

Appendix B. Sample Policy: Sexual Misconduct

Disclaimer: The inclusion of this resource, which is referenced throughout this report, is for informational purposes only and does not constitute an endorsement of specific individuals and/or organizations, or their policies, products, and services, by the U.S. Department of Justice. The formatting of this appendix has been adjusted to adhere to COPS Office publication standards and to enhance accessibility. Its content has not been altered.

Draft Sample Policy Concerning Sexual Harassment and Misconduct by Law Enforcement against Members of the Public

*Developed by Andrea J. Ritchie, Soros Justice Fellow,
and the Policing Subgroup of the LGBT/HIV Federal Criminal Justice Policy Working Group*

Background

The International Association of Chiefs of Police (IACP) recommends that all law enforcement agencies adopt written policies specifically addressing sexual harassment and misconduct by members of law enforcement agencies against members of the public and arrestees. Additionally, a core requirement of the Prison Rape Elimination Act (PREA) standards is that law enforcement agencies create a written policy addressing “all forms of sexual abuse and sexual harassment and outlining the agency’s approach to preventing, detecting, and responding to such conduct.”⁵⁰ (§151.111) The standards also require agencies to “employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its lockups.”

Policy

This agency strictly prohibits sexual harassment, sexual assault, sexual misconduct, sexual abuse, and rape of any member of the public by any member of the agency. Engaging in such conduct will be grounds for immediate discipline, up to and including suspension and/or termination.

⁵⁰ While PREA standards apply with equal force to sexual misconduct by police and prison officials and by fellow detainees, arrestees, and prisoners, this policy addresses only sexual misconduct by police officers.

Definitions

Sexual misconduct by law enforcement is defined as any behavior by an officer that takes advantage of the officer's position in law enforcement to misuse authority and power (including but not limited to force) in order to commit a sexual act, initiate sexual contact with another person, or respond to a perceived sexually motivated cue (from a subtle suggestion to an overt action) from another person. It also includes any communication or behavior by an officer that would likely be construed as lewd, lascivious, inappropriate, or conduct unbecoming an officer or that violates general principles of acceptable conduct common to law enforcement. Additional forms of sexual misconduct include adult consensual sexual contact while on duty, voyeuristic behavior, and non-sexual contacts (e.g., unnecessary call backs to crime victims and witnesses).

Prohibited conduct

1. **Sexual activity on duty** – Engaging in sexual activity or sexually motivated behaviors is prohibited under any circumstances:
 - a. while on duty, or
 - b. in a police vehicle under control of the agency, or
 - c. in, or at, a police or governmental facility.

Engaging in sexual activity while on duty is harmful to the agency's reputation and a breach of the public's trust. It is prima facie evidence of neglect of duty. Examples of prohibited sexual activity or sexually motivated behaviors include:

- i. sexual contact by force (e.g., sexual assault, rape);
- ii. extorting sexual favors in exchange for not taking law enforcement action, ticketing or arresting an individual;
- iii. gratuitous physical contact with suspects (e.g., inappropriate or unnecessary, or unnecessarily invasive searches, frisks or pat-downs, unnecessarily brushing up against members of the public);
- iv. officer-initiated sexual contacts while on duty;
- v. engaging in citizen-initiated sexual contact while on duty;
- vi. sexual behavior while on duty (e.g., masturbation, viewing and/or distributing pornographic images, sexting);

- vii. unnecessary contacts/actions taken by officers for personally and/or sexually motivated reasons (e.g., unwarranted call backs to crime victims, making a traffic stop to get a closer look at the driver for non-professional reasons);
- viii. inappropriate or unauthorized use of personal information, including telephone numbers, obtained from individuals in the course of duty, and of agency resources and/or information systems for other than legitimate law enforcement purposes;
- ix. any display of a member's uncovered genitalia, buttocks, or breast in the presence of an arrestee, detainee, or resident, and;
- x. voyeuristic actions that are sexually motivated (e.g., looking in windows of residences for sexually motivated reasons). Voyeurism is defined as an invasion of privacy of an arrestee, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an arrestee who is using a toilet in his or her cell to perform bodily functions; requiring an arrestee to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an arrestee's naked body or of an arrestee performing bodily functions.

2. **Sexual activity off-duty**

- a. Employees shall not use any agency facility or property, vehicle, or information system to initiate or participate in a sexual act with another or engage in voyeuristic behavior that is personally or sexually motivated.
 - b. Agency members shall not use their official position, official identification cards or badges to coerce, persuade, force or initiate sexual contact or penetration with anyone, or to solicit sexual conduct when off duty.
3. **Sexually inappropriate material** – Unless the employee can demonstrate a legitimate agency interest in such conduct, such as a recognized policy investigation into criminal activity or employee misconduct, employees shall refrain from any communications of sexually inappropriate material, electronic or otherwise, while on duty.
4. **Unnecessary law enforcement activity** – Officers shall not conduct any stop or investigation that is personally or sexually motivated and falsely veiled as a legal and warranted action within policy. Employees shall avoid inappropriate or unnecessary search, frisk or pat-downs.
5. **Discriminatory or sexual language or gestures** – In the performance of their duties, members shall not use coarse, violent, profane or insolent language or gestures, and shall not express any prejudice concerning race, ethnicity, religion, politics, national origin, lifestyle, gender, disability, sexual orientation, gender identity, or any personal characteristics. Discourteous conduct may include overt rudeness, annoyance, abusive or insulting language, racial or ethnic slurs, overbearing attitude, sexual or social references, disrespect, or a lack of proper attention or concern.

