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Section-04 Security	OP-040117	Page: 1	Effective Date: 10/10/2019
Investigations	ACA Standards: 2-CO-1A-26, 5-3D-4281-3, 5-3D-4281-6		
Scott Crow, Interim Director Oklahoma Department of Corrections		Signature on File	

Investigations

Oklahoma State Statute, Title 57, “Prisons and Reformatories,” Section 508.4, creates an Investigations Unit within the Oklahoma Department of Corrections (ODOC), with established jurisdiction to investigate criminal wrongdoing or administrative violations at ODOC owned or operated facilities, private prison facility or any other facility who contracts with ODOC house offenders for the State of Oklahoma.

Jurisdiction of an investigation may extend into the community when identified criminal acts directly impact correctional operations and/or for the purpose of fugitive apprehension efforts.

An investigation is defined as a formal in-depth inquiry conducted by the office of Fugitive Apprehension and Investigations (OFAI) staff or other staff member, as designated by the agency director. The inquiry will investigate acts, inferences, and circumstances surrounding an allegation made by any person, information received in the form of a grievance, or information acquired in the normal routine course of business, by any staff, who by virtue of their position came into possession of the allegation/information, which tends to indicate the possibility of criminal activity or departmental violations on the part of an inmate, offender, visitor, employee, volunteer, contractor, or other member of the public, which affects or may affect ODOC. (2-CO-1A-26)

I. Purpose

A. Information

The purpose of the OFAI investigation is to determine whether there is sufficient information available to: (PREA 115.17 (f))

1. Determine whether sufficient facts, circumstances, and/or physical evidence exist to substantiate, refute, or dismiss allegations of criminal activity or administrative violations; (PREA 115.71 (f)(1))
2. Recommend final disposition, based on a culmination of information received during any level of the investigative process;
3. Pursue prosecution of matters involving criminal activity; and
4. Pursue administrative actions involving policy and procedural violations.

B. Investigative Reports

Investigations are an internal management tool used to assist managers in making informed decisions in either day-to-day operations; amending operating procedures; conducting disciplinary actions involving employees or inmates/offenders; initiating criminal or civil proceedings against employees, inmates/offenders, contractors, or members of the public; and detecting violations of procedures or law. The investigative report is intended to present facts and information obtained during the investigative process. As such, it will not contain the opinion of the investigatory agent(s), except as to recommendations of changes to policies and procedures based off of findings from an investigation. (PREA 115.71 (f) (2), (g), 115.71 (a))

II. Sexual Assault Investigations (5-3D-4281-3, 5-3D-4281-6) (PREA 115.21 (a))

A. Allegations of Sexual Abuse or Assault

All allegations of sexual abuse and harassment, including third party and

anonymous reports, will be reviewed to determine if sufficient information exists to complete a formal investigation. (PREA 115.22 (b), 115.61 (c), 115.71 (a)) If an investigation is conducted, it will be done promptly, thoroughly and objectively. (PREA 115.71 (a))

The departure of the alleged suspect or victim from employment or control of the agency will not be a basis for terminating an investigation. (PREA 115.71(j) PREA 115.271(j))

Upon notification/receipt of an allegation of sexual misconduct, abuse, or assault as defined in [OP-030601](#) entitled "Oklahoma Prison Rape Elimination Act," the following process will occur:

1. The facility/unit head will ensure immediate verbal notification to the office of Inspector General (OIG) or duty officer, if physical evidence can be gathered.

The reporting facility /unit head will ensure the crime scene is secured and documented by a staff member until the arrival of an OFAI agent or the verbal release by an OFAI agent is received.

2. If physical evidence is not present due to the assault occurring more than 120 hours prior to notification or the event is defined as abusive sexual contact rather than a non-consensual sexual act, verbal notification will be made by 9:00 a.m. the following business day and crime-scene preservation will not be a requirement. Abusive sexual contact and non-consensual sexual acts are defined in [OP-030601](#) entitled "Oklahoma Prison Rape Elimination Act."
3. The OIG will ensure an OFAI agent, who has received special training in sexual abuse investigations in confinement settings, is assigned to investigate all allegations of inmate-on-inmate non-consensual sexual acts. The OIG or designee may authorize the reporting official to investigate reported incidents of inmate-on-inmate abusive sexual contact and harassment. (PREA 115.71 (b))
4. All staff-on-inmate/offender sexual assaults will be investigated by OFAI in accordance with this policy as well as requirements listed in [OP-030601](#) entitled "Oklahoma Prison Rape Elimination Act." (5-3D-4281-3, 5-3D-4281-6) Alleged incidents of staff sexual misconduct with inmates/offenders will be reported in accordance with [OP-110215](#) entitled "Rules Concerning the Individual Conduct of Employees."
5. The assigned OFAI agent will gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data. (PREA 115.71 (c))

