

Investigations of Sexual Offenses

Information for Facility Managers

Kentucky Department of Juvenile Justice

November 7-9, 2005

Summary of Sexually Reported Incidents in DJJ Facilities

From January 2003- October 2005

- Total Number of Victims: 78
- Number of Founded Incidents: 23 **29%**
- Number of Unfounded Incidents: 54 **69%**
- Number of Pending Incidents: 1
- Number of Female Victims: 36 **46%**
- Number of Male Victims: 42 **54%**
- Number of Female Offenders: 25 **32%**
- Number of Male Offenders: 53 **68%**
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Summary of Sexually Reported Incidents in DJJ Facilities

From January 2003- October 2005

▪ Facilities	
▪ Morehead YDC: 26	33%
▪ Adair Youth Development Center: 19	24%
▪ McCracken RJDC: 7	9%
▪ Cardinal Treatment Center: 6	8%
▪ London Group Home: 3	4%
▪ Northern YDC: 3	4%
▪ Bowling Green Group Home: 1	1%
▪ Breathitt RJDC: 1	1%
▪ Hopkinsville Group Home: 1	1%
▪ Laurel RJDC: 1	1%
▪ Lincoln Village: 1	1%

Preserve-Report-Document

Preserve

- If you are being notified of an incident, and did not receive the allegation directly from the victim, there may not be a need for you to interview the victim.
- If someone else has interviewed the victim and obtained the essential information (who, what, when, how, and where), there is no need to have the victim repeat the story. This person needs to thoroughly document their interview.
- Victims should not be required to retell their story over and over again.

Preserve

- As soon as you become aware of an incident, begin thinking about what needs to be preserved to either prove or disprove an allegation.
- Think in terms of both a criminal and administrative hearing.
- We will only get one shot at doing this right.

Things to Consider Preserving

- Isolate and protect the area (s) where the alleged offense was reported to have occurred.
- Clothing of both the victim and offender
- Bedding-blankets, sheets, towels
- Items in the trash cans
- Logbooks
- Duty Rosters/timesheets

Things to Consider Continued

- Visitor Logs
- Check-out Logs (keys to isolated areas)
- Videos/Digital Recordings (tabs on cassettes)
- Be aware if the victim or potential resident witnesses are due to be released from custody soon after the allegation has been made. They can be hard to find after they are released back into the community.
- Correspondence and canteen account of the youth.

Potential DNA Evidence

Blood

Semen

Saliva

Skin

Hair

Report

- Call the hotline. The hotline is monitored after hours and on weekends on regular intervals. An investigator will get back with you when the message is retrieved.
- Notify your chain of command as required by DJJ.
- In the event you have an incident that is fresh, go ahead and notify law enforcement. When in doubt, report.

Documentation

- As soon as time permits, prepare a memo to document everything you did from the time you were notified.
- Include who you notified and when.
- What you did to protect evidence.
- What you instructed others to do.

Considerations

- Our number one concern should be the well being of the victim. If medical treatment is necessary, make arrangements to have it done.
- You should be aware of the need to prohibit contact between the victim and the offender.
- Do not discuss the allegation with anyone besides those who you are required to talk with. If possible, do not discuss the incident with the alleged offender. We want to limit the opportunity to destroy potential evidence and establish an alibi.

Considerations

- Seldom will we learn about one of these incidents in a timely manner.
- If the victim denies that something happened or recants, we still need to work the case as if it did. They could change their minds again and evidence could be lost.

OOI Investigation

- We will attempt to get to the victim as soon as possible and conduct an interview.
- Depending on the allegation, law enforcement will be notified. With the exception of Jefferson and Fayette Counties, KSP will be the agency notified.
- Currently, not all sex acts between staff and youth in a DJJ facility are a crime.

OOI Investigation

- If a criminal investigation is initiated, OOI will conduct an administrative investigation at its conclusion. Due to *Garrity* issues, it can complicate the matter if one is done before the other.
- Even if criminal charges are not pursued, administrative action could still take place.