Frisks

1. Under no circumstances shall members of the agency frisk any person for the purpose of viewing or assigning gender based on the person's anatomy or genitalia or for any demeaning or harassing purpose.
2. Transgender, intersex, and gender-nonconforming individuals shall not be subject to more invasive frisk procedures than other individuals in the field or in police holding facilities.
3. At no time should a frisk involve touching of the breasts, genital area or buttocks absent reasonable suspicion to believe that an individual is concealing a weapon presenting an immediate danger to the officer in that location, or probable cause to believe that an individual is concealing weapons, evidence or contraband in that location.
 - a. When conducting a frisk of a woman, if the officer has a reasonable suspicion that a weapon is concealed in the chest area, the proper method of frisking the area consists of blading the side of the hand in between the breasts and then running the side of the hand underneath the breasts, palm facing downwards.

Searches

1. Under no circumstances shall members of the agency search any person, including searches premised on an individual's consent, for the purpose of viewing or assigning gender based on the person's anatomy or genitalia, or for any demeaning or harassing purpose.
2. Transgender, intersex, and gender-nonconforming individuals shall not be subject to more invasive searches than other individuals in the field or in police holding facilities.
3. At no time should a search involve touching of the breasts, genital area or buttocks absent probable cause to believe that an individual is concealing weapons, evidence or contraband in that location.
 - a. When conducting a search of a woman, if the officer has probable cause to believe that a weapon, evidence or contraband is concealed in the chest area, the proper method of searching the area consists of blading the side of the hand in between the breasts and then running the side of the hand underneath the breasts, palm facing downwards.
4. Before searching an individual when no lawful basis exists for the search other than the individual's consent, members shall inform the individual of their right to refuse a search based on consent, and ask for the written or recorded consent of the individual to be searched. If no such consent is provided, then no search will be conducted.

5. Before conducting any search of an individual in the field or at a police holding facility, officers conducting the search will ask the individual to be searched their preference with respect to the gender of the officer conducting the search (i.e. a transgender woman who identifies as a woman may prefer to be searched by female members of the agency). This request will be honored absent exigent circumstances, which shall be documented in writing as set forth below. This provision does not apply to frisks conducted to ensure officer safety.
 - a. If exigent circumstances exist or the search involves a frisk conducted to ensure officer safety and there is no time to determine whether the individual would feel safer with a male or female officer, then the default should be for the individual to be searched by a female officer, unless a male officer is explicitly requested prior to or during the search. A search of a transgender, gender non-conforming, or intersex person by an officer of the same gender identity shall be considered a same-sex search for purposes of PREA and any other applicable law.
 - b. If no officer of the gender requested is available, then the members shall:
 - i. Summon an officer who is of the gender requested by the individual to conduct the search; and if no such officer is available within a reasonable time period or the individual's request is not honored for any other reason, the member shall document in the command log the individual's preference with respect to the gender of the officer performing the search, and the reason the individual's preference was not honored.
 - ii. If an officer of the same sex is not available to conduct a legally necessary strip search, then such a search may only be conducted in private by a physician as a last resort.
 - c. At no time shall a member refuse to search someone based on actual or perceived gender identity or gender expression.

Transport

1. All members are required to contact dispatch at the beginning and end of transport and to document mileage from start to finish of each trip to transport arrestees.

Additionally, it is recommended that all police vehicles will be equipped with global positioning service (GPS) devices to track their location at all times.

Police lockups

1. Educational material concerning the agency's policy concerning sexual harassment, assault, abuse and misconduct shall be provided to all arrestees upon arrival at a police facility, and shall be displayed throughout police facilities through posters and written materials in commonly spoken languages. Such material will include information about arrestees' options for reporting

sexual abuse and sexual harassment, retaliation for reporting such an incident, or staff neglect or violation of responsibilities that may have contributed to the abuse. (For example: Arrestees may make a report of sexual abuse or sexual harassment by informing any staff member verbally or in writing; requesting a medical consultation through sick-call; having a friend or family member report on their behalf verbally or through the agency webpage. (PREA Standard §115.151 (a)(b)). Contact information for a local rape crisis center or other victim advocacy organization should also be included.