6. The OFAI agent will interview alleged victims, suspects and witnesses; and will review prior complaints and reports of sexual abuse involving the suspect and victim. (PREA 115.71 (c) (d))

III. Requesting Inspector General Investigations

A. Requests

1. The agency director may authorize any investigation.
2. All other requests for OFAI investigations will be submitted electronically utilizing the "Request for an Investigation" ([Attachment G](#), attached) to the Inspector General or designee through the appropriate chain of command.
3. A facility/unit head may directly request an investigation to the OFAI when physical evidence is present or exigent circumstances exist utilizing the "Request for an Investigation" ([Attachment G](#), attached) with immediate notification to the appropriate chain of command.

B. OFAI Authorizations

1. The OFAI may authorize investigations and information or intelligence gathering operations for any reason involving allegations of policy violations and/or violations of state and federal law.
2. Allegations involving staff on staff harassment, retaliation and/or discrimination will be referred to the Employee Rights and Relations Unit for investigation as specified in [OP-110410](#) entitled "Prohibited Discrimination, Harassment and Retaliation."

IV. General Provisions

A. Confidentiality

1. Pursuant to the agency's Administrative Rules adopted pursuant to the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250.1 et seq., investigation reports and other supporting documentation are confidential and not available to the public or employees.
2. Investigation reports and supporting documentation are law enforcement records, and the agency deems confidential any information contained in the investigation reports or in the supporting documentation that has the potential of subjecting any facility, the public, the employees, or the inmates to any unreasonable risk.
3. Where applicable, investigative activity will also be protected by the attorney-client privilege and the attorney work-product privilege.

B. General Counsel Notification

When the subject of an investigation is known to be a party to litigation against the agency, the General Counsel will be notified by the facility/unit head.

1. The office of the General Counsel may advise in any investigation.
2. When the office of the General Counsel participates in an investigation in an advisory capacity, any advice or counsel given will be private and confidential under the attorney work-product privilege and the attorney-client privilege.

C. CLEET Notification

The office of Inspector General or designee will provide a written report to the director of the Council for Law Enforcement Education and Training (CLEET) when a CLEET certified peace officer is terminated or resigns due to an OFAI investigation for misdemeanor or felony charges.

D. Review, Distribution, and Disposition Procedure

The investigation will be deemed complete upon review of Inspector General or his designee and the when the charges have been accepted by the district attorney in the county where the charge is to be filed.

After completion of an investigation, any person, except an inmate/offender, who participated, gave a statement, or was interviewed, may request to inspect the information that the individual has provided. Such request will be made in writing through the chain of command stating the purpose(s) of the inspection. The agency director may approve or deny the request after due consideration of the stated purpose(s).

1. The case will be submitted to the district attorney where the case is to be filed. The case cannot be sent to staff inside ODOC as they cannot make recommendations as to what the case reflects. An officer investigation is an unbiased report that only reflects the facts of the case. By allowing a staff to have input into an investigation the investigation would no longer be impartial.
2. Upon completion of an investigation, an original copy and a digital copy will be made. No additional copies of the investigation report will be made without approval of the office of Inspector General.
3. In compliance with PREA requirements, all PREA investigations will be maintained as long as the alleged abuser is incarcerated and/or employed by the agency, plus five years. (PREA 115.71(i), 115.271(i))

E. Format of Investigative Reports

Investigations by office of Inspector General will be abbreviated as IG, followed by the appropriate case number and the following summary information:

1. Basis for Investigation

A brief narrative outlining the reason the investigation was requested will be entered.

2. Interviews and Evidence

A summary of all interviews and evidence relied upon in the investigation and limited to the facts necessary and relevant to the findings of any recommendations to change policy, any and all state/federal statute violations, and/or any and all policy and procedure violations. Additionally, the summary of each relevant interview shall include a brief statement indicating where and when the interview took place and everyone present during the interview.

