ **Considerate of an individual's feelings**
 - ☞ **Friendly attitude**
 - ☞ **Private setting**
 - ☞ **Avoid physical barriers**
 - ☞ **Sit rather than stand**
 - ☞ **Posture**
 - ☞ **Tone of voice**
 - ☞ **Encourage conversation**

3. Discuss the importance of having an interview strategy and some key elements to be included in that strategy.
 - ☞ **Who to interview**
 - ☞ **What questions to ask**
 - ☞ **Desired outcome of the interview**
 - ☞ **Use of open-ended questions**
 - ☞ **Listening skills**
 - ☞ **Non-verbal behaviors**
 - ☞ **Mirroring responses to questions**

4. Identify useful techniques when using written questionnaires to gather facts.
 - ☞ **Start with general questions**

- ☞ **Move toward more specific questions**
- ☞ **Use open-ended questions**
- ☞ **Carefully review the language used in the written response**

Unit 7 - Preparing a Written Report

1. Identify the steps necessary to complete a report following an investigation.

- ☞ **Gather all factual information**
- ☞ **Record the facts as soon as possible**
- ☞ **Organize facts to best reflect the truth**
- ☞ **Write the report**

2. Explain the basic principles required for both criminal and administrative reports.

- ☞ **Organized**
- ☞ **Factual**
- ☞ **Accurate**
- ☞ **Grammatically correct**
- ☞ **Complete**
- ☞ **Concise**
- ☞ **Impartial**
- ☞ **Timely**

3. Review the report heading necessary for all gender-based employee misconduct investigations.

- ☞ **Allegation**
- ☞ **Venue/Jurisdiction**
- ☞ **Prisoner**
- ☞ **Staff**
- ☞ **AIPAS inquiry**
- ☞ **Individuals interviewed**
- ☞ **Confidentiality warning**
- ☞ **Documents reviewed**

☞ **Findings/Conclusions**

☞ **Attachments**

4. Discuss the common problems associated with report writing.

☞ **Time management**

☞ **Inexperience and/or lack of training**

☞ **Poor writing skills**

☞ **Inefficient report writing forms or established methods**

☞ **Technically difficult or legally complex cases**

☞ **Investigators who are cynical or not motivated**

☞ **Inexperience or lack of supervisory training**

5. Identify various techniques to improve report writing skills.

☞ **Improved note taking**

☞ **Well planned investigation**

☞ **Clearly articulate the elements of the violation**

☞ **Use a standardized reporting system**

☞ **Use an active writing voice**

☞ **Clearly identify every person involved**

☞ **Use descriptive words**

☞ **Control sentence length**

☞ **Use accurate quotes**

☞ **Limit abbreviations**

☞ **Correct spelling**

☞ **Use simple clear language**

☞ **Carefully use adjectives and adverbs**

☞ **Report without bias**

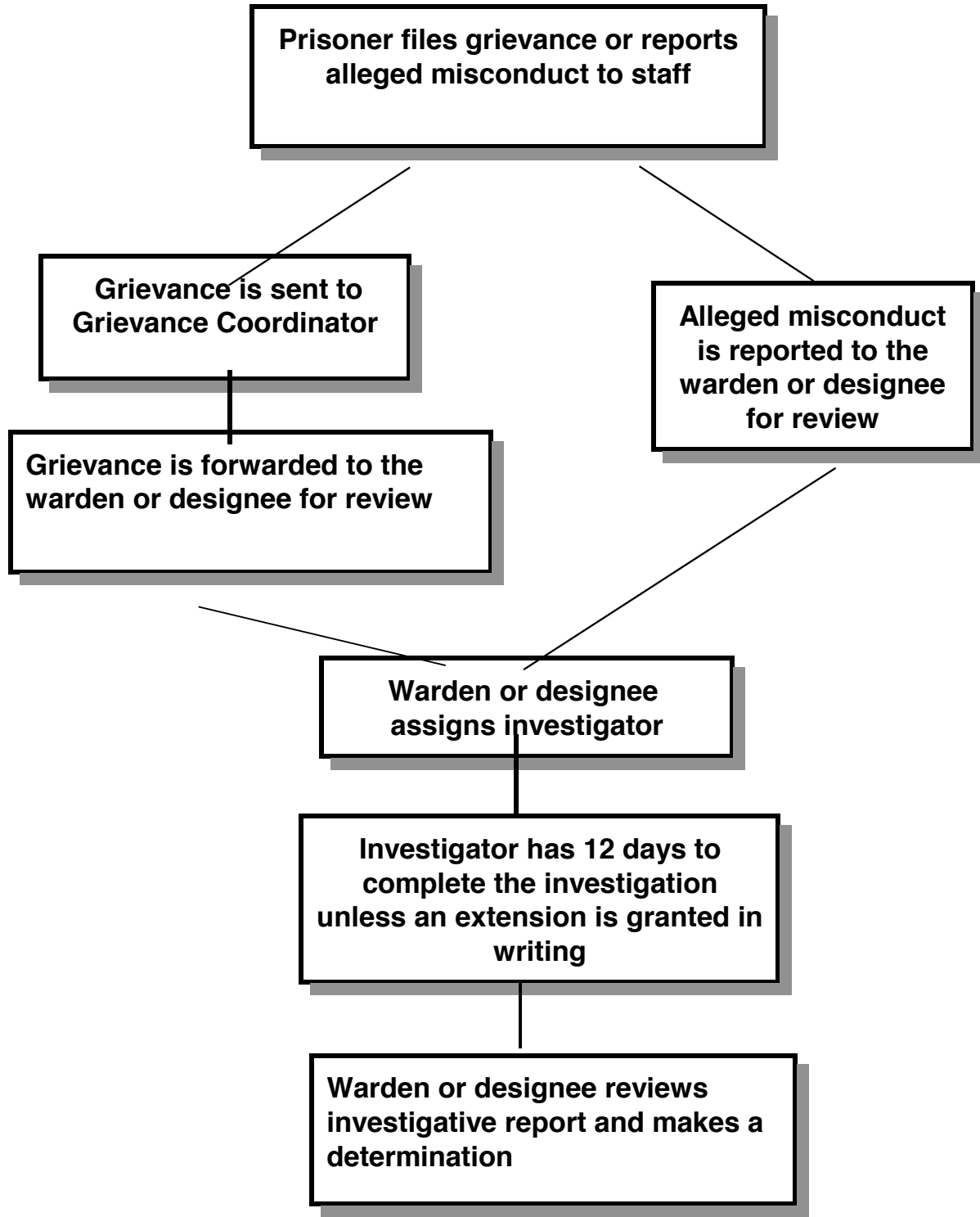
☞ **Use outline or bullet format**

☞ **Make use of dictionaries, policies, procedures, and rule books**

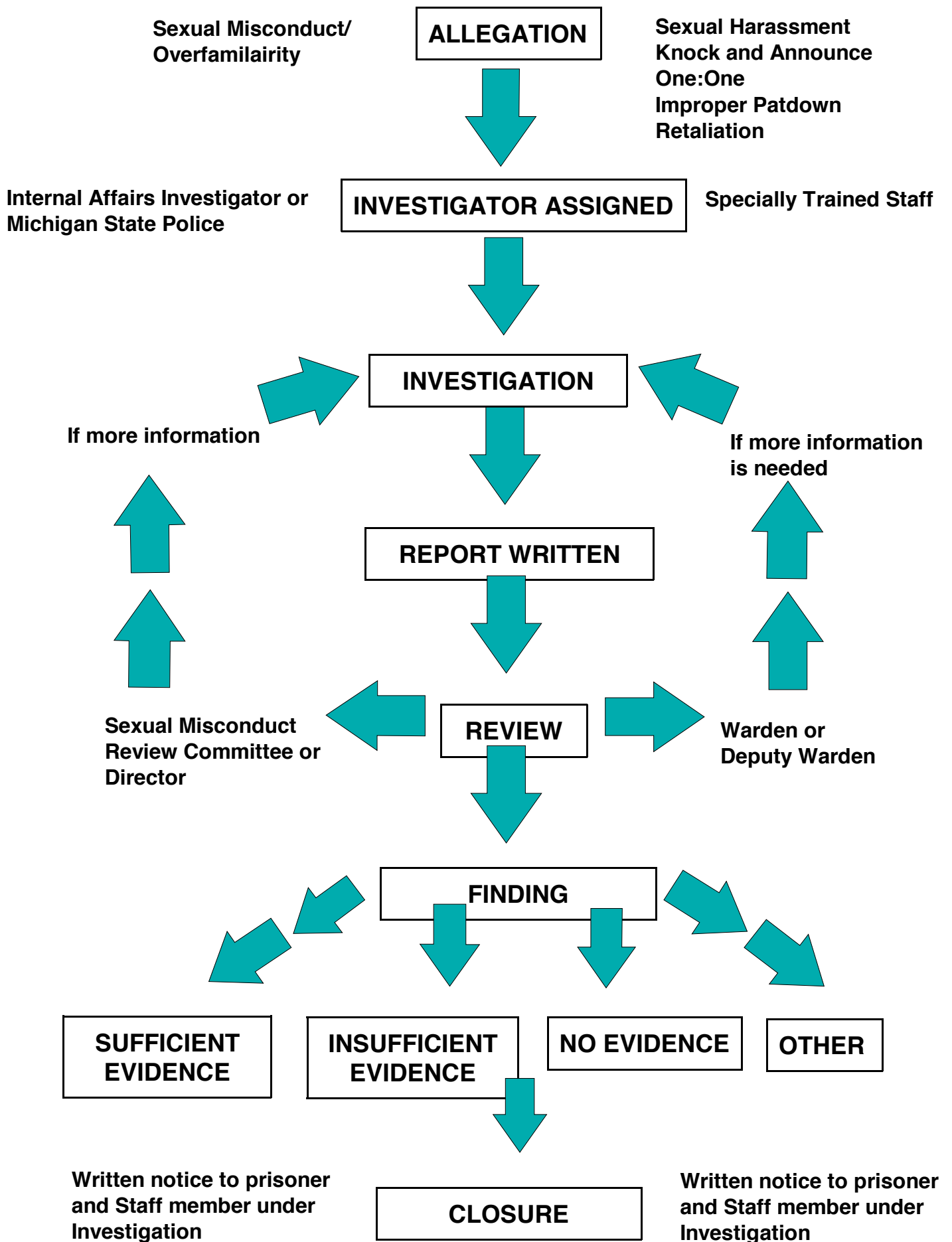


Critique by Administrator

Reporting Process for Allegations of:
sexual harassment, overfamiliarity, violation of knock and announce,
improper pat down searches, violation of 1:1 or retaliation.



What is The Investigative Process?



Act No. 227
Public Acts of 2000
Approved by the Governor
June 26, 2000
Filed with the Secretary of State
June 27, 2000
EFFECTIVE DATE: October 1, 2000

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Reps. Faunce, Baird, Toy, Voorhees, Brater, LaForge, Jacobs, Ruth Johnson, Pestka, LaSata, Kukuk, Woronchak, Martinez, Kowall, Tabor, Hager, Gosselin, Julian, Mortimer, Lemmons, Jellema and Howell

ENROLLED HOUSE BILL No. 4881

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to

crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending sections 520c and 520e (MCL 750.520c and 750.520e), section 520c as amended by 1983 PA 158 and section 520e as amended by 1996 PA 155.

The People of the State of Michigan enact:

Sec. 520c. (1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

- (a) That other person is under 13 years of age.
- (b) That other person is at least 13 but less than 16 years of age and any of the following:
 - (i) The actor is a member of the same household as the victim.
 - (ii) The actor is related by blood or affinity to the fourth degree to the victim.
 - (iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.
- (c) Sexual contact occurs under circumstances involving the commission of any other felony.
- (d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:
 - (i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
 - (ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in sections 520b(1)(f)(i) to (v).
- (e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f)(i) to (v).

