



Operating Procedure

Effective Date January 1, 2015	Number 038.2
Amended 4/28/16	Operating Level Department
Supersedes Operating Procedure 038.2 (1/1/12)	
Authority COV §53.1-10, §63.2-1606	
ACA/PREA Standards 4-4429-1; 4 ACRS-6A-01-1	
Office of Primary Responsibility Chief of Mental Health Services	

Subject

REPORTING AND INVESTIGATION OF ALLEGED ABUSE OR ASSAULT AGAINST AGED OR INCAPACITATED OFFENDERS

Incarcerated Offender Access

Yes No

FOIA Exempt Yes No

Attachments Yes #1 No

I. PURPOSE

This procedure establishes protocol for the protection of offenders with disabilities through reporting and investigating incidents of alleged abuse against aged or incapacitated offenders in Department of Corrections facilities, as mandated by COV §63.2-1606.

II. COMPLIANCE

This operating procedure applies to all units operated by the Department of Corrections (DOC). Practices and procedures shall comply with applicable State and Federal laws and regulations, Board of Corrections policies and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

III. DEFINITIONS

Abuse - The improper intentional act or treatment of an offender by a trusted individual or caretaker that causes that causes physical, financial, or emotional injury to the offender

Aged Offender - For the purpose of this operating procedure, any offender who is 50 years of age or older.

Employee - A person who is paid by the Department of Corrections on an hourly, salaried, or contractual basis, or who is paid by another state agency or outside vendor for working in a position within DOC or in a position that supervises offenders.

Financial Exploitation - Mismanaging money or stealing property, which also includes forcing an offender to sign/give property over to another.

Incapacitated Offender - For the purpose of this operating procedure, an offender who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age, or other causes to the extent that the offender lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his or her well-being.

Licensed Mental Health Programs - Programs that are licensed by the Virginia Department of Behavioral Health and Developmental Services

Neglect - The act of not arranging for, or the withholding of goods or services necessary to maintain physical and mental health.

Organizational Unit Head - The person occupying the highest position in a DOC operating unit, such as a correctional facility, regional office, probation and parole office, Virginia Correctional Enterprises (VCE), Academy for Staff Development, Corrections Construction Unit, Agribusiness Unit, or a separate operational unit

Physical Abuse - The willful infliction of pain or injury, such as beating, slapping, kicking, or other abuse such as causing sprains, burns, bruises, or dislocations, or abuse leading to injury or death.

Psychological Abuse - Willfully inflicting emotional pain or injury, such as verbal harassment, threats, or coercion.

Qualified Mental Health Professional (QMHP) - An individual employed in a designated mental health services position as a Psychologist or Psychology Associate, Psychiatrist, Social Worker (Masters level) or Registered Nurse or an individual with at least a Masters degree in psychology, social work or relevant human services area with knowledge, training, and skills in the diagnosis and treatment of mental disorders.

Sexual Abuse

- **Sexual abuse of an offender by another offender** includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:
 - Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
 - Contact between the mouth and the penis, vulva, or anus
 - Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument
 - Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.
- **Sexual abuse of an offender by a staff member, contractor, or volunteer** includes any of the following acts, with or without consent of the offender:
 - Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
 - Contact between the mouth and the penis, vulva, or anus
 - Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire
 - Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire
 - Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire
 - Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described as sexual abuse in this section
 - Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an offender
 - Voyeurism by a staff member, contractor, or volunteer

This definition does not include incidental touching during security searches, medical personnel engaged in evidence gathering or legitimate medical treatment, or to health care personnel performing body cavity searches in order to maintain security and safety within a facility.

Sexual Assault - Any sexual touching or contact which is non-consensual, forced, or coerced in any manner, including but not limited to rape, sodomy, or unlawful touching. (see COV §18.2-67.10)

IV. PROCEDURE

A. Reporting of Alleged Abuse, Neglect or Exploitation of All Offenders

1. Employees and volunteers are required to report all allegations and incidents of abuse on an offender to the Organizational Unit Head or Administrative Duty Officer in a timely manner, and to fully cooperate with any investigation.
 - a. All allegations and incidents of sexual abuse and sexual assault shall be reported immediately, investigated, and managed in accordance with Operating Procedure 030.4, *Special Investigations Unit* and Operating Procedure 038.3, *Prison Rape Elimination Act (PREA)*.
 - b. Allegations and incidents of non-sexual abuse of offenders not covered by this operating procedure shall be reported in accordance with Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*, investigated and managed as appropriate.