2. Officers will refrain from observing arrestees using toilets or engaging in private bodily functions absent exigent circumstances.
3. The department provides arrestees multiple ways to privately report sexual abuse and sexual harassment, including one method for reporting to an outside entity. Specifically, the department has entered into an agreement with an outside entity that is not part of the agency (i.e., [X city] police or a civilian oversight agency), and that is able to receive and immediately forward reports of sexual abuse and sexual harassment to agency officials.
4. The department has entered into an agreement with [local rape crisis center] reflecting that the center's information is being provided to arrestees, who may contact the organization upon release or transfer from the lockup, to ensure the provision of care for arrestees following a sexual assault.

Duty to report

1. Members of the agency shall immediately report to their direct supervisor any knowledge, suspicion, or information regarding an incident of: sexual abuse or sexual harassment by any member of the agency or retaliation against arrestees or staff who reported such abuse. Staff are also required to report any neglect of duties or deviation from agency policy that may have contributed to an incident of sexual abuse or sexual harassment. If a staff member is unable to report to their direct supervisor for any reason, the report may be made directly to the agency PREA Coordinator (§115.161 (a) and §115.151 (d)).
2. Staff shall not reveal any information regarding a report of sexual abuse or sexual harassment to anyone other than their direct supervisor or the agency PREA Coordinator (§115.161 (b)).
3. Arrestees and staff who report sexual abuse and sexual harassment, or cooperate with an investigation, will be protected from retaliation (§115.167 (a)).

Response to allegations of sexual assault or misconduct

1. Where the allegations relate to sexual misconduct that took place outside of a police holding facility governed by PREA, they shall immediately be referred to a civilian oversight agency, if one exists. In the absence of a civilian oversight agency, the complaint shall be investigated by

designated officers not assigned to the same precinct or unit as the alleged perpetrator, who have received training specific to investigation of police sexual misconduct as well as training specific to investigation of sexual assault.

2. Where the allegations relate to sexual misconduct that took place in a police holding facility governed by PREA, the PREA Coordinated Response Team will make recommendations regarding housing changes, transfers, and the provision of emotional support services for arrestees (§115.165). Refer to the Agency Coordinated Response Protocol for information about the Coordinated Response Team and investigations.
3. The PREA Coordinator will meet directly with arrestees and staff who report to monitor them for retaliation on the day after the report is made and weekly thereafter; the PREA Coordinator will also make recommendations to the agency on how to protect that person, if deemed necessary.
4. The agency shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation unless the allegation has been determined to be unfounded. This review shall ordinarily occur within 30 calendar days of the conclusion of the investigation. The review team shall include upper-level management officials, with input from line supervisors and investigators. The review team shall:
 - a. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
 - b. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; gang affiliation; or was motivated or otherwise caused by other group dynamics at the lockup;
 - c. Examine the area where the incident allegedly occurred to assess whether physical or other conditions in the area may enable abuse;
 - d. Assess the adequacy of staffing levels in that area during different shifts;
 - e. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff;
 - f. Prepare a report of its findings, including, but not necessarily limited to, determinations made pursuant to the incident review, any recommendations for improvement and submit such report to the PREA Coordinator; and

The agency shall implement the recommendations for improvement, or shall document its reasons for not doing so (§115.186).

5. Using a standardized instrument and set of definitions, the agency shall collect accurate, uniform data for every allegation of sexual abuse at locations under its direct control. The agency shall maintain, review, and collect data as needed from all available documents and sexual abuse incident reviews.
6. The agency shall aggregate the incident-based sexual abuse data at least annually. The data collected shall include the data necessary to answer all questions from the Local Jail Jurisdictions Survey of Sexual Violence conducted by the Department of Justice, or any subsequent form developed by the Department of Justice and designated for police lockups.

Prevention and oversight

In order to effectively prevent, detect and ensure accountability for police sexual misconduct, departments should:

1. Contract with local anti-violence organizations to conduct exit interviews and random contacts with individuals who have been stopped, detained or arrested by police within one week to inquire as to whether the individual experienced sexual harassment or misconduct.
2. Conduct unannounced supervision of officers in the field on a regular (at a minimum, weekly) basis in order to monitor interactions for compliance with this policy.
3. Incorporate the following into quarterly reviews of officers' performance:
 - a. Review of number of stops of women
 - b. Review clearance rate of stops and arrests of women
 - c. Review of language used in reports to describe women and LGBT individuals
 - d. Review of complaints received from members of the public and fellow officers regarding sexually inappropriate language, conduct, and behavior
4. Prohibit hiring or promoting officers with a history of perpetrating sexual abuse in the community or in an institutional setting; and consider any incidents of sexual harassment in its review of candidates for employment or promotion (115.117).
5. Regularly conduct integrity audits designed to detect violations of this policy.
6. Independently audit agency compliance with this policy on an annual basis.

7. Review data collected and aggregated concerning violations of this policy in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, by:
 - a. Identifying problem areas;
 - b. Taking corrective action on an ongoing basis; and
 - c. Preparing an annual report of its findings and corrective actions for each lockup, as well as the agency as a whole.
 - i. The report should include a comparison of the current year's data and corrective actions with those from prior years, and should provide an assessment of the agency's progress in addressing sexual abuse. The agency report should be made readily available to the public through its website.