(g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

(i) The actor is related to the victim by blood or affinity to the fourth degree.

(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.

(j) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility under section 20g of 1953 PA 232, MCL 791.220g, who knows that the other person is under the jurisdiction of the department of corrections.

(k) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.

(l) The actor knows or has reason to know that a court has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.

(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 15 years.

Sec. 520e. (1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age but less than 16 years of age, and the actor is 5 or more years older than that other person.

(b) Force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute that threat.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute that threat. As used in this subparagraph, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.

(v) When the actor achieves the sexual contact through concealment or by the element of surprise.

(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(d) That other person is related to the actor by blood or affinity to the third degree and the sexual contact occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a

prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(2) Criminal sexual conduct in the fourth degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$500.00, or both.

Enacting section 1. This amendatory act takes effect October 1, 2000.

To be completed by Referral Source	TO: Mental Health Services _____ Practitioner	R easoning O rientation B ehavior E motion R ecall/Memory T alk A ppearance R elationships
	FROM: _____ Name Title Work Station	
	RE: _____ Prisoner Name Number Lock	
	DATE: _____	

NOTE: Send completed packet to Mental Health Services; attach additional sheet(s) if necessary.

REASON FOR REFERRAL:

DESIRED ACTION:

NOTE: Return completed response to Referral Source.

RESPONSE:

Signature/Title

Date

MENTAL HEALTH SERVICES REFERRAL	Patient Identification
	Name: _____
	Number: _____
	D.O.B. _____

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE	EFFECTIVE DATE 07/09/2007	NUMBER 03.03.140
SUBJECT PROHIBITED SEXUAL CONDUCT INVOLVING PRISONERS	SUPERSEDES 03.03.140 (12/11/00)	
AUTHORITY MCL 750.520c; 791.203; 791.204; 42 USCA 15601 et. seq.		
ACA STANDARDS 4-4281-1 through 4-4281-7		
PAGE 1 OF 5		

POLICY STATEMENT:

The Department enforces a zero tolerance standard for sexual violence between or among prisoners. The Department also enforces a zero tolerance for staff sexual misconduct, staff sexual harassment, and staff overfamiliarity with prisoners.

RELATED POLICIES:

- 01.01.140 Internal Affairs
- 02.03.100 Employee Discipline
- 03.03.105 Prisoner Discipline
- 03.03.110 Special Problem Offender Notice
- 03.03.130 Humane Treatment and Living Conditions for Prisoners
- 04.05.120 Segregation Standards

POLICY:

DEFINITIONS

- A. Prisoner on Prisoner Sexual Violence - Abusive sexual contact and non-consensual sexual acts between or among prisoners without the other prisoner's consent or with a prisoner who is unable to consent or refuse. For purposes of this policy:
 - 1. "Abusive sexual contact" means physical contact with another prisoner for sexual purposes, including intentional touching of sexual areas but not including penetration.
 - 2. "Non-consensual sexual acts" means sexual contact with another prisoner involving penetration.
- B. Staff Overfamiliarity - Conduct between an employee and a prisoner which has resulted in or is likely to result in intimacy, including but not limited to a kiss or a hug, or a close personal or non-work related association.
- C. Staff Sexual Harassment - Verbal statements or comments of a sexual nature directed by staff to a prisoner, demeaning references to gender or derogatory comments about body or clothing directed by staff to a prisoner, or profane or obscene language or gestures of a sexual nature directed by staff to a prisoner.
- D. Staff Sexual Misconduct - A sexual act directed by an employee toward a prisoner, including any of the following:
 - 1. An attempted, threatened, or requested sexual act or helping, advising, or encouraging another employee to engage in a sexual act.

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2. The intentional touching, either directly or through clothing, of a prisoner's genitals, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or gratify the sexual desire of any person.
3. Invasion of privacy for sexual gratification, indecent exposure, or voyeurism.

GENERAL INFORMATION

- E. For purposes of this policy, "prisoner" includes probationers in the Special Alternative Incarceration Program and parolees residing in a Department facility.
- F. This policy does not apply to probationers and parolees who are being supervised in the community except as set forth in Paragraph L; however, overfamiliarity, staff sexual misconduct, and staff sexual harassment involving these offenders also is prohibited and shall be reported and investigated as set forth in [PD 01.01.140](#) "Internal Affairs" and [PD 02.03.100](#) "Employee Discipline".
- G. Allegations of prisoner sexual assaults against staff shall be reported to the Michigan State Police (MSP) or other appropriate law enforcement agency for investigation. The prisoner also shall be subject to discipline in accordance with [PD 03.03.105](#) "Prisoner Discipline" and, as appropriate, reclassification to segregation in accordance with [PD 04.05.120](#) "Segregation Standards".

PRISON RAPE ELIMINATION ACT

- H. The Prison Rape Elimination Act of 2003 ("PREA") addresses prisoner on prisoner sexual violence, staff sexual misconduct, and staff sexual harassment in correctional facilities and specifically provides for the analysis of the incident and effects of such conduct. The Special Administrator for Correctional Facilities Administration (CFA) shall be responsible for reporting statistical information and other data as required under the Act. Staff shall supply information requested by the Special Administrator for this purpose as directed by the Special Administrator.
- I. The CFA Special Administrator shall be responsible for monitoring compliance with this policy at all facilities housing female offenders; this responsibility does not include monitoring prisoner on prisoner sexual violence except as required to meet PREA reporting requirements as set forth in Paragraph H and as otherwise directed by the CFA Deputy Director.

PROHIBITED CONDUCT

- J. Prisoners are prohibited from having any sexual contact with another prisoner. A prisoner voluntarily engaging in such behavior is subject to discipline in accordance with [PD 03.03.105](#) "Prisoner Discipline" and, as appropriate, reclassification to a higher security level, including segregation, in accordance with [PD 05.01.130](#) "Prisoner Security Classification" and [PD 04.05.120](#) "Segregation Standards". A Special Problem Offender Notice shall be issued, as appropriate, as set forth in [PD 03.03.110](#) "Special Problem Offender Notice".
- K. Staff sexual harassment, staff sexual misconduct, and staff overfamiliarity are violations of Department work rules; staff engaging in such conduct are subject to discipline pursuant to [PD 02.03.100](#) "Employee Discipline". It also is a felony

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for staff to engage in sexual contact with a prisoner, as defined in MCL 750.520c.

- L. It is a felony for a contractual employee or a volunteer to engage in sexual contact with a prisoner, as defined in MCL 750.520c. A contractual employee or volunteer who engages in such behavior shall be prohibited from providing services within any Department correctional facility. In addition, a parolee or a probationer shall not be required to receive services from a contractual employee or volunteer in the community known to have engaged in such conduct. If such contact is reported by a parolee or probationer, the supervising agent shall ensure that the parolee or probationer is not required to have any further contact with the individual pending investigation of the matter. The supervising agent also shall immediately notify the Deputy Director of Field Operations Administration (FOA) or designee through the appropriate chain of command of the matter; the FOA Deputy Director or designee shall ensure a prompt investigation is conducted to verify whether the contractual employee or volunteer was found to have engaged in such conduct and, if verified, take appropriate action to ensure the individual no longer provides services to probationers or parolees.
- M. Due to concerns unique to CFA and FOA facilities housing female prisoners, including privacy issues, staff assigned to such facilities are subject to additional requirements. Those requirements shall be set forth in operating procedures approved by the CFA Special Administrator and, in CFA, approval of the CFA Deputy Director.

REPORTING PROHIBITED CONDUCT

- N. Staff shall immediately report allegations of conduct prohibited by this policy to appropriate supervisory staff. Failure to do so is a work rule violation and may result in discipline pursuant to [PD 02.03.100](#) "Employee Discipline".
- O. Prisoners may report allegations of conduct prohibited by this policy, including threats of such conduct, to the inspector or any other Department employee. Such allegations may be reported verbally or in writing, including through the grievance process. If reported verbally to an employee, the employee shall document it in writing as soon as possible and report it to appropriate supervisory staff. Female prisoners also may report such allegations in confidence to the CFA Special Administrator.
- P. Prisoners in a CFA facility who report that they have been the victim of prisoner on prisoner non-consensual sexual acts or staff sexual misconduct shall be referred to Bureau of Health Care Services (BHCS) psychological services staff for assessment, counseling, and other necessary mental health services consistent with the requirements set forth in [PD 04.06.180](#) "Mental Health Services". Prisoners in an FOA facility who report that they have been the victim of prisoner on prisoner non-consensual sexual acts or staff sexual misconduct shall be permitted to speak with a counselor available in the local community, if requested.
- Q. Prisoners who make accusations of misconduct against employees, including for staff sexual misconduct, staff sexual harassment, or staff overfamiliarity, which are investigated and determined to be unfounded shall be charged with the major misconduct of "Interference with the Administration of Rules", with approval of the Director, CFA or FOA Deputy Director as appropriate, or designee. Hearings shall be conducted in accordance with [PD 03.03.105](#)

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"Prisoner Discipline".

- R. Complaints filed by a prisoner regarding conduct prohibited by this policy shall serve to exhaust a prisoner's administrative remedies only when filed as a grievance through all three steps of the grievance process in compliance with [PD 03.02.130](#) "Prisoner/Parolee Grievances".

INVESTIGATION OF ALLEGATIONS OF PROHIBITED CONDUCT

- S. Reasonable steps shall be taken to ensure the confidentiality of reports of conduct prohibited by this policy and any resulting investigations. Persons interviewed as part of an investigation shall be specifically warned not to discuss the investigation with others. Staff and prisoners who intentionally compromise this confidentiality shall be subject to discipline in accordance with [PD 02.03.100](#) "Employee Discipline" and [PD 03.03.105](#) "Prisoner Discipline", as appropriate. However, this does not preclude prisoners from discussing such matters with their attorneys, to seek treatment, or to ensure their own safety. It also does not preclude staff from discussing such matters with their attorneys or in accordance with this or any other policy directive, Civil Service rules and regulations, or applicable collective bargaining unit agreements.
- T. For each investigation which sustains an allegation of prisoner on prisoner sexual violence, and for each investigation which results in sustained disciplinary charges for staff sexual misconduct/harassment, the investigator assigned to the case shall complete the United States Department of Justice Survey on Sexual Violence form ([SSV-IA](#)) and submit it to the CFA Special Administrator. The investigator shall include with the form a copy of the investigative report and related Critical Incident Report/FOA Critical Incident Notification form, major misconduct reports, and major misconduct hearing reports, as applicable.

Prisoner on Prisoner Sexual Violence

- U. All reported allegations of prisoner on prisoner sexual violence or threats of such behavior, whether reported verbally or in writing, shall be referred for investigation to the Warden or designee or, in FOA, to the appropriate Regional Administrator. The assigned investigator shall personally interview the alleged victim, the alleged perpetrator, and sufficient witnesses to establish the facts, unless otherwise directed by the investigating law enforcement agency. The investigation shall be coordinated as necessary with the hearing investigator if disciplinary charges are issued or the alleged victim is being reclassified to involuntary protective segregation.
- V. Allegations of prisoner on prisoner non-consensual sexual acts also shall be referred to MSP or other appropriate law enforcement agency for investigation. The Department investigation shall be coordinated as necessary with the investigating law enforcement agency.

Staff Sexual Misconduct/Harassment and Staff Overfamiliarity

- W. The CFA Special Administrator may request that an investigation be conducted in response to allegations s/he receives alleging staff sexual misconduct/sexual harassment or staff overfamiliarity at facilities housing female prisoners. The Special Administrator shall share with the facility head and his/her supervisors, as appropriate, allegations of such conduct.