Garrity - Administrative Investigation Warnings

- ...You are entitled to all the rights and privileges guaranteed by the laws and the constitution of this state and the United States, involving the right not to be compelled to incriminate yourself. I further wish to advise you that refusal to testify or to answer questions relating to the performance of your departmental duties could result in your dismissal from the department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges...

Garrity Cont'd

- ...At this time I am going to question you regarding (type of investigation). This questioning concerns administrative matters relating to the official business of the department. I am not questioning you for the purpose of instituting any criminal proceeding against you. During the course of the questioning, even if you do disclose information which indicates that you may be guilty of criminal conduct, neither your statements nor the fruits (products, results, etc.) of any statement you make will be used against you in any criminal proceedings...

Standard of Proof

- In an administrative hearing the standard of proof is the preponderance of the evidence (51%).
- In a criminal trial the standard of proof is beyond a reasonable doubt.

KRS Proposal

- Being an employee, contractor, vendor, or volunteer of the Dept. of Corrections, or a detention facility as defined in KRS 520.010, or of an entity under contract with either the department or a detention facility for the custody, supervision, evaluation, or treatment of offender, he subjects an offender who is incarcerated, supervised, evaluated, or treated by the Dept. of Corrections, the detention facility, or the contracting entity, to sexual contact.
- Attempt to include DJJ and elevate the penalty to a felony. (statute of limitations)

Victim Polygraph Limitations

- 3. Examinations of victims of sex crimes.
- The victim Section of a sex crime has the right to refuse examination and shall be informed of this right. The victim's consent to the examination shall be in writing and received before the examination begins.
- Examinations will not be conducted of victims of sex crimes, as defined in KRS 17.500, to verify a crime has occurred.
- Examinations of a sex crime victim shall not be conducted unless:
 - 1) The suspect has declined examination, has passed an examination or has been found unsuitable for an examination; and
 - 2) There is a testable dichotomy for polygraph testing; and

Victim Polygraph Limitations

- 3) Before the examination, the investigating officer has provided the examiner with a signed, written document listing investigative strategies which have been used in the case, and declaring that the victim has not been told that the investigation would cease if the victim refuses to consent to an examination. This signed, written document shall contain no reference to whether the victim is or is not behaving like a typical sexual assault victim, as scientific evidence has shown that behaviors of individual sexual assault victims vary widely and therefore cannot be described as typical.
- Under no circumstances will the victim of a sex crime and the suspect be tested in or be present in the same facility at the same time.
- The victim will be advised that at the victim's request, a victim advocate will be allowed to watch the examination from a two way mirror or by closed circuit television in real time. The examiner and the victim will be the only two individuals inside the examination room during the entire examination process.

Victim Polygraph Limitations

- At the beginning of the examination, the examiner will advise the victim that the examination is a stressful experience and that if the victim feels uncomfortable at any time with the polygraph process, it will be terminated immediately.
- Under no circumstances will the victim be interrogated. A post-examination debriefing will be conducted to give the victim the opportunity to explain any unresolved responses on the examination. The victim will be advised that upon the victim's request, a victim advocate will be allowed to watch the debriefing session from a two-way mirror or closed circuit television. The testing format utilized must be a researched comparison/control question format (CQT). The relevant questions will be answered with a “yes” answer.
- A Irrelevant/Relevant Question Format will not be utilized on any victim of sexual assault.

Victim Polygraph Limitations

- Past sexual history of the victim will not be explored by the examiner.
- No Sex Related Comparison/Control Questions will be asked of the victim.
- At the end of the examination, the examiner will advise the victim of the results.
- Quality Control of the examination must be conducted in writing and maintained with the polygraph file at least until after adjudication of the case.
- The entire examination must be videotaped with adequate picture and sound from the time the victim walks into the testing room until the victim leaves the testing room for the last time. There will be no break in the videotaping of the process. The videotape will be maintained as evidence until at least the investigation is adjudicated.

Sexual Assault Nurse Program

- Available in Fayette, Northern KY, Paducah, and Bowling Green areas
- Provides a much more comprehensive rape exam and documentation and preservation evidence.
- Will do the exam for administrative purposes.
- Will examine juveniles over the age of 14.