3. Summary

A summary of any state/federal statute and/or policy and procedure violations which may have occurred will be listed. The agent will complete a separate paragraph for each inmate/offender and/or staff member identified as violating statute(s) and/or procedure(s). Paragraphs outlining inmate/offender misconduct will note the appropriate misconduct code and the specific action of the violation. Any recommendations for changes to policy and procedures that resulted from the investigation will also be included here.

F. Notification

1. An entrance briefing will be conducted within three working days of the investigation assignment date with all affected facility/unit heads. Entrance briefings may be conducted via the telephone and will be documented in the InfoShare management system.

2. Investigations that involve staff who have been placed on administrative suspension, with or without pay, will be designated as priority for completion within designated administrative timeframes in accordance with [OP-110415](#) entitled "Progressive Disciplinary Procedures."

3. If an employee who is being investigated is assigned to a different unit, the facility head will notify the affected employee's senior staff member.

4. After completion of the final review by the agency director or designee, the employee will be notified by the facility/unit head or immediate supervisor, if assigned to another unit, in writing that the investigation has been completed and what, if any, action will be taken by the facility or unit head.
5. Upon completion of the investigation, criminal charges may be presented, in accordance with Section V. D., and the OIG or designee will ensure a decision is made by the appropriate prosecuting agency prior to officially closing a case.

G. Use of Recording Devices

Digital recordings will be made for all persons interviewed for purposes of an investigation and will be available for review in InfoShare. Interviewees are not allowed to use personal audio or video recorders during the interview.

H. Immunity

1. Immunity from criminal prosecution may be granted only by the district attorney of jurisdiction.
2. Immunity from corrective discipline may only be granted by the agency director.

V. General Procedures for Conducting Investigations and Inquiries

A. Preservation of Crime/Incident Scene

1. Facility/Unit heads will ensure the scene of a crime is preserved and secured immediately after the incident by facility personnel, to include a crime scene recorder who will record the names and purpose of all persons entering and/or exiting the crime scene area and reason. Entry will be limited to preservation of mission and released only by the investigating authority.
2. Inmate/Offender movement will be controlled during the crime investigation to the extent determined necessary by the facility/unit head. Under no circumstances will inmate/offenders be allowed access to a crime scene once it has been secured.
3. A crime-scene reporter is to remain at the crime scene until the investigator notifies the facility/unit head that the crime scene no longer needs to be preserved.

B. Interview of Employee (PREA 115.71 (d) (f))

When an interview is conducted, the party to be questioned will be advised of the following: (PREA 115.71 (f))

1. The general topic of the investigation and the nature, whether administrative or criminal.
2. Employees are required to cooperate in investigations in which they will not be subject to criminal sanctions. Failure to cooperate or making false statements during the course of an investigation will result in termination from employment. (PREA 115.71 (f))
3. All employees being interviewed during the course of an internal/administrative investigation will be required to read and sign their acknowledgement of 21 O.S. § 281, in accordance with [Attachment D](#) entitled "Internal/Administrative Advise of Title 21, Section 281" (attached). (PREA 115.71 (d))
4. Employees who are suspected of internal/administrative rule or policy violation(s) may be required to sign their name on the signature line of the "Disciplinary Interview Advise of Rights for Fugitive Apprehension and Investigations" form ([Attachment C](#), attached), indicating they understand this administrative advice of rights. (PREA 115.71 (d))
5. The credibility of an alleged victim, suspect or witness will be assessed on an individual basis and will not be determined by the person's status as an inmate/offender or staff. (PREA 115.71 (e))

C. Procedures When Criminal Conduct May Have Occurred

1. The person being interviewed will be informed that criminal conduct is suspected. Any employee or inmate/offender, who is the subject(s) of the criminal investigation **and** interviewed in a custodial setting, will be read the "Criminal Investigations Advise of Rights/Waiver or Consent" form ([Attachment A](#), attached). (PREA 115.71 (d))
 - a. Individuals who are suspected of criminal activity and are questioned will be required to initial the yes/no spaces on the form, indicating they understand the "Advise of Rights."
 - b. The agent's questions will focus on the subject matter of the investigation. If at any point, an employee invokes the right to remain silent, the interview will cease.
 - c. The agent cannot grant immunity from prosecution, although truthful statements obtained after advisement of [Attachment C](#) will not be used by the agent to seek criminal charges against the interviewee. *Garrity v. New Jersey*, 385 U.S 493 (1967).