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- X. All reported allegations of staff sexual misconduct, staff sexual harassment, or staff overfamiliarity, whether reported verbally or in writing, shall be referred for investigation as set forth in [PD 02.03.100](#) "Employee Discipline" except that if the allegation falls within the jurisdiction of the Internal Affairs Division, Operations Support Administration, it shall instead be referred to that Division as set forth in [PD 01.01.140](#) "Internal Affairs". The Administrator of the Internal Affairs Division shall ensure that all allegations that, if true, would constitute a criminal act are referred to MSP or other appropriate law enforcement agency for investigation; however, the Department investigation shall proceed in accordance with [PD 01.01.140](#) "Internal Affairs" and [PD 02.03.100](#) "Employee Discipline" regardless of whether the referral results in criminal prosecution.
- Y. In all investigations of staff sexual misconduct/sexual harassment or staff overfamiliarity, investigators shall personally interview the alleged victim, the alleged perpetrator, and sufficient witnesses to establish the facts. The investigation shall not be closed simply due to the resignation, transfer, or termination of the accused staff person; the investigation shall proceed in accordance with [PD 01.01.140](#) "Internal Affairs" and [PD 02.03.100](#) "Employee Discipline".
- Z. Staff who are accused of, witnessed, or have personal knowledge of staff sexual misconduct/sexual harassment, or staff overfamiliarity and refuse to cooperate with an investigation shall be subject to discipline, in accordance with [PD 02.03.100](#) "Employee Discipline".
- AA. Wardens and, for FOA facilities, the FOA Deputy Director shall ensure that information on all allegations of staff sexual misconduct/sexual harassment and staff overfamiliarity is entered into the Allegations Investigations Personnel Action System (AIPAS). This shall include information on the outcome of the investigation. Although entered on AIPAS, information on allegations that do not result in sustained rule violations shall not be retained in an employee's Personnel File or used for any purpose not authorized by this or any other policy directive.
- BB. Except for staff specifically authorized by the Director, only the CFA Special Administrator and his/her staff and the Deputy Director of Operations Support Administration (OSA) and his/her staff involved in employee disciplinary proceedings, including the Internal Affairs Division, shall have access to information in AIPAS.

ADDITIONAL MEASURES TO MINIMIZE PROHIBITED CONDUCT

- CC. The Administrator of the Office of Training and Professional Development in the Bureau of Human Resources, OSA, shall ensure both new employee and in-service training is available to staff regarding conduct prohibited by this policy. The Administrator of the Office of Training and Professional Development also shall ensure that training is available on how to conduct investigations under this policy. Staff, including investigators and facility administrators, shall attend training as required.
- DD. The CFA Deputy Director shall ensure a brochure is maintained to educate prisoners regarding conduct prohibited by this policy, self-protection, how to report conduct or threats of conduct prohibited by this policy, and treatment and counseling available to them. The brochure shall be available to all prisoners in CFA and FOA facilities and shall be incorporated into facility orientation programs and the Prisoner Guidebook. Reasonable measures shall be taken

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to ensure that non-English speaking prisoners receive the same information.

- EE. Each Warden and, for FOA facilities, the FOA Deputy Director shall take reasonable measures to eliminate prisoner access to secluded areas of the facility. In CFA, this includes maintaining a key receipt system which identifies employees assigned to receive keys to these areas, consistent with the requirements set forth in [PD 04.04.100](#) "Custody, Security and Safety Systems"; this also includes conducting rounds of such areas as set forth in [PD 04.04.100](#) at intervals sufficient to guard against conduct prohibited by this policy.

Identification/Counseling of Prisoners in CFA with Histories of Sexual Victimization or Sexually Aggressive Behavior

- FF. As part of the initial assessment conducted at reception facilities pursuant to [PD 04.01.105](#) "Reception Facility Services", prisoners convicted of or identified as having a history of a predatory or assaultive sexual offense shall be referred to BHCS psychological services staff for assessment and counseling; this shall include assessing the need for specialized programming for predatory or assaultive sex offenders (e.g., assaultive offender program; sex offender program), unless the prisoner was previously interviewed and has not engaged in a new predatory or assaultive sexual offense since that interview. Prisoners identified as having a history of physical or sexual abuse, or who pose a reasonable concern that they may be sexually victimized while incarcerated due to age, physical stature, history, or physical or mental disabilities shall be similarly referred to BHCS psychological services staff; the Intake Screening for History of Sexual or Physical Abuse form (CHJ-464) shall be completed by BHCS staff as part of this screening process. When necessary, prisoners shall be referred for mental health services in accordance with [PD 04.06.180](#) "Mental Health Services".
- GG. Whenever a prisoner transfers, s/he shall be screened within 24 hours of arrival at the receiving facility to identify any history of sexually aggressive behavior and to assess the prisoner's risk of sexual victimization at that facility due to his/her age, physical stature, history, or physical or mental disabilities. This shall be documented in writing and considered when making housing, bed, and work assignments at that facility.
- HH. Prisoners with a history of sexually aggressive behavior, or who are found guilty of sexually aggressive behavior while incarcerated, shall be referred to BHCS psychological services staff for assessment, counseling, and other necessary mental health services, as appropriate, consistent with the requirements set forth in [PD 04.06.180](#) "Mental Health Services". Prisoners who are reasonably believed to be at risk of sexual victimization while incarcerated, or who have been sexually assaulted while incarcerated, shall similarly be referred.

OPERATING PROCEDURES

- II. The FOA Deputy Director, Wardens, and, for facilities housing female prisoners, the CFA Special Administrator shall ensure that procedures are developed to implement requirements set forth in this policy directive; this shall be completed within 60 calendar days after the effective date of the policy directive. This requirement includes ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed. Facility procedures shall not conflict with procedures issued

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by the Director.

[AUDIT ELEMENTS](#)

JJ. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist Wardens with self audit of this policy pursuant to [PD 01.05.100](#) "Self Audit of Policies and Procedures".

Approved: PLC 06/13/07

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE	EFFECTIVE DATE 06/30/2008	NUMBER 01.01.140
SUBJECT INTERNAL AFFAIRS	SUPERSEDES 01.01.140 (07/09/07)	
AUTHORITY 791.203		
ACA STANDARDS NONE		
PAGE 1 OF 4		

POLICY STATEMENT:

The Internal Affairs Division is a vital component of an integrated investigative system within the Department, complementing the investigative staff at the work site and the administrative investigative responsibilities of the Bureau of Human Resources in the Operations Support Administration.

RELATED POLICIES:

- 02.03.100 Employee Discipline
- 02.03.109 Discriminatory Harassment
- 03.02.130 Prisoner/Parolee Grievances
- 03.03.140 Prohibited Sexual Conduct Involving Prisoners

POLICY:

GENERAL INFORMATION

- A. For purposes of this policy, "employee" includes contractual employees.
- B. For purposes of this policy, the work site administrator shall be the Warden or, for non-institutional sites, the highest ranking supervisor, except that in Central Office the work site administrator shall be the appropriate Executive Policy Team (EPT) member.
- C. The Administrator of the Internal Affairs Division shall coordinate the investigation of all cases under the jurisdiction of the Internal Affairs Division which are referred to the Michigan State Police or a local law enforcement agency for criminal investigation. All Department employees shall assist and cooperate with Internal Affairs and law enforcement staff conducting an investigation and ensure a prompt and thorough response is provided to any request made relating to the investigation, consistent with Department policy. This provision is not intended to place any duty on an employee contrary to law or to limit an employee's right under a collective bargaining unit agreement, Civil Service rule, or state or federal law.

CASES WITHIN THE JURISDICTION OF THE INTERNAL AFFAIRS DIVISION

- D. The Internal Affairs Division has jurisdiction to investigate the following allegations against employees, subject to Paragraph F:
 - 1. Staff sexual misconduct, which is defined as a sexual act directed by an employee toward a prisoner, including any of the following:
 - a. An attempted, threatened, or requested sexual act or helping, advising, or encouraging another employee to engage in a

sexual act.

- b. The intentional touching, either directly or through clothing, of a prisoner's genitals, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or gratify the sexual desire of any person.
 - c. Invasion of privacy for sexual gratification, indecent exposure, or voyeurism.
2. Staff overfamiliarity, which is defined as conduct between an employee and a prisoner which has resulted in or is likely to result in intimacy, including but not limited to a kiss or a hug, or a close personal or non-work related association.
 3. Conduct which, if found to be true, would constitute a felony or misdemeanor, including a violation of MCL 257.625 "Operating a Motor Vehicle While Intoxicated or Visibly Impaired"; this does not include traffic misdemeanors.
 4. Infraction of a work rule or policy where the magnitude is such that the integrity of the Department has been undermined.
 5. Conduct which, if found to be true, would likely result in the employee being discharged from employment pursuant to [PD 02.03.100](#) "Employee Discipline".
- E. The Internal Affairs Division also has jurisdiction to investigate the following if it is determined, after review by the Administrator of the Division, to potentially involve employee misconduct:
1. Death of an incarcerated offender unless the death was due to natural causes; however, a death due to natural causes falls within the jurisdiction of the Internal Affairs Division if the death occurred under unusual circumstances.
 2. An escape or escape attempt from a Correctional Facilities Administration institution.
 3. An incident considered "high profile" or capable of drawing substantial media attention.
- F. Employee allegations of discriminatory harassment against another employee which do not constitute criminal conduct, and allegations of equal employment opportunity or civil rights violations, shall be administered by the Office of Equal Employment Opportunity and Recruitment in the Bureau of Human Resources, Operations Support Administration. Allegations involving violations of collective bargaining unit contract provisions shall be administered by the Labor Relations Section in the Bureau of Human Resources. The Director, however, may assign the Internal Affairs Division to lead or assist in any Department investigation involving allegations of employee misconduct.
- G. Generally, allegations concerning the conduct of offenders are not investigated by the Internal Affairs Division unless it involves allegations of employee misconduct which fall within the jurisdiction of the Division. The Director, however, may assign the Internal Affairs Division to lead or assist in any

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Department investigation involving offender conduct. All allegations of prisoner misconduct are to be administered in conformance with [PD 03.03.105](#) "Prisoner Discipline".

REFERRAL OF CASES TO INTERNAL AFFAIRS DIVISION

- H. All allegations of conduct which fall under the jurisdiction of the Internal Affairs Division shall be referred to the Internal Affairs Division as set forth in this section. This includes allegations made during the course of an investigation by other Department staff and allegations by offenders, whether verbally or in writing, provided the allegations contain facts rather than mere assertions or rumor. The worksite administrator or designee shall ensure that allegations which contain only mere assertions or rumors are appropriately investigated and referred to the Internal Affairs Division if the allegations are subsequently determined to fall within its jurisdiction. If questions arise as to whether a case should be referred to the Internal Affairs Division, the worksite administrator or designee shall contact the Administrator of the Internal Affairs Division for guidance on how to proceed.
- I. The work site administrator or designee shall immediately notify the appropriate EPT member or designee by telephone or pager, including after normal business hours, if an employee is alleged to be involved in criminal activity of a major magnitude; e.g., a death with obvious homicide overtones; sexual assault. The EPT member or designee shall similarly immediately notify the Administrator of the Internal Affairs Division.
- J. If a case is based solely on factual allegations by an offender, the work site administrator or designee shall provide the Internal Affairs Division with a written summary of the allegations, including any written documentation provided by the offender, as soon as possible but no later than three business days after receipt of the allegation. The Administrator of the Internal Affairs Division will review the matter and instruct the work site administrator or designee on how to proceed, consistent with requirements set forth in this policy.
- K. For each case which falls under the jurisdiction of the Internal Affairs Division, including those for which notice was provided pursuant to Paragraph I, the work site administrator or designee shall complete and send a Complaint Against Employee form ([CAJ-307](#)) to the Internal Affairs Division as soon as possible but no later than five business day after receipt of the allegation; however, the form shall be sent in a case based solely on allegations by an offender only as directed by the Administrator of the Internal Affairs Division as set forth in Paragraph J. Whenever an employee has been suspended as a result of the alleged conduct, a copy of the stop order shall be submitted with the form.
- L. Upon referral of a case to the Internal Affairs Division, any Department investigation of the case shall cease until further direction is received from the Administrator of the Internal Affairs Division or designee.