2. All allegations of offender abuse shall be investigated systematically to protect the offender and the reporting employee or volunteer.
 3. The results of the investigation shall be made known to the offender, the involved employee or volunteer, and the employee/volunteer's supervisor. The involved employee or volunteer and the employee/ volunteer's supervisor need not be informed of the results of an investigation for sexual abuse and sexual assault investigations.
- B. The requirements of this operating procedure apply specifically to the abuse, neglect, or exploitation of aged or incapacitated offenders as required by COV §63.2-1606. (4-4429-1; 4-ACRS-6A-01-1)
1. Any employee or volunteer, who has reason to suspect or has direct knowledge (including offender self-report) that an aged or incapacitated offender may have been the subject of abuse, neglect, or exploitation shall immediately submit a written, signed statement of such information directly to the Organizational Unit Head or Administrative Duty Officer. The report of the alleged abuse, neglect, or exploitation shall describe the incident(s) as fully as possible; giving the names of the persons involved; the time, date, and location of the incident and the names of any witnesses.
 2. Offender grievances or written complaints shall be reported immediately, and a copy given to the Organizational Unit Head or Administrative Duty Officer.
 3. The Organizational Unit Head or Administrative Duty Officer shall immediately initiate any necessary action to protect and, if necessary, secure all physical evidence and act to protect the safety and welfare of the offender. Photographs(s) will be taken when indicated.
 4. By the end of the shift after receiving a complaint or report of abuse, the Organizational Unit Head or, in their absence, the Administrative Duty Officer, shall review available information and complete an *Incident Report* in VACORIS. The *Incident Report* shall be attached to an e-mail and sent to the Incident Report Distribution list, IncidentReportDistribution@vadoc.virginia.gov (see Operating Procedure 038.1 *Reporting Serious or Unusual Incidents*).
 5. An *Internal Incident Report* marked PREA shall be submitted for all allegations and incidents of sexual abuse and sexual assault in accordance with Operating Procedure 038.1 *Reporting Serious or Unusual Incidents* and the Regional PREA Analyst must be notified.
 6. The Organizational Unit Head, or designee, is required to immediately report to the Mental Health Clinical Supervisor and Chief of Mental Health Services any alleged abuse of aged or incapacitated offenders or offenders who are receiving services from a DOC Licensed Mental Health Program. In the case of a Licensed Mental Health Program, a report is also required to the Department of Behavioral Health and Developmental Services (DBHDS) Licensure Division, using the *Reporting Allegation(s) of Abuse* (see Attachment 1) and attaching a copy of the *Incident Report*.
- C. Facility investigation of alleged abuse, neglect, or exploitation of incarcerated offenders
1. The Organizational Unit Head or, in their absence, the Administrative Duty Officer may make a temporary administrative reassignment of the alleged victim or alleged perpetrator to protect the offender(s). An investigation shall be conducted and documented.
 2. If the Organizational Unit Head believes the information warrants investigation, they shall appoint the Chief of Security, Institutional Investigator, or other appropriate staff to initiate an investigation. If the offender is receiving mental health services, the Organizational Unit Head will notify the Senior Qualified Mental Health Professional (QMHP) or Mental Health Unit Director within one working day of the complaint of alleged abuse, neglect, or exploitation.
 3. The preliminary investigation shall be completed within five working days and results shall be reported to the Organizational Unit Head. The Organizational Unit Head shall forward the completed report to the Special Investigations Unit Point of Contact Agent for review.
 4. After coordination with the Special Investigations Unit, in cases of sexual abuse, assault, or exploitation, the investigation shall include the following:

- a. A written report from the Senior QMHP or Mental Health Unit Director who, in consultation with the psychiatrist (if the offender is prescribed psychotropic medication), will determine the offender's mental status, including the ability of the offender to report factual information. The Senior QMHP or Mental Health Unit Director will submit this report to the Organizational Unit Head within two working days after receiving the request.
 - b. Complete statements obtained from the offender(s) involved in the alleged incident, and statements of any witness and employee allegedly involved in the incident.
5. A copy of the facility's preliminary investigation (founded or unfounded) shall be forwarded to the Special Investigations Unit Chief for review.
6. Request for pictures from outside regulatory agencies - licensed mental health program
- a. If the alleged incident of abuse involves an offender assigned to a licensed mental health program, pictures of the alleged abuse may be requested by the Department of Behavioral Health and Developmental Services (DBHDS) Licensure Division or other involved agencies as appropriate.
 - b. The following procedures shall be followed:
 - i. When an appropriately involved outside agency requests pictures of offender alleged abuse incidents, the Shift Commander, or other appropriate staff shall use a digital camera to take the pictures.
 - ii. Pictures shall be taken in the presence of the representative of the outside agency and the facility staff shall check the picture for quality and date/time, and then sign the picture.
 - iii. Pictures shall be given to the representative of the outside agency. The Shift Commander shall insert a note into the *Incident Report* file indicating the number of pictures taken and description of the pictures taken.
 - iv. Consistent with facility procedures, no other cameras will be allowed into the facility unless directly authorized by the Organizational Unit Head.

D. Review by the Special Investigations Unit (SIU)

1. The SIU may decide to conduct its own investigation. All DOC employees and volunteers are expected to fully cooperate with Special Investigations Unit staff.
2. The Chief of Corrections Operations shall discuss findings of the SIU with the Organizational Unit Head, along with recommendations for any disciplinary or administrative action in accordance with employee standards of conduct (see Operating Procedure 135.1, *Standards of Conduct*) and the requirements of COV §63.2-1606.
3. The employee will be informed of the final outcome of the investigation.

E. Coordination of review with outside agencies

1. Facility staff are expected to cooperate with any investigation by another agency such as the State Police, Department of Behavioral Health and Developmental Services (DBHDS) Virginia Office for Protection and Advocacy (VOPA), or the Department for Aging and Rehabilitative Services (DARS), or any other agency that may have jurisdiction or legal authority to monitor complaints of alleged abuse, neglect, or exploitation of offenders.
2. The coordination of any investigation with other agencies shall be under the direction of the Organizational Unit Head.

F. Staff and Volunteer Education

1. Procedures for reporting and investigating alleged offender abuse shall be made a part of the facility orientation for all new employees and new volunteers.
2. This procedure shall be incorporated into the security staff and non-custodial staff basic and in-service training.

3. Offenders shall be informed of their rights during the offender orientation program.

G. Use of Offender Grievance Procedure

1. Offenders in institutions have the right to utilize Operating Procedure 866.1, *Offender Grievance Procedure*, to file a complaint of alleged abuse and or/neglect.
2. Offenders assigned to Community Corrections facilities or under community supervision have the right to submit a written complaint to the Organizational Unit Head. (see Operating Procedure 866.2, *Offender Complaints, Community Corrections*)

V. REFERENCES

Operating Procedure 030.4, *Special Investigations Unit*

Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*

Operating Procedure 038.3, *Prison Rape Elimination Act (PREA)*

Operating Procedure 135.1, *Standards of Conduct*

Operating Procedure 866.1, *Offender Grievance Procedure*

Operating Procedure 866.2, *Offender Complaints, Community Corrections*

Joint Commission on Accreditation of Healthcare Organizations, Comprehensive Accreditation Manual for Behavioral Healthcare

12 VAC 35-105, Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services

VI. FORM CITATIONS

None

VII. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years from the effective date.

The office of primary responsibility reviewed this operating procedure in January 2016 and necessary changes have been made.

The office of primary responsibility reviewed this operating procedure in January 2017 and no changes are needed at this time.

The office of primary responsibility reviewed this operating procedure in January 2018 and changes are being drafted.

Signature Copy on File

11/10/14

A. David Robinson, Chief of Corrections Operations

Date