Lying to an agent after advisement of Attachment C may result in prosecution or discipline of the interviewee for lying to an agent during the course of an administrative investigation and may cause the employee to forfeit the legal protections provided by the court in *Garrity. LaChance v. Erickson*, 522 U.S. 262 (1998).

D. Filing of Criminal Charges

1. Upon completion of the investigation and a determination that probable cause exists that felony wrongdoing or sexual abuse/assault has occurred, the case will be referred to the appropriate district attorney or United States attorney to determine if criminal prosecution will be pursued. (PREA 115.71 (h)) Upon finding probable cause of misdemeanor wrongdoing not involving sexual abuse/assault, the investigating agent may or may not refer the case for prosecution with the approval of the office of Inspector General.
2. When an investigation is referred for criminal prosecution, the investigating agent will submit a copy of the report, an affidavit and all work products to include description of physical, testimonial and documentary evidence obtained during the investigation to the prosecuting authority. Copies of all documentary evidence will also be included, where feasible. (PREA 115.71 (d) (g))
 - a. Materials deemed highly sensitive or which may create a threat to the safety of others if released should be indicated to the prosecuting authority.
 - b. OFAI or the facility/unit will ensure that all physical evidence is preserved pending adjudication of the charge.
3. If criminal charges are accepted by the district attorney of jurisdiction, OIG will notify the office of the General Counsel and the appropriate senior staff member of said charges.

VI. Departmental Polygraph Program

A. Authorization

1. Request to Polygraph

All requests for polygraph examinations to include employees, volunteers, vendors or citizens will be submitted to the agency director in writing by office of Inspector General.

- a. If during the course of an OFAI investigation, it becomes necessary to offer a polygraph examination to a private prison employee, the request must first be approved by the office of

Inspector General prior to requesting approval through the private prison facility head through the director of Institutions.

2. Requests to Polygraph Inmates/Offenders

- a. Requests to polygraph inmates/offenders will be submitted by the assigned agent to the office of inspector General for approval. Supporting documentation will be attached with the written request.
- b. Inmates/Offenders, staff members, volunteers, contract employees or other members of the public, who are the victims of alleged sexual assault/rape, are not viable polygraph candidates and will not be required to submit to a polygraph examination as a condition of continuing the investigation. (PREA 115.71)

B. Administration

1. OFAI will ensure polygraph examinations are conducted in accordance with the Oklahoma Polygraph Act.
2. Polygraph examinations will be administered by licensed state examiners in accordance with the Oklahoma Polygraph Examiners Act. Oklahoma State Statute, Title 59 § 1454, will be followed.
3. The polygraph examiner will not conduct an examination on any person involved in one of his/her assigned investigations.
4. If internal resources are not available, the agency director or the Inspector General may utilize the polygraph services of other licensed state or private agencies.
5. The "Polygraph Examination Interview Form" ([Attachment B](#), attached) will be utilized when conducting polygraph examinations.
6. Refusal to submit to a polygraph will not be considered a refusal to cooperate in an investigation. Punitive action is not to be taken on any employee or inmate/offender based solely on their refusal to take the polygraph test. If an employee/inmate/offender/individual agrees to submit to polygraph testing but fails to show or cancels a scheduled polygraph less than 48 hours before the scheduled examination, the employee/inmate/offender may be charged all expenses incurred by the agency.

C. Prior Notification and Place of Examination

1. Prior Notification

a. Inmates/Offenders

Inmates/offenders will be asked if they will voluntarily submit to a polygraph examination before an appointment is made. In all cases, except where unique circumstances dictate otherwise, an inmate/offender will be administered the examination at the facility/unit where he or she is incarcerated/supervised.

b. Staff

Prior to obtaining approval from the agency director, staff members will be asked if they will voluntarily take a polygraph examination. If the subject agrees to submit to polygraph testing, consent will be obtained and documented on the "Polygraph Examination Consent Form" ([Attachment F](#), attached).

D. Report Distribution

The original polygraph report will be retained by the polygraph examiner conducting the examination. A copy will be sent to the agent requesting the examination and will be included with the final investigative report.

VII. Department Computer and Digital Forensic Examinations

A. Computers

1. Procedures for Conducting Examinations

OFAI will have the primary responsibility for conducting all computer and digital forensic examinations using agency approved software and trained personnel.