PROCESSING AND INVESTIGATION

- M. The Administrator of the Internal Affairs Division shall review each case referred to determine whether the case will be accepted by the Internal Affairs Division and notify the referring work site supervisor or designee of that decision. If a case is not accepted, the case shall be returned to the referring work site administrator or designee for investigation or other appropriate action.

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- N. For each case accepted by the Internal Affairs Division, the Administrator of the Internal Affairs Division shall notify the referring work site administrator or designee if the case will be investigated by Internal Affairs Division investigators or other Department staff. Staff outside the Internal Affairs Division who are assigned to investigate a case shall keep the Administrator of the Internal Affairs Division informed of all major developments in the investigation in the manner directed by the Administrator. Internal Affairs Division staff shall assist with the investigation as deemed appropriate by the Administrator in consultation with the work site administrator or designee.
- O. The Administrator of the Internal Affairs Division shall ensure that all investigations are conducted in a prompt and thorough manner. Investigations of staff overfamiliarity and staff sexual misconduct shall be investigated consistent with the requirements set forth in [PD 03.03.140](#) "Prohibited Sexual Conduct Involving Prisoners". The Administrator of the Internal Affairs Division shall keep the Administrator of the Operations Support Administration and other appropriate EPT members advised on any significant issues that come to his/her attention during the investigation.
- P. The staff person assigned to conduct the investigation shall maintain an investigatory file for the case. The file shall contain all documentation related to the investigation, including any notes and recordings made. Upon completion of the investigation, the file shall be forwarded to the Internal Affairs Division along with a written report of the facts established during the investigation. The Administrator of the Internal Affairs Division shall be responsible for maintaining the official case file once the investigation has been concluded.
- Q. Subject to Paragraph T, the Administrator of the Internal Affairs Division shall review the investigation report and submit a recommendation to the Administrator of the Operations Support Administration as to whether there is sufficient evidence to formally charge the employee with a rule violation. The Administrator of the Operations Support Administration or designee shall make the final determination as to whether charges will be issued in the case and, if applicable, what charges are to be issued. If charges are not issued, it also shall be determined whether there is sufficient evidence upon which to conclude that the allegations are unfounded.
- R. The Administrator of the Internal Affairs Division shall ensure that the appropriate work site administrator is notified in writing of the decision as to whether charges will be issued and, if applicable, the charges to be issued. The Administrator also shall ensure that the employee who was investigated is notified in writing that the investigation was conducted and the disposition of that investigation unless disciplinary charges are to be issued. If disciplinary charges are to be issued, the employee shall receive notice of the charges and a hearing as set forth in [PD 02.03.100](#) "Employee Discipline".
- S. The Administrator of the Internal Affairs Division shall ensure a case tracking system is maintained to identify and monitor the status of all cases accepted by the Internal Affairs Division. The Administrator of the Internal Affairs Division shall inform the Director or designee of the status of each case on the case tracking system on a schedule to be determined by the Director or designee. Other administrative and management staff shall be advised of the status of such cases as determined by the Director or designee.

Sexual Misconduct Review Committee

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- T. There shall be a Sexual Misconduct Review Committee, which shall be chaired by the Administrator of the Operations Support Administration or designee. The Committee shall include the Administrator of the Internal Affairs Division, the Administrator of the Office of Equal Opportunity and Recruitment, the affected Deputy Director, and if applicable, the CFA Special Administrator. The Committee shall be responsible for reviewing all completed investigation reports involving staff sexual misconduct prior to referral to the Director pursuant to Paragraph Q; cases shall be referred to the Director only with the concurrence of the Committee. If the Committee determines additional investigation is necessary, the investigation shall be completed and the case returned to the Committee for review prior to referral to the Director.

OPERATING PROCEDURES

- U. The FOA Deputy Director, the Administrator of the Internal Affairs Division, and Wardens shall ensure that procedures are developed as necessary to implement requirements set forth in this policy directive. Procedures shall be completed within 60 calendar days after the effective date of this policy directive. This includes ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed. Facility procedures shall not conflict with procedures issued by the Director.

AUDIT ELEMENTS

- V. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist EPT members, Administrative Management Team members, and Wardens with self audit of this policy pursuant to [PD 01.05.100](#) "Self Audit of Policies and Procedures".

APPROVED: PLC 06/24/08

Handout 2A

Stages of Recovery from Trauma

Victims of traumatic or catastrophic events tend to go through a number of stages in dealing with what has happened to them. These stages are:

1. **The catastrophe.** This lasts until the victim feels safe. That is, the traumatic event may continue to go on for some victims long after specific abusive activities against them stop. This is because they do not feel safe or free from the abuse yet. For children in a violent household, the catastrophe may last for months or years, until they are old enough to leave home or their abuser leaves.
2. **Relief of confusion.** When the catastrophe ends, it often brings a rushed combination of feelings...relief at having escaped or the trauma being over, but also questions about why such a terrible thing happened to them in the first place, or why they were picked (perhaps out of a group of possible victims), or why they didn't escape sooner.
3. **Avoidance.** Because catastrophic events produce troubling questions about why things happened the way they did, or whether the victim could have done something different to end it, many victims respond by avoiding thinking about the whole thing. Some may literally forget important parts of the event. Others may unconsciously engage in elaborate psychological tactics to avoid things which remind them of the event.
4. **Reconsideration.** This is the beginning of the ability to confront nas come to terms with the trauma. While some victims can come to this stage on their own, most cannot. Factors of the trauma itself can influence the victim's ability to confront the event...the victim's age, the length of the trauma, whether there was exposure to the grotesque, the passive or active role of the victim, the nature of the environment, and the cultural beliefs the victim had then or now about such events.
5. **Adjustment.** When the victim can resolve his/her questions about the traumatizing event and deal forthrightly with what has happened to them, a reasonable adjustment can occur. At this point, "victims" are psychologically transformed into "survivors" and the psychological effects of the trauma are lessened.

Handout 2B

LONG-TERM EFFECTS OF CHILD ABUSE AND CHILD SEXUAL ASSAULT

1. **Depression:** This is one of the most common long-term effects of abuse and/or molestation. What is meant here is clinical depression, which is marked by the extreme, pervasive, and overwhelming nature of feelings of sadness and by a variety of accompanying symptoms.
2. **Anxiety:** This is extreme nervousness without being able to pinpoint what it is that one is worried about. The feeling of being worried and yet unable to do anything constructive about it. Symptoms may be physical.
3. **Eating Disorders:** Especially in women, the disorders of compulsive eating, anorexia and bulimia are highly correlated with child sexual assault.
4. **Isolation and Stigmatized Feelings:** Victims may feel cut off from others who don't understand what they've been through, and may have trouble interacting. They may feel tainted, or believe that others see them that way.
5. **Poor Self Esteem:** Victims often feel bad about themselves later, either for having been selected for abuse...or for having gone along with it... or for failing to escape. They may feel they were not worthy of being rescued since it took so long, or they may feel that they caused what happened.
6. **Difficulty in Trusting Others:** Since child abuse, and especially sexual assault, is often perpetrated by a trusted adult, abused children may lose the ability to ever really trust anyone again.
7. **Tendency Toward Re-Victimization in Later Life:** Women who were sexually or physically abused in childhood have been found to have heightened vulnerability to later victimization such as rape, dating/domestic violence, assault, etc. Experiencing abuse as a child can alter the victim's world view about what is acceptable, particularly as it relates to violence within relationships.
8. **Sexual Problems:** Especially for sexually abused children, there is a high likelihood of later sexual problems, including impotency or frigidity, promiscuity, prostitution, other inappropriate sexual activities, difficult sexual adjustment in marriage, less satisfaction with relationships, or complete avoidance of sex.
9. **Substance Abuse:** Substance abuse may be a psychological attempt to avoid the thoughts or the pain of the trauma, or an attempt to "treat" the physical symptoms being experienced.
10. **Self-Mutilation and Suicidal Thoughts:** Some victims try to destroy the physical body which they believe got them into trouble or failed to save them. They may believe that they deserve punishment for not escaping, or for collaborating with their abuser.

Handout 2C

Prisoner willingness to engage in sexual activity with staff does NOT constitute “consent” in the legal sense, nor does it make such behavior by staff acceptable.

This is because whenever there is a power difference - as in the difference between the relative power of an employee and a prisoner - seemingly willing behavior can **never** be viewed as truly consensual. **Such sexual behavior by staff with prisoners is both unprofessional and illegal.**

Specifically, MDOC Employee Work Rule #50, #51, and #52 includes clear language prohibiting employee from:

- ☞ Engaging or attempting to engage in sexual misconduct or sexual harassment with a prisoner
- ☞ Engaging in overfamiliarity with a prisoner, their family member(s) or their visitors

Any violations of this rule will be grounds for dismissal. Note: It is a criminal offense (criminal sexual conduct in the second degree) if an employee of the Department engages in sexual contact with a person under the jurisdiction of the Department.

In addition to its illegality, sexual activities between staff and women prisoners can also have detrimental re-victimizing effects on the women prisoners involved, no matter how willing they appear to be. Thus, staff who fail to conduct themselves professionally in this regard risk not only criminal prosecution, but they also risk further damaging the prisoners under their charge, even though the prisoners themselves may not appreciate this fact.

Handout #2D

Prior Abuse Reported by Inmates

(Bureau of Justice statistics April 1999)

- ☞ **Nationwide more than 57% of women prisoners in state prisons and 40% in federal prisons reported physical or sexual abuse prior to their sentence**
- ☞ **37% of state prisoners and 23% of federal prisoners reported abuse before age 18**
- ☞ **40% had been abused either by a family member or other relative**
- ☞ **47 % had been sexually assaulted before age 18 by either a family member or a non-family person;**
- ☞ **87% of the women prisoners who had spent their childhood in foster care or institution reported abuse;**
- ☞ **76% of women who grew up with a parent or guardian who drank heavily or used drugs reported prior abuse;**
- ☞ **46% of the women prisoners reported having witnessed severe domestic violence between their parents while growing up.**

Relationship to the abuser by the prisoner reporting abuse:

- ☞ **27% had been abused by their parents;**
- ☞ **21% had suffered abuse by a relative;**
- ☞ **9% had suffered sexual assault by a stranger;**
- ☞ **61% had been physically assaulted by their intimate partners (husbands, ex-spouse, boyfriends, lovers, friends).**

Handout 2E

EFFECTS OF DOMESTIC VIOLENCE ON BATTERED WOMEN

- ☞ **Physical Conditions/Complaints - headaches, ulcers, gastro-intestinal problems, just not feeling 'well.'**
- ☞ **Battered women are more likely than non-battered women to describe their general health as only 'fair' or 'poor,' and to report more days in bed due to illness than non-battered women.**
- ☞ **Emotional Issues – Feeling scared, worthless, depressed, helpless, overwhelmed, hopeless, etc.**
- ☞ **Battered women report more stress related concerns and emotional problems than non-battered women do.**
- ☞ **The more severe the violence, the more likely battered women are to report also having a drug or alcohol problem.**
- ☞ **Even if the battered woman is able to safely escape an abusive partner, she is likely to feel the above effects for a long time. Therapeutic and support group intervention can be helpful for some battered women).**

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Handout 4A Cross Reference for Procedural Requirements Relating to Investigations	
How soon after an allegation has been made must an investigation commence?	
AFSCME	The collective bargaining agreement (CBA) is silent; therefore, PD 02.03.100 applies.
MCO	“within fifteen (15) week days following the date on which the Employer had reasonable basis to believe that such action or investigation should be taken.” Art. 10, Sec. A, 1 st ¶.
MSEA	Investigation “is timely when commenced within twenty (20) week days following the date on which the Employer had reasonable basis to believe that such investigation should be undertaken”: Art. 9, Sec. A, 1 st ¶.
UAW	Investigation “is timely when commenced within twenty (20) week days following the date on which the Employer had reasonable basis to believe that such an investigation should be undertaken”: Art. 9, Sec. B, 1 st ¶.
NERE (non-exclusively represented employees)	Civil Service (CS) rules and regulations do not address investigations, except for situations involving discriminatory harassment (CS Reg. 1.03). However, PD 02.03.100 sets forth the department’s policy which would govern the process for non-exclusively represented employees (NEREs).
Are there specific timelines required for completion of investigations?	
Note: In general, all investigations need to be completed as soon as administratively possible given the specific circumstances (such as unavailable witnesses due to absences, difficulty in obtaining physical evidence, etc.).	
AFSCME	CBA is silent.
MCO	“need not be unduly prolonged.” Art. 10, Sec. B, 1 st ¶.
MSEA	CBA is silent.
UAW	“as expeditiously as possible”: Art. 9, Sec. B, 1 st ¶.
NERE	The policy directive, as well as CS rules and regulations, are silent on this issue.
Can staff have union or other representation during an interview?	
AFSCME	Yes: Art. 8, Sec. D, 1 st & 2 nd ¶.

