

CF OPERATING PROCEDURE
NO. 155-28

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, April 17, 2017

Mental Health/Substance Abuse

SEXUAL MISCONDUCT IN STATE MENTAL HEALTH TREATMENT FACILITIES

1. Purpose. This operating procedure describes departmental procedures for complying with the provisions of sections 394.4593 and 916.1075, Florida Statutes, regarding any suspected or actual sexual misconduct of an employee with a resident in a state mental health treatment facility.

2. Scope.

a. This operating procedure applies to state mental health treatment facilities, whether operated by the Department of Children and Families or by contract with private entities.

b. The reporting requirements of this operating procedure are in addition to, and do not replace, reporting procedures found in:

(1) The abuse, neglect and exploitation reporting system. Allegations of abuse, neglect or exploitation must always be reported immediately to the Florida Abuse Hotline and appropriate local law enforcement agency as required by law.

(2) CFOP 180-4, Mandatory Reporting Requirements to the Office of Inspector General.

(3) CFOP 155-25, Incident Reporting and Processing in State Mental Health Treatment Facilities.

3. References.

a. Section 394.4593, Florida Statutes (F.S.), Sexual misconduct prohibited; reporting required; penalties.

b. Section 916.1075, F.S., Sexual misconduct prohibited; reporting required; penalties.

4. Definitions. As used in this operating procedure, the following terms shall mean:

a. Covered Person. This term is used in section 916.1075, F.S. and refers to people in forensic facilities only. An employee, volunteer, or intern of the Department; any person under contract with the Department; and any person providing care or support to a forensic resident on behalf of the Department or their providers.

b. Employee. This term is used in section 394.4593, F.S., and refers only to people in civil facilities as defined in Chapter 394, F.S. Any paid staff member, volunteer, or intern of the Department, any person under contract with the Department; and any person providing care or support to a resident on behalf of the Department or its providers.

This operating procedure supersedes CFOP 155-28 dated October 17, 2014.

OPR: SMF

DISTRIBUTION: X: OSGC; ASGO; SMF; Region/Circuit Mental Health Treatment Facilities.

c. Sexual Misconduct. In civil facilities, "sexual misconduct" means any sexual activity between an employee and a resident, regardless of the consent of the resident. In forensic facilities, "sexual misconduct" means any sexual activity between a covered person and a forensic resident in the custody of the Department, regardless of the consent of the resident. The term does not include a procedure completed for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee or covered person. The term does not apply to an employee or covered person who is legally married to the resident or who has no reason to believe that the person with whom the employee or covered person engaged in sexual activity is a resident in the custody of the Department. The term does not apply to an event instigated by a resident with no involvement or instigation by a covered person or employee.

d. Sexual Activity means:

- (1) Fondling the genital area, groin, inner thighs, buttocks, or breasts of a person.
- (2) The oral, anal, or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another with any other object.
- (3) Intentionally touching in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering these areas of a person or forcing or enticing a person to touch the perpetrator.
- (4) Intentionally masturbating in the presence of another person.
- (5) Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person.
- (6) Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality or the simulation of any act involving sexual activity in the presence of another person.

e. State Mental Health Treatment Facility. A facility operated by the Department of Children and Families or by a private provider under contract to serve individuals committed pursuant to Chapter 394 or Chapter 916, Florida Statutes.

5. Policy. It is the responsibility of mental health treatment facility administrators to ensure the reporting of all incidents of sexual misconduct in accordance with the requirements of this operating procedure.

6. Procedures. Each facility will adhere to the following procedures:

a. Establish a facility operating procedure to fully comply with the provisions of sections 394.4593 and 916.1075, F.S., Sexual Misconduct, including:

(1) An employee or covered person who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect that a person has engaged in sexual misconduct, shall immediately (within no more than two hours of the incident) report the incident to the Department's central abuse hotline and to the appropriate law enforcement agency. NOTE: These provisions are specified in statute as the duty of the employee. Criminal penalties are provided for an employee who does not comply with these provisions. The employee or covered person will notify appropriate supervisory staff who will contact administrative staff in accordance with facility based policy.

(2) The employee or covered person shall prepare, date, and sign a statement that specifically describes the nature of the sexual misconduct, the location and time of the incident and the persons involved. This statement shall be prepared within 24 hours of the incident.

(3) In civil facilities, pursuant to section 394.4593(6), F.S., the employee shall deliver the report to the Hospital Administrator or designated person who is responsible for providing copies to the Department's Inspector General and to the Chief Hospital Administrator of Mental Health Treatment Facilities, Mental Health Program Office within 48 hours of the incident or within 48 hours of the incident being reported to facility staff. The Hospital Administrator shall follow-up the submission of information to the Inspector General and law enforcement to assure that timely investigations are scheduled and executed.

(4) In forensic facilities, pursuant to section 916.1075(5), F.S., for an allegation pertaining to a forensic resident committed to the Department, the covered person shall deliver the report directly to the Department's inspector general as appropriate, or to the Hospital Administrator or designated person who shall provide copies to the Department's Inspector General and to the Chief Hospital Administrator of Mental Health Treatment Facilities, Mental Health Program Office within 48 hours of the incident or within 48 hours of the incident being reported to facility staff. The Hospital Administrator shall follow-up the submission of information to law enforcement to assure that timely investigations are scheduled and executed.

(5) The internal policy shall protect the confidentiality of the employee or covered person who reports the allegation of sexual misconduct.

(6) The internal policy shall include a checklist of mandated activities to assure that the facility complies with all provisions of the law.

(7) The internal policy shall assure the protection and preservation of evidence to facilitate fair and just investigation by the Inspector General and/or law enforcement. The reports of incidents shall be maintained in a confidential manner with code identifiers or initials.

b. Upon receipt of completed investigative reports, the hospital administrator will provide copies to the Chief Hospital Administrator.

c. When there is an allegation of sexual misconduct which involves an employee licensed by the Department of Health (DOH), the allegation will also be reported to the DOH.

(1) Reports should be made in a timely manner (as with other notifications) using the DOH complaint form (DOH web site) or other similar written format.

(2) A report should also be made to the applicable law enforcement.

(3) The victim or legal guardian will be informed of the incident.

(4) If under investigation, consent from the victim or legal guardian will be obtained to release records.

d. Professionals licensed by DOH also have an independent requirement to report to DOH any allegations against them.

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

WENDY SCOTT

Director, State Mental Health Treatment Facilities, Policy and Programs

SUMMARY OF REVISED, ADDED, OR DELETED MATERIAL

Paragraph 1 was reworded to provide more clarity. Unnecessary language was deleted from paragraph 2. The wording of paragraph 6b was changed to require that copies of investigative reports be sent to the Chief Hospital Administrator.