2. Seizing/Securing the Data Equipment as Evidence

a. The facility/unit information technology (IT) professional will act as the liaison with OFAI regarding any seizure of assigned computer, tablet, and cellphone or like equipment. Under no circumstances will an attempt be made to open files or browse the computer, tablet, cellphone or drive; doing so alters dates and times and is the equivalent of destroying a crime scene.

b. If the computer is "ON," all power sources will be disconnected. The power cord from the back of the computer will be unplugged (not the wall socket). If off, leave it off.

c. The computer, tablet, cellphone or drive is to be tagged as evidence in accordance with [OP-040109](#) entitled "Control of Contraband and Physical Evidence."

- d. All information on the display will be written/recorded; a photograph may be taken, if possible.
- e. Any power supply cords associated with the device should be included.
- f. Instruction manuals associated with the device should be included if available.
- g. If a flash drive is found attached to a data device, it should be removed before the computer has been "powered down."

VIII. Department Issued Subpoenas

Oklahoma statute, 57 O.S. § 510(25), authorizes the agency director to issue subpoenas to assist or further investigations into allegations of crimes committed in public or private prisons within the State of Oklahoma and requires enforcement by the District Court in Oklahoma County.

A. Requests/Approval

Subpoenas will be used to gain information that is unavailable by other means such as information protected by privacy laws or upon denial of a request by the investigative agent.

- 1. The agent will submit a proposed subpoena duces tecum and an affidavit through their immediate supervisor to the office of the General Counsel for review.
- 2. The General Counsel may assist the investigative agent in the drafting of a subpoena for the agency director's review.
 - a. The subpoena will contain, at a minimum:
 - (1) Name of the recipient of the subpoena;
 - (2) Type of information requested;
 - (3) To whom the subpoenaed information is to be returned; and
 - (4) A date by which the recipient must respond to the subpoena.
 - b. The office of Inspector General will maintain a record of all subpoenas issued by the agency.

3. Upon approval by the agency director, the investigative agent will properly serve and execute the subpoena and may seek assistance from the office of the General Counsel.

B. Enforcement

An investigative agent seeking to enforce a subpoena against a person or entity that has been properly served and failed, without adequate excuse, to obey a subpoena should seek assistance from the office of the General Counsel.

IX. References

Policy Statement No. P-040100 entitled "Security Standards for the Oklahoma Department of Corrections"

OP-020202 entitled "Management of Office Records"

OP-030601 entitled "Oklahoma Prison Rape Elimination Act"

OP-040109 entitled "Control of Contraband and Physical Evidence"

OP-110215 entitled "Rules Concerning the Individual Conduct of Employees"

OP-110410 entitled "Prohibited Discrimination, Harassment and Retaliation"

OP-110415 entitled "Progressive Disciplinary Procedures"

Prison Rape Elimination Act of 2003, P.L. 108-79

12 O.S. § 2004.1

21 O.S. § 281

22 O.S. § 1327

29 USCA § 2001

51 O.S. § 24.A

57 O.S. § 510(16)

57 O.S. § 510(25)

59 O.S. § 1451 et seq.

70 O.S. § 3311

74 O.S. § 840-1.6

Garrity v. New Jersey, 385 U.S 493 (1967)

In re Stover v. United States, 40 F.3d 1096 (1994)

LaChance v. Erickson, 522 U.S. 262 (1998)

X. Action

The office of Fugitive Apprehension and Investigations is responsible for compliance with this procedure.

The Inspector General is responsible for the annual review and revisions.

Any exceptions to this procedure will require prior written approval from the agency director.

This procedure is effective as indicated.

Replaced: Operations Memorandum No. OP-040117 entitled "Investigations" dated January 11, 2018

Distribution: Policy and Operations Manual
Agency Website

<u>Attachments</u>	<u>Title</u>	<u>Location</u>
Attachment A	“Criminal Investigations Advise of Rights/Waiver or Consent”	Attached
Attachment B	“Polygraph Examination Interview Form”	Attached
Attachment C	“Disciplinary Interview Advise of Rights for Fugitive Apprehension and Investigations”	Attached
Attachment D	“Internal/Administrative Advise of Title 21, Section 281”	Attached
Attachment F	“Polygraph Examination Consent Form”	Attached
Attachment G	“Request for an Investigation”	Attached