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MCO	Yes, when “employee’s own conduct is the direct object of the investigation”: Art. 10, Sec. B, 2 nd ¶ & Sec. G. Also, when “investigatory interview is recorded, videotaped, or a verbatim transcribed record of the interview is created by the Employer”: Art. 10, Sec. B, 3 rd ¶. See also Sec. G for specific situations in which employees are entitled to request union representation for pre-disciplinary investigatory interviews.
MSEA	Yes, during an investigatory interview “regarding allegations or charges of misconduct against the employee which if substantiated could result in suspension or dismissal”: Art. 9, Sec. A, 3 rd ¶.
Continued: Can staff have union or other representation during an interview?	
UAW	Yes, during an investigatory interview “regarding allegations or charges of misconduct against the employee, which, if substantiated, could result in suspension or dismissal”. The Employer must also advise the employee of the nature of the investigatory interview before the meeting begins: Art. 9, Sec. B, 2 nd ¶.
NERE	Yes, see PD 02.03.100.
If so, does the investigator have to offer this or does the staff member have to request representation?	
Note: The department’s practice is to advise employees of that they are entitled to union representation in the notice of the investigatory interview.	
AFSCME	Entitled upon employee request: Art. 8, Sec. D, 1 st ¶.
MCO	Upon employee’s request: Art. 10, Sec. B & G.
MSEA	Upon employee’s request: Art. 9, Sec. A, 3 rd ¶.
UAW	Written notice of the employee’s right to union representation must be given to the employee by the Employer: Art. 9, Sec. B, 2 nd ¶.
NERE	This issue not addressed in CS rules or regulations but PD 02.03.100 states upon employee request.
May a written questionnaire be used?	
Note: Questionnaires should advise employees that they may consult with their representative before responding.	
AFSCME	Yes: Art. 8, Sec. D, 3 rd ¶;
MCO	Yes: Art. 10, Sec. B, 2 nd ¶;
MSEA	Yes: Art. 9, Sec. A, 2 nd ¶;

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UAW	Yes, but the employee must be advised that he/she may consult with a union representative before responding to the written questionnaire: Art. 9, Sec. B, 3 rd ¶;
NERE	Written questionnaires may be used. However, in situations involving discriminatory harassment, the alleged harasser “shall” be required to sign a statement regarding the allegation: CS Regulation 1.03, 6, B, 4 (reference CS Rule 1-8, 2-10). The issue is not further addressed in the CS rules or regulations or PD 02.03.100.
Are time frames required regarding the return of questionnaires?	
AFSCME	“...a reasonable time to respond without undue delay”: Art. 8, Sec. D, 3 rd ¶;
MCO	“...a reasonable time to respond without undue delay”: Art. 10, Sec. B, 2 nd ¶;
MSEA	None cited in CBA but employee should be given reasonable time in the same manner as noted in other CBAs.
Continued: Are time frames required regarding the return of questionnaires?	
UAW	Yes, the employee is allowed “a reasonable time to respond without undue delay” but the response cannot be required sooner than 24 hours: Art. 9, Sec. B, 3 rd ¶.
NERE	The policy directive, as well as CS rules and regulations, are silent on this issue, but employees should be given a reasonable time in the same manner accorded bargaining unit members.
May staff change answers on a written question once it has been submitted?	
AFSCME	Yes: Art. 8, Sec. D, 3 rd ¶.
MCO	Yes: Art. 10, Sec. B, 2 nd & 3 rd ¶.
MSEA	CBA is silent but Article 9, Sec. A, 2 nd ¶, requires that the Employer avoid duplicating questions on any follow up questionnaires. However, if an employee requests to change an answer, the changed information should be accepted by the investigator.
UAW	Yes: Art. 9, Sec. B, 3 rd ¶.
NERE	The policy directive, as well as CS rules and regulations, are silent on this issue. However, if an employee requests to change an answer, the changed information should be accepted by the investigator.
If so, what is the time frame in which this must be done?	
AFSCME	Review and revisions must be made “no later than the end of the employee’s next regularly scheduled work shift”: Art. 8, Sec. D, 3 rd ¶.

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MCO	Review and revisions to any written statement must be made “no later than the end of the employee’s next regularly scheduled work shift”: Art. 10, Sec. B, 2 nd ¶. Revision of statements made during recorded, videotaped or transcribed investigatory interviews are made by filing “a statement with the Employer requesting amendment or correction...no later than 24 hours following receipt of the record of the interview from the Employer”: Art. 10, Sec. B, 3 rd ¶.
MSEA	CBA is silent but ...
UAW	Review and revisions must be made “no later than the end of the employee is (sic) next regularly scheduled work shift”: Art. 9, Sec. B, 3 rd ¶.
NERE	The policy directive, as well as CS rules and regulations, are silent on this issue.
What should be done (i.e.: is written documentation required) if staff indicate they do not want union representation?	
AFSCME	CBA is silent but Employer must have employee sign a waiver of representation. If the employee refuses, representation must be obtained. (Contact Labor Relations).
MCO	CBA is silent but Employer must have employee sign a waiver of representation. If the employee refuses, representation must be obtained. (Contact Labor Relations).
MSEA	CBA is silent but Employer must have employee sign a waiver of representation. If the employee refuses, representation must be obtained. (Contact Labor Relations).
Continued: What should be done (i.e.: is written documentation required) if staff indicate they do not want union representation?	
UAW	CBA is silent but Employer must have employee sign a waiver of representation. If the employee refuses, representation must be obtained. (Contact Labor Relations).
NERE	The policy directive, as well as CS rules and regulations, are silent on this issue. Since there is no contractual obligation, a waiver is not necessary.
If staff initially decline union representation and then during the course of the interview request it, what action should be taken?	
AFSCME	CBA is silent for this specific scenario. However, the interview should be ended and the employee allowed an adequate opportunity to obtain representation.

MCO	CBA is silent for this specific scenario. However, the interview should be ended and the employee allowed an adequate opportunity to obtain representation.
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MSEA	CBA is silent for this specific scenario. However, the interview should be ended and the employee allowed an adequate opportunity to obtain representation.
UAW	CBA is silent for this specific scenario. However, the interview should be ended and the employee allowed an adequate opportunity to obtain representation.
NERE	This issue is not addressed in CS rules or regulations but PD 02.03.100 provides that an employee is entitled to representation upon request once the employee's own conduct is the direct object of a disciplinary investigation. Therefore, the interview should be ended and the employee allowed an adequate opportunity to obtain representation.
What should be done if the staff member refuses to complete a written questionnaire?	
Note: Contact Labor Relations.	
AFSCME	CBA is silent.
MCO	CBA is silent.
MSEA	CBA is silent.
UAW	CBA is silent.
NERE	The issue is not addressed in CS rules or regulations.

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AFSCME

Article 8—UNION REPRESENTATION

Section D. Right to Representation.

An employee shall be entitled to the presence of a designated Union representative at any meeting at which disciplinary or any adverse action may or will take place, or at an investigatory interview of the employee by the Employer related to one or more specific charges of misconduct by the employee, if he/she requests one. If an employee is to be represented at a scheduled meeting by an attorney, the employee or the Union shall give as much notice as possible to the Employer. It is agreed that where disciplinary or adverse action is intended as the subject of a meeting, or where such action will result directly and immediately depending upon the content of the meeting, representation is allowed.

In any investigatory interview with an employee where the employee has been suspended (with or without pay) or transferred from the employee's regular job assignment, the employee shall have the right to representation.

When, in the course of any investigation, a written statement of any kind, other than a critical incident report, is requested from an employee, the employee shall be given the request and questions in writing, a reasonable time to respond without undue delay, a copy of the written response and an opportunity to review, amend, change or correct said statement which shall be done no later than the end of the employee's next regularly scheduled work shift. Said statement shall not be used or considered as a complete statement of fact until the time period set forth herein has lapsed. No disciplinary action or suspension without pay pending investigation shall be taken on the basis of such statement until the end of the period allowed for modification. Transfer or suspension with pay pending the outcome of an investigation shall not be considered disciplinary action.

Where an employee is required to report on his/her conduct to a trial board, board of inquiry, patient abuse committee, or similar fact-finding inquiry making any determination prior to imposition of discipline on him/her, he/she shall have the right to appear, to have representation, and to have an opportunity to call witnesses. He/she shall receive a copy of the findings and have an opportunity for post-hearing appeal to his/her Appointing Authority before imposition of discipline.

When a Recipient Rights Office or other preliminary investigation results in a report containing information derogatory to an employee or which would constitute a basis for disciplinary action, an employee shall be entitled to representation in any follow up investigation or discussion.

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Whenever, as a result of an investigation, disciplinary action is or may be appropriate, a disciplinary conference shall be held with the employee who shall be entitled to representation. The employee shall be informed of the nature of the complaint or allegations against him/her and the reasons that disciplinary action is contemplated or intended. The employee shall have an opportunity to respond and discuss such information prior to the imposition of disciplinary action.

It is agreed that the imposition of charges and/or discipline shall be within a reasonable and timely fashion. Where an investigation does not result in discipline, the findings of the investigation shall be timely communicated in writing to the employee under investigation, with a copy to the Local Union.

None of the above is intended to circumvent the normal relationship between supervisor and employee as it pertains to discussions and counseling, during which the right to representation shall not apply.

MCO

Article 10----DISCIPLINARY ACTION

Section A. General.

The Union recognizes the authority and responsibility of the Employer to take timely and reasonable disciplinary action against employees for just cause. Discipline will normally be progressive in nature, however, the employer shall have the right to invoke a penalty which is appropriate to the seriousness of an individual incident or situation. For purposes of this Article, disciplinary action or investigation to determine whether disciplinary action should be taken is timely only when commenced within fifteen (15) weekdays following the date on which the Employer had reasonable basis to believe that such action or investigation should be taken. Disciplinary action includes: written reprimand; involuntary demotions; suspension without pay; forfeiture of accrued annual leave in lieu of suspension; payment of fines in lieu of suspension; and discharge. The suspension without pay of a probationary employee during or at the end of the pay period in which the initial probationary period expires, pending separation for unsatisfactory service, as well as the separation itself in such circumstances, shall not be considered disciplinary action for purposes of this Article.

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A demotion will not be considered disciplinary action if it is a result of the employee failing to satisfactorily complete a required probationary period upon promotion or transfer; in conjunction with the layoff or "bump" of the employee; or the voluntary or contractually required transfer or reassignment of the employee to a position allocated at a lower level, if voluntary, or required by Civil Service merit-based rules, or this contract, if unaccompanied by disciplinary action of some other kind.

Placing an employee on "lost time" (leave without pay) for the period of an employee's unauthorized absence from work shall not be considered disciplinary action. However, if the employee has requested authorization to use accrued leave credits for such time and it is denied, the denial shall not be exempt from the scope of the grievance procedure solely on the basis that the denial is not disciplinary action.

The decision whether to offer an employee the option to forfeit accrued annual leave, or assess the suspension, shall be in the sole discretion of the Employer, and is not grievable.

Just cause for disciplinary action will include, but not be limited to:

- a. Failure to carry out assigned duties and responsibilities required by the Employer;
- b. Conduct unbecoming a state employee;
- c. Unsatisfactory service;
- d. Violation of Employer work rules, policies, regulations or directives pertaining to performance, conduct or safety.

Section B. Investigation.

The parties agree that disciplinary action must be supported by timely and accurate investigation, but investigations need not be unduly prolonged. The Employer has the right to receive prompt, truthful answers to questions put to the employee concerning any matter regulated by the Employer, related to conduct or performance, or which may have a bearing upon the employee's fitness, availability or performance of duty.

When, in the course of any disciplinary investigation, a written statement of any kind is requested from an employee, the employee shall be given the request in writing and the employee shall to the best of his/her ability provide an accurate and truthful written statement on the matter being investigated, including answers to any specific questions included in the request. The employee shall be afforded a reasonable time to respond without undue delay. A copy of the written response shall be provided to the employee who shall have the opportunity to review, amend, change or correct said statement no

later than the end of the employee's next regularly scheduled work shift. Such statement shall not be considered or used until the time period set forth herein has

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elapsed. However, when the employee's own conduct is the direct object of the investigation, the employee shall have the opportunity to confer with a Union representative, if readily available, before submitting such statement.

In the event the investigatory interview is recorded, videotaped, or a verbatim transcribed record of the interview is created by the Employer, the employee shall be permitted a Union representative during the interview. The Employer will provide a copy of the recording, videotape or transcript to the employee when it becomes available to the Employer. The employee may file a statement with the Employer requesting amendment or correction of his/her statements reflected in the record of the interview no later than 24 hours following receipt of the record of the interview from the Employer. Such employee statement, if timely filed, shall become part of the record of the interview to the extent it pertains to the subject matter of the interview.

NOTE: When a critical or unusual incident report is required, the employee may be required to provide a narrative statement of events without the necessity of specific written questions. Such report shall be provided promptly and accurately to the best of the employee's ability.

Where, as a principal in an investigation, an employee is directed to report on his/her own conduct to a patient or resident abuse committee or Fact Finding investigation by an appointed Fact Finder, making any determination which may result in disciplinary action for the employee, the employee shall have the right to appear, to have Union representation, to suggest witnesses to be interviewed and to submit relevant documents. If a formal hearing is conducted in addition to the above, the employee shall also be entitled to call and question any witnesses. The employee and the Union, through the employee, shall receive a copy of any findings, and have an opportunity to rebut the findings and reports to his/her Appointing Authority, within five (5) weekdays, before a decision is issued concerning any disciplinary action.

When a recipient rights investigation or other preliminary investigation results in a report or finding containing information detrimental to an employee's good standing, or which would constitute a basis for disciplinary action, the right to a subsequent disciplinary conference as provided by Section D. of this Article shall still apply, at which the right to Union representation shall also apply.

The Employer shall not require or attempt to persuade an employee to take a polygraph examination, lie detector test or similar test of the employee's veracity in the course of

a disciplinary investigation, nor discipline or discriminate against an employee solely on the basis that the employee refused or declined to take the examination/test.

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It shall be the policy of the Employer to not take disciplinary action in the course of an investigation, except as provided in Section C. below.

Whenever, as a result of an investigation, disciplinary action is or may be appropriate, a disciplinary conference shall be held with the employee in accordance with Section D. of this Article.

Whenever an investigation does not result in disciplinary action, the finding of the investigation shall be communicated to the employee(s) under investigation. Upon request of the employee under investigation, such findings will be confirmed in writing.

Section G. Right to Representation.

Bargaining Unit members are entitled to be accompanied by the designated Union Representative for his/her work area, or by an MCO staff person, or other individual approved by MCO Central Office if representation is requested, in the circumstances described in Subsections 1 and 2 below:

1. A disciplinary conference conducted pursuant to Section D. above; and
2. A pre-disciplinary investigatory interview where--
 - a. The employee has been suspended or removed from the work premises pursuant to Section C. of this Article; or
 - b. The employee has been suspended (with or without pay), or reassigned from the employee's regular job assignment; or
 - c. The employee has been specifically charged in writing with one or more instances of misconduct; or
 - d. The employee is directed to report on his/her own conduct (as a principal in an investigation) to a patient or resident abuse committee or Fact Finder; or
 - e. The interview is attended by more than one supervisor or Employer Representative; and, the employee is not represented by a Union Staff Representative; in the event that a staff representative is to attend, the Employer shall be given as much advance notice of such fact as possible.

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It shall be the responsibility of the Employer, upon the employee's request, to secure the release of the Union Representative. The representative may assist the employee in presenting his/her evidence and/or argument, and point out other relevant matters. The Employer may, however, insist upon communicating directly to and with the employee regarding the matters under discussion during the conference or interview.

None of the above is intended to circumvent the normal relationship between the supervisor and employee as it pertains to discussions and counseling. The right to Union representation shall not apply to conversations between an employee and the supervisor for the purpose of giving instruction concerning work performance, providing training or retraining, or correction of work habits or techniques.

When an employee is entitled to request and be accompanied by the Union Representative at a conference under this Section, the employee and the designated Union Representative may be allowed time, not to exceed one-half hour, immediately prior and contiguous to the scheduled conference, to permit them to confer about the subject matter of the conference. Such time shall be without loss of pay. Such one-half hour conference time shall not be required unless requested by the employee or the Union Representative, nor shall it be required if the amount of time elapsed between the time the employee received notice of the conference and the start of the conference is 48 hours or more.

MSEA

ARTICLE 9---DISCIPLINARY ACTION

The parties recognize the authority of the Employer to reprimand in writing, suspend, discharge or take other appropriate disciplinary or corrective action against an employee for just cause.

Discipline, when invoked, will normally be progressive in nature, however, the Employer shall have the right to invoke a penalty which is appropriate to the seriousness of an individual incident or situation.

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A. Investigation and Representation.

Allegations or other assertions of failure of proper employee conduct or performance are not charges, but constitute a basis for appropriate investigation by the Employer. The parties agree that disciplinary action must be supported by timely and accurate investigation. For purposes of this Article, investigation to determine whether disciplinary action should be taken is timely when commenced within twenty (20) week days following the date on which the Employer had reasonable basis to believe that such investigation should be undertaken.

An employee is required to give prompt, full and accurate answers, to the extent possible, to questions put to him/her by the Employer concerning any matter regulated by the Employer, related to conduct or performance, or which may have a bearing upon the employee's fitness, availability or performance of duty. Written questionnaires may be used to initiate or further an investigation. The Employer will avoid duplicating questions contained on the initial questionnaire on any follow-up questionnaire given to the employee under investigation.

An employee shall be entitled upon request to the presence of a Union Representative at a meeting at which discipline or a less than satisfactory service rating may or will take place, or at an investigatory interview of the employee by the Employer regarding allegations or charges of misconduct against the employee which if substantiated could result in suspension or dismissal. It shall not be the policy of the Employer to take disciplinary action in the course of an investigation unless an emergency suspension or removal from the premises as provided in this Article is warranted. If the MSEA Representative is to be an attorney certified by MSEA, the employee or MSEA shall give as much notice as possible to the Employer.

UAW ARTICLE 9----DISCIPLINARY ACTION

Section B. Investigation.

Allegations or other assertions of failure of proper employee conduct or performance are not charges, but may constitute a basis for appropriate investigation by the Employer. The parties agree that disciplinary action must be supported by timely and accurate investigation. For purposes of this Article, investigation to determine whether disciplinary action should be taken, is timely when commenced within twenty (20) weekdays following the date on which the Employer had reasonable basis to believe that such an investigation should be undertaken. The Employer will agree to conclude an investigation as expeditiously as possible.

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Where an investigation does not result in discipline, the findings of the investigation shall be communicated to the employee under investigation. Upon the employee's request, such findings will be confirmed in writing.

An employee shall be given written notice of the right to the presence of a Union Representative at a meeting at which discipline or a less than satisfactory service rating may or will take place, or at an investigatory interview of the employee by the Employer regarding allegations or charges of misconduct against the employee, which, if substantiated, could result in suspension or dismissal. The Employer must advise the employee of the nature of any disciplinary or investigatory meeting before the meeting commences.

The parties agree that when, in the course of any investigation, a written statement of any kind is requested from an employee eligible for representation under this Article, the employee shall be given the request in writing with notice that the employee may consult with a union representative prior to responding. The employee shall be afforded a reasonable time to respond without undue delay but in no event shall the response be due prior to 24 hours. A copy of the written response shall be provided to the employee who shall have an opportunity to review, amend, change or correct said statement no later than the end of the employee's next regularly scheduled work shift. Such statement shall not be considered or used until the time period set forth herein has elapsed.

Handout 4B

APPENDIX ONE: PROOF FORMULAS FOR EMPLOYEE HANDBOOK RULES

This appendix provides a summary of the MDOC Employee Handbook Rules and examples of the types of questions that when answered would serve to prove guilt (or not guilty). Some of the rules are reproduced in their entirety, others only have selected sections of the rule. See the most recent version Employee Handbook for a complete guide to all the work rules.

Rule #1 Treatment of Employees, Offenders, and the Public.

Fair and equal treatment is mandatory in all areas of the Department's operations. Actions which affect personal welfare must be taken on a rational, objective, and nonarbitrary basis.

1. What specific actions were taken which affected the personal welfare of the person?
2. How were these actions taken?
3. How did the actions affect personal welfare?
4. Why was the action not rational, objective, and/or nonarbitrary?

Actions which affect personal welfare must be taken on a rational, objective and non-arbitrary basis.

1. What action was taken?
2. Who took the action?
3. How was the action unreasonable, non-objective or arbitrary?
4. How did the action affect someone's personal welfare?

Due process must be observed when setting penalties from abuse of power. An employee shall not act in a discriminatory or arbitrary manner or fail to observe required due process procedures.

1. How did the employee discriminate or treat the person differently than others?
2. What were the penalties?
3. How was the penalty arbitrary?
4. How did the employee fail to observe due process?
5. Was the employee aware or should have been aware of the due process?
6. How was the employee aware?

Using abusive, threatening, profane, vulgar, or actions which either degrade or belittle another person or group is not allowed.

1. What specific language was used?
2. How are these words or actions abusive, threatening, etc.?
3. Whom was the language used toward?
4. How did the employee direct the language toward the person?

Rule #2 Use of Position for Personal Gain

An employee shall not engage in actions that could constitute the use of his/her position for personal gain.

1. What action did the employee take?
2. How could this action constitute his/her position for personal gain?
3. Did the employee or could the employee have had personal gain from their action?
4. Was the action taken for personal gain?
5. Did the action violate P.D. 02.03.107 "Code of Ethics and Employee Conduct"?

Rule #3 Discriminatory Harassment

An employee must not discriminate against a person by words or actions on the basis of religion, gender, race, ethnic origin, handicap, age, weight/height, disability, or marital status.

1. How did the employee discriminate?
2. How were other employees treated in similar circumstances?
3. What specific words or actions were used to discriminate?
4. Did the action and/or speech violate P.D. 02.03.109?

An employee must report any incidents of sexual harassment to the designated sexual harassment counselor/coordinator or to the appropriate supervisor. Refer to P.D. 02.03.109 "Discriminatory Harassment" for additional information.

Note: Allegations or actions of discrimination or harassment based upon a person's religion, gender, race, ethnic origin, color, handicap, age, weight/height, disability, or marital status should be referred to the appropriate discriminatory harassment counselor. These allegations/actions must be investigated by someone who is appropriately trained in discriminatory harassment investigation, and is assigned by the Warden or regional administrator. The complaint, investigation, charges and discipline are done with the concurrence of the EEO office.

Rule #4 Use/Misuse of State Property or Equipment

An employee who misuses State property may be required to reimburse the State for its value. State property and equipment remain State property and are not for personal use or to be removed from State premises without proper authorization.

1. What was the property?
2. How was the property or equipment misused?
3. Was the property or equipment State owned?
4. What is the value of the property?
5. How was the property removed from State premises?
6. How did the person use the State property for personal use?
7. Did the person have authorization to remove the property?
8. Did the person authorizing the property to be removed, have the authority to allow this?

Property must be kept clean and in good condition at all times and immediately return upon leaving the Department.

1. Was the employee issued the equipment or property?
2. How was the property not kept clean and in good condition?
3. Was the property or equipment damaged because of neglect?
4. How was the property or equipment damaged?

Rule #5 Conduct Unbecoming a Department Employee

An employee shall not behave in an inappropriate manner or manner which may harm or adversely affect the reputation of the Department.

1. What was the specific behavior of the employee?
2. How was the behavior inappropriate?
3. How could or did the behavior harm or adversely affect the Department's reputation?

Department employees have a special responsibility to support and uphold the law through their own actions and personal conduct.

1. What was the specific action/conduct of the employee?
2. How did the conduct or action not support and uphold the law?
3. What specific law did the employee not uphold or support?
4. Was a law enforcement agency involved?
5. Did the employee meet the reporting requirements?
6. Did the investigator contact the law enforcement agency to confirm the information?
7. Were all witnesses contacted to confirm their reports?

Rule #6 Physical Contact

Any inappropriate placing of hands on another person, touching another person, or other types of body contact, is not permitted.

1. How and where did the person touch the other person?
2. How and where did the person place their hand?
3. What specific type of body contact did the person have with another person?
4. Was the physical contact authorized by policy?
5. Was the physical contact intentional and if so how?
6. Where did the contact take place?

Rule #7 Confidential Nature of Records

All employees must respect the confidentiality of employee, prisoner, parolee or probationer files, and must not discuss medical record information or other official information or reports with unauthorized persons. All prisoner health care records and employee records are confidential.

1. Was the information or document confidential in nature?
2. Who did the employee give the information?
3. Was this communication (or giving of documents) authorized?

All requests from outside the Department for information concerning corrections offenders or employees, or their files should be referred to the designated Freedom of Information Act (FOIA) Coordinator for that location . . . (see P.D. 01.06.110 Freedom of Information Act).

1. Who requested the information?
2. Did the employee refer the request to the FOIA Coordinator?

Rule #8 Use of Health Care Services

The prison health care services are only to be used by employees in cases of serious emergency, medical stabilization for serious on-the-job injuries and Department authorized services, such as TB testing and Hepatitis B vaccinations. When the clinic facilities are used for an emergency or on-the-job injury, the employee is to be transferred as soon as practical to a private physician or hospital on vendor contract with the Department to serve as the primary examiner. A complete report must be made by the clinic staff in each of these instances and sent to the proper Warden and personnel office.

1. Did the employee get authorization to use Health Care Services?
2. Was the use because of an emergency?
3. What was the emergency?
4. What medical service was provided?
5. Was a report made by the clinical staff?
6. Where was the report sent?

Rule #9 Class II Insubordination

Class II insubordination is an action or inaction of an employee that could seriously weaken the Department's ability to carry out its responsibilities, such as operation of safe and secure facilities or protection of the public. Investigation which confirms a violation of this rule will result in immediate suspension and subsequent dismissal.

1. What was the specific action or inaction of the employee?
2. How did the action or inaction weaken or could have weakened the Department's responsibility?
3. What was the Department's responsibility?
4. Was the action or inaction willful?
5. How was the employee aware of the proper procedure, direction, and/or order?

Rule #10 Class I Insubordination or Disregard for Authority

Class I insubordination is an action or omission of an employee showing intentional disregard of authority such as failing or refusal to follow a supervisor's directive or order. Violation of this rule may result in an immediate suspension.

1. What was the specific action or inaction of the employee?
2. How did the employee show intentional disregard for a directive or order?
3. Was the person giving the order a supervisor?
4. Did the employee hear the order?
5. Was the action or inaction willful?

Rule #11 Searches While on Facility Property

A search of an employee may be conducted in accordance with the provisions of P.D. 04.04.110 "Search and Arrest in Correctional Facilities." An employee who refuses to submit to a search while on Department-owned or leased property **will** be suspended immediately pending investigation. If the investigation supports the fact that an employee who has refused to be searched has direct prisoner contact or is in a secured area, that employee shall be discharged.

1. What type of search was attempted?
2. Where was the search attempted?
3. Was in accordance with the provisions of P.D. 04.04.110?
4. Was the person attempting to search clear in his/her instructions?
5. How did the employee refuse to be searched (words, actions)?
6. Was the employee suspended immediately?
7. Who suspended the employee and was the employee properly suspended?

Rule #12 Responding or Assisting During an Emergency

An employee is required to respond to any request for help during an emergency, including a practice mobilization.

1. How was the employee contacted?
2. How was the employee aware of the contact?
3. Did the employee have a legitimate reason for not responding?
4. Did the employee inform the contact person of the reason they were not responding?

An employee shall come to the assistance of another employee or prisoner who is being assaulted or other emergency situation.

1. How did the employee fail to respond?
2. What was the emergency situation?
3. How was the employee aware of the emergency situation?
4. Was assistance needed?

Rule #13 Enforcing Rules, Regulations, Policies, or Procedures

All employees are required to enforce and follow all departmental rules, regulations, policies, and procedures.

1. How was the employee aware of the rule, regulation, policy, and procedure?
2. Was the directive in writing?
3. How did the employee not enforce the directive?

An employee shall not undermine or interfere with the Department's efforts to enforce rules, regulations, policies, or procedures.

1. What was the rule, regulation, policy, or procedure?
2. Was the employee aware or should have been aware of the directive?
3. What specific actions, inactions, or omission did the employee do to interfere?
4. What actions, inactions, or omissions did the employee do to undermine?
5. How did this interfere or undermine the Department's efforts to enforce the directives?

Rule #14 Maintaining Order

An employee who works at an institution shall assist in the maintenance of order and effective custody. Actions or inactions by an employee that may detract from maintaining order within the facility are prohibited.

1. What actions, inactions, or omissions failed to maintain order and effective custody?
2. How did these actions, inactions, or omissions interfere with maintaining order and effective custody?
3. What proper actions or assistance should the employee have taken to maintain order and effective custody?
4. Was the employee aware or should have been aware of the proper actions or

assistance to be taken?

Rule #15 **Rule Recinded as of January 2006. The number was intentionally not reused.**

Rule #16 **Criminal Acts - Any Felony**

Any conduct an employee, whether on one's own time or in connection with official duties, which results in a felony conviction, whether guilty, no contest, plea or trial, including felony traffic offenses, shall result in dismissal.

1. Was the staff arrested?
2. Did you receive the law agencies report?
3. Did the employee report the arrest?

Rule #17 **Controlled Substance/Intoxicant - Possession, Introduction or Attempted Introduction**

An employee shall not possess, introduce or attempt to introduce intoxicants or controlled substances into a facility. Such action in a facility which houses prisoners is a crime and shall result in discharge and referral for prosecution. Introduction of other substances, such as yeast, which can be used to manufacture illegal substances are also a violation of Department rules.

1. What substance was introduced (or attempted to introduce)?
2. How was it introduced? Where? When? By Whom?
3. How was the substance identified?
4. Where is the substance now?

Rule #18 **Use of Alcohol or Controlled Substances**

Employees are subject to random, reasonable suspicion, pre-appointment, post accident and follow up drug and alcohol testing in accordance with Civil Service Commission Rule 1-7 or the applicable collective bargaining unit agreement. An employee who reports for duty with alcohol on his/her breath, or when suspected of being influenced by alcohol or a controlled substance, will be required to submit to an evidential breath test or appropriate drug test.

The following prohibited activities for all employees:

- A. Consumption or possession of alcohol while on duty.
- B. Reporting for duty or being on duty with a blood alcohol concentration of .02 or greater percent by weight in the blood.
- C. The on duty use or possession of a controlled substance except where the use of the controlled substance is pursuant to the instructions of a physician.
- D. Reporting for duty or being on duty with a prohibited level of drugs present in the bodily fluids.
- E. Refusal to submit to a required drug test or alcohol test which means:
 1. failing to provide an adequate sample without an adequate medical explanation, or

2. engaging in conduct that obstructs the testing process or,
3. refusing to be tested

An employee who refuses to submit to such testing shall also be committing a violation of Rule 9 "Class II Insubordination" and will be dismissed.

Example proof formula questions:

Alcohol Use

1. Did the employee possess or consume alcohol while on duty?
2. Was there a witness or physical evidence?
3. What was done with the evidence?

Test Refusal

1. Was the person giving the instruction to report for drug testing clear in their instructions?
2. How did the employee refuse the test (specific words and actions)?

Interfering with testing

1. What action did the employee take that interfered with the test or test procedure?
2. How is it known that the employee did this action (witness, physical evidence)?

Rule #19 Rule rescinded as of April, 2000. The number was intentionally not reused.

Rule #20 Introduction of Contraband/Escape Paraphernalia/Unauthorized Weapons Including Facsimiles

An employee shall not introduce paraphernalia, unauthorized weapons or facsimiles of weapons any time not specifically authorized in a facility where prisoners are housed.

1. What was the contraband?
2. How was it discovered?
3. Did the employee attempt or bring it into the correctional facility or onto the property?
4. Did they have authorization to bring it onto the property?
5. Was the item received or intended to be received by a prisoner?

Rule #21 Contraband in Vehicle on State Property

While on the premises of a facility housing prisoners, an employee shall lock and properly secure his/her motor vehicle and not have or keep alcohol or unauthorized weapons including ammunition, guns, knives, or facsimiles thereof in that vehicle. Transporting some of these items onto the premises of a facility housing prisoners may also be a criminal offense. Possession of a controlled substance, including in a motor vehicle is illegal.

Where prohibited in this rule, employees are to ascertain that such items are not in their motor vehicle and it will be assumed they were aware of the presence of the prohibited item if it is found in the motor vehicle. See P.D. 03.03.100 "Firearms and Chemical Agents" regarding proper handling and storage of weapons, including on the premises of a facility.

1. How was the vehicle unsecured?
2. Where was the vehicle?

OR

1. What unauthorized item was in the vehicle?
2. How was it discovered? (When, who)
3. Where was the vehicle?

Rule #22 Misdemeanor or other restrictions

Any conduct by an employee, whether on one's own time or in connection with official duties, which results in a misdemeanor conviction, whether by guilty plea, no contest plea, or trial, including traffic offenses, is prohibited. If the conviction involves a controlled substance, the employee shall be discharged. Behavior not resulting in a misdemeanor conviction may still result in discipline for violation of work rule #5.

Discipline may be imposed for violation of this rule as well as for Conduct Unbecoming an Employee.

Minor traffic offenses that are not a misdemeanor do not need to be reported.

An employee shall provide a verbal report to his/her immediate supervisor within 24 hours after any stage or phase of an arrest or prosecution including but not limited to; issuance of any warrant, any arraignments, any pretrial conferences, pleas of any kind, preliminary examination, trial, sentencing, delay, diversion, or dismissal. Each verbal report shall be followed up, within 72 hours, by a written report to the appropriate Deputy Director, Warden, Field Operations Administration Regional Administrator or Central Office Administrator.

1. What was the misdemeanor?
2. Did the employee report the arrest, etc. in a timely manner?
3. Was the conviction (or other resolution) verified? How so?

Rule #23 Possession of Medication

All employees must notify their immediate supervisor if taking prescribed medication which may interfere with the employee's work responsibilities.

An employee who has custody or security responsibilities must immediately provide written notice to the Warden or Field Operations Administration Regional Administrator, through the Personnel Office, of a prescribed medication that may have an effect on the work performed. If the medication(s) does not adversely affect job performance, the Warden or FOA Administrator will provide a way for the employee to take the medication. If there is a question on the effect of the medication, medical advice may be sought.

1. What was the medication?
2. Where was it found?
3. Did the employee have permission to have the medication in a facility?

Rule #24 **Rule rescinded as of April, 2000. Number intentionally not reused.**

Rule #25 **Rule rescinded as of April, 2000. Number intentionally not reused.**

Rule #26 **Entry Into a Facility**

Employees shall not visit nonpublic areas of a facility where prisoners are housed for non-work related purposes without prior approval of the Warden or designee.

1. Where does the employee work?
2. What part of the facility was he/she visiting?
3. Did the employee have appropriate approval?

Off duty employees are also required to receive permission to enter or be present at any secure area of the facility.

1. Who was the employee?
2. Was the employee off duty?
3. Did he/she have permission to enter the facility?

All Departmental employees visiting any facility where prisoners are housed shall sign the facility visitors log.

1. Who was the employee visiting?
2. Did the employee sign the facility visitors log?

A Department employee may visit a prisoner only if that prisoner is an immediate family member and is housed at a facility other than where the employee works . . . Visitation of an immediate family member in a facility, requires prior permission of both of the appointing authority where the prisoner is housed and the employee's appointing authority . . .

1. What prisoner did the employee visit?
2. Did the employee have the approval of the Warden of the facility?
3. Did the employee have the approval of their Warden to visit the family member?

Rule #27 **Dereliction of Duty**

An employee is required to fully perform his/her job duties. An action or omission of an employee indicating **neglect** of his/her job duties or for the safe and proper care and control of prisoners, parolees or probationers will be considered dereliction of duty.

1. What was the specific action or omission by the employee?
2. What was the required job duty or action?
3. How did the action or omission affect the safe and proper care and control of prisoners, parolees or probationers?

Rule #28 Use of Force

An employee may use only as much force as reasonably necessary to perform his/her duties. All employees with direct prisoner contact should be thoroughly familiar with P.D. 04.05.110 "Use of Force" and/or refer to P.D. 04.05.112 "Managing Disruptive Prisoners." Excessive use of force shall result in discharge.

1. What was the prisoner doing (describe words and actions)?
2. What force was used (be as specific as possible)?
3. Did the employee have reasonable alternatives to the use of force or to the degree of force used?
4. Was the force consistent with the guidelines of policy, Department training, and the use of force continuum? If not, how was it inconsistent?

Rule #29 Exchange of Duties - Custody/Security

An employee may exchange duties or responsibilities with another employee only with prior explicit permission from the immediate supervisor.

1. What were the duties that were exchanged?
2. Were the duties exchanged with both employees knowledge?
3. Was the exchange explicitly approved by the immediate supervisor?
4. Was it authorized by any other supervisor?
5. Was the exchange done before or after permission was given?

Rule #30 Duty Relief

An employee may not leave an assignment without proper relief or permission.

1. Where was the employee assigned?
2. Did the employee leave the assignment?
3. Where did the employee go?
4. Did the employee have proper relief before leaving?
5. Did the employee have supervisor approval to leave?

The employee being relieved must report to the immediate supervisor any condition that would appear to limit or otherwise impair the ability of the relieving employee to function properly.

1. What specific behavior did the relieving employee exhibit?
2. How could, or how did, the behavior have limited or impaired the relieving employee?
3. Was the behavior reported to the immediate supervisor?
4. Did the supervisor observe the behavior?
5. What action did the supervisor take?
6. Was the behavior known and allowed (reasonable accommodation, approved medication)?

Rule #31 Security Precautions

Any action or inaction by an employee which jeopardizes the safety or security of any facility is prohibited.

1. What was the action or inaction?
2. Did the employee fail to follow an established security/safety procedure, policy, or post order?
3. Was the employee aware of or should have been aware of the procedure or policy?
4. Did the employee have approval to not follow the established procedure or policy?

Rule #32 Attention to Duty

An employee is required to be alert while on duty. Any items that distract from the alertness of an employee are not allowed.

1. What was the specific behavior of the employee which distracted from alertness?
2. What item(s) did the employee have which distracted from alertness?
3. What were the job duties of the employee at the time?
4. Was the behavior observed by another person?
5. How long did the employee engage in the behavior?

No employee with duties involving direct management of prisoners shall not have a book, pamphlet, newspaper, or other reading matter while on duty, except post orders, applicable collective bargaining agreement and information specific to the performance of job-related duties.

1. Was the reading material job specific?
2. Where was the reading material found?

All other employees may possess such items at their work site but are prohibited from using them while on duty.

1. Was the reading material job specific?
2. Was the employee on duty, off duty, or on an approved break?

Rule #33 Reporting a Rule Violation

An employee shall immediately report behavior of prisoners or employees who are in violation of Departmental rules, policies or procedures to supervisory staff.

1. Did the behavior violate a Department rule, policy or procedure?
2. How did the employee become aware of the violation?
3. Did the employee know or should have known the behavior was a violation?
4. Did the employee immediately report the behavior to a supervisor?
5. What action did the supervisor take?

Rule #34 Reporting Approach to Introduce Contraband, Violate Rules, Policies or Procedures

An employee must report each time s/he is approached to introduce contraband or violate rules, policies, or procedures. A verbal approach must be made to the employee's supervisor that work day and a complete written report of the approach must be made no later than the end of the employee's work day.

1. Who approached the employee?
2. What was specifically said to the employee?
3. Was the request to violate a rule, policy, procedure or introduce contraband?
4. Was the item contraband by policy definition?
5. Did the employee report the approach to their supervisor that day?
6. Was a written report submitted prior to the end of that work day?

Rule #35 Rule rescinded as of April, 2000. Number intentionally not reused.

Rule #36 Rule rescinded as of April, 2000. Number intentionally not reused.

Rule #37 Required Rounds

An employee shall make *all* required rounds.

1. What rounds are required (post order, policy, procedure, etc.)?
2. How did the employee fail to make rounds?

Rule #38 Reporting Requirements

Employees must submit accurate and complete oral or written reports when required by policy or procedure or when requested by a supervisor or other authorized personnel.

1. What report was required?
2. What policy, rule, supervisor, etc. required the report?
3. Did the employee submit the report? Within the required time limits?
4. What made the report inaccurate or incomplete?

Rule #39 Required Field Agent Contact

Note: This rule does not apply to CFA staff.

Rule #40 Rule rescinded as of April, 2000. Number intentionally not reused.

Rule #41 Rule rescinded as of April, 2000. Number intentionally not reused.

Rule #42 Employee Uniform Requirements

No employee shall wear the uniform except in the performance of duty and direct travel to and from the work site.

1. Where did the employee stop?
2. Were they in direct travel to and from the work site?
3. Was there an emergency which would have caused the employee to be in uniform but not in direct travel to and from the work site?

All employees required to be in uniform must wear the entire uniform . . . Substitution of other types of clothing for parts of the uniform or alterations of the uniform are permitted when clearly authorized under policy or contractual guidelines.

1. What uniform is required? What was missing?
2. What was substituted or altered outside of policy or contract?

Stopping at an establishment which serves alcoholic beverages, while in uniform and the return of uniform items are covered by P.D. 02.03.103 "Employee Uniforms."

Rule #43 Rule rescinded as of April, 2000. Number intentionally not reused.

Rule #44 Rule rescinded as of April, 2000. Number intentionally not reused.

Rule #45 Rule rescinded as of April, 2000. Number intentionally not reused.

Rule #46 Rule rescinded as of 2005. Number intentionally not reused.

Rule #47 Falsifying or Altering Documents

An employee shall not falsify or alter documents, including but not limited to, employment applications, road book entries, case notes, log book entries, investigative reports, time cards or reports, health care provider statements or travel vouchers. Punching someone else's time card or altering a time card in a fraudulent manner is expressly prohibited. Violation of this rule shall result in discharge.

1. What report or document was falsified or altered?
2. How was it falsified or altered?
3. How is it known the employee falsified or altered the document/report?

Rule #48 Giving or Receiving Gifts or Services

Employees are forbidden from exchanging with, giving to, or accepting gifts or services from a prisoner, including but not limited to soda or pop, candy or other foodstuffs, tobacco products or shoe shines.

1. Did the employee give or receive a gift or service?
2. What was the gift or service?
3. How is it known the exchange was made?

Rule #49 Fighting

Employees shall not fight or assault any person in a facility. An employee may act to reasonably defend oneself against actual or displayed violence or to execute employee duties in accordance with custody and security policies and procedures.

1. Who was the employee fight with or assaulting?
2. What type of force was being used (describe strikes, pushes, grabs, etc.)?
3. Was the behavior in self-defense or other purpose authorized by Policy or Procedure?

Rule #50 Overfamiliarity or Unauthorized Contact

Rule #51 Sexual Misconduct with Offender

Rule #52 Sexual Harassment of Offender

Rule #53 Workplace Safety

Rule #54 Use of Recording Devices

Handout 6A - Components Required in Gender Based Misconduct Investigations

1. Allegation

- ☞ **What** is the allegation being investigation?
- ☞ Be specific as to date of alleged incident.
- ☞ Summarize the allegation and identify Principal (staff) and Complainant (prisoner).

- ☞ **Who** reported the incident?
- ☞ Be specific, i.e., Warden Jane Jones, Inspector Sara Smith, Prisoner Susan Young #123456, etc.

- ☞ **How** was the alleged incident reported?
- ☞ Be specific, i.e., 307 Complaint Against Employee, Prisoner Grievance, etc.
- ☞ If submitted as a grievance, provide date filed.

- ☞ **When** did the alleged incident occur?
- ☞ Be specific as to the date and time of alleged incident.

2. Venue/Jurisdiction

- ☞ **Where** exactly did the alleged incident occur?
- ☞ Include the county and state, e.g., Washtenaw County, State of Michigan.

3. Date/Time of Incident

- ☞ Where exactly did the alleged incident occur?
- ☞ If the time of alleged incident is available, record it.

4. Principal

- ☞ Identify the staff member against whom the allegation was made by: first and last name, position, facility, employee number, date of hire, shift, union, current status, i.e., working , stop order, etc..

5. AIPAS Inquiry

- ☞ Document that the AIPAS database was queried for past investigations which may have involved the prisoner who filed the grievance as well as the staff member against whom the grievance was filed.

6. **Individuals Interviewed and Summary**

- ☞ Identify by first and last name, and number all prisoners who were interviewed.
- ☞ Identify by job title as well as first and last name all staff members who were interviewed.
- ☞ Identify by job title as well as the first and last name of all who were present during interview, i.e., MCO Union Representative John Smith, Attorney Jane Jones, etc.
- ☞ Include the date, time, and location of the interview.
- ☞ Summarize statements from individuals interviewed.
- ☞ Obtain a written statement and/or written response to a questionnaire from relevant witnesses.

7. **Confidentiality Warning**

- ☞ Document that all individuals who were interviewed were advised of the importance of maintaining confidentiality.
- ☞ Note: this may be included in the individual summaries prepared for each individual who was interviewed, and may also be included at the beginning of a questionnaire.

8. **Additional Information**

- ☞ Identify all documents that were reviewed during the course of the investigation.
- ☞ If any of the documents provided relevant information, summarize them.

9. **Conclusion/Disposition**

- ☞ Summarize allegation and findings.
- ☞ One of the following conclusions must be reached: Sufficient Evidence, Insufficient Evidence, No Evidence, or Other.
- ☞ If any other finding is made, identify what policy, procedure, and/or work rule was violated.

10. **Attachments**

- ☞ List all documents which are being included with the report.

Investigating Gender-Based Misconduct Complaints

Carry Over Activity

What are the two most important things that I have learned during this training?

1)

2)

How am I going to use this information back at work?

