

Proposed

**State of Kansas
Department of Corrections**

Notice of Hearing on Proposed Administrative Regulation

The Kansas Department of Corrections will conduct a public hearing from 10:00 to 11:00 a.m. Thursday, October 22, 2015, in the Large Conference Room at 714 S.W. Jackson Street, 3rd Floor, Topeka, Kansas to consider adopting a proposed permanent rule and regulation concerning sexual abuse grievances by juvenile offenders.

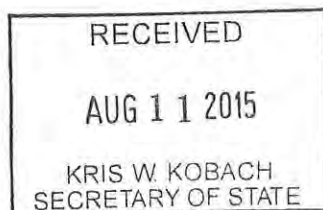
This 60-day notice of the public hearing constitutes a public comment period for the purpose of receiving written public comments on the proposed permanent regulation. All interested parties may submit written comments prior to the hearing to Ray Roberts, Secretary, 714 S.W. Jackson Street, Suite 300, Topeka, KS 66603 or kdocpub@doc.ks.gov. All interested parties will be given a reasonable opportunity to present their views orally at the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request each participant to limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Hope Burns at (785) 296-3317, hope.burns@doc.ks.gov, or the Kansas Relay Center at (800) 766-3777. There is designated handicap accessible parking on Jackson Street in front of the building.

A copy of the full text of the regulations may be reviewed or obtained at 714 S.W. Jackson Street, Suite 300, Topeka, KS 66603, requested via E-mail at kdocpub@doc.ks.gov or from the Kansas Department of Corrections' Web site at <http://www.doc.ks.gov>. The following is a summary of the proposed regulation and economic impact statement:

K.A.R. 123-15-107. Special procedures for sexual abuse grievances; sexual harassment grievances and grievances alleging retaliation for filing same; reports of sexual abuse or sexual harassment submitted by third parties. The regulation first adopts from 28 CFR 115.6 definitions of certain terms dealing with sexual abuse and sexual harassment, including a definition of voyeurism, which when engaged in by staff, contractors, or volunteers, is recognized as a form of sexual abuse. It then provides for procedural steps to handle and dispose of such grievances, consisting of a facility-level disposition by the superintendent of the offender's assigned facility, and an optional appeal to the Secretary.

Economic Impact: This proposed permanent regulation requires no additional resources for the Kansas Department of Corrections and will have no economic impact upon offenders, other governmental agencies, private businesses, or other private individuals.



_____/S/_____
Ray Roberts, Secretary

123-15-107. Special procedures for sexual abuse grievances; sexual harassment grievances and grievances alleging retaliation for filing same; reports of sexual abuse or sexual harassment submitted by third parties. (a) Definitions. For the purpose of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Sexual abuse" means either of the following:

(A) "Sexual abuse of an offender by another offender," which means any of the following acts if the victim does not consent, is coerced into the act by overt or implied threats of violence, or is unable to consent or refuse:

(i) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(ii) contact between the mouth and the penis, vulva, or anus;

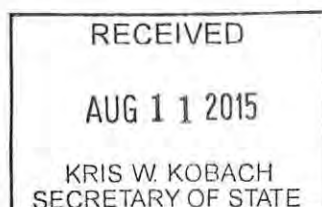
(iii) penetration of the anal or genital opening of another person, however slight, by a hand, finger, or object; or

(iv) 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; or

(B) "sexual abuse of an offender by a staff member, contractor, or volunteer," which means any of the following acts, with or without the consent of the offender:

(i) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(ii) contact between the mouth and the penis, vulva, or anus;



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(iii) contact between the mouth and any body part if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(iv) penetration of the anal or genital opening, however slight, by a hand, finger, or object, that is unrelated to official duties or if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(v) 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 if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(vi) any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the acts described in paragraphs (a)(1)(B)(i)-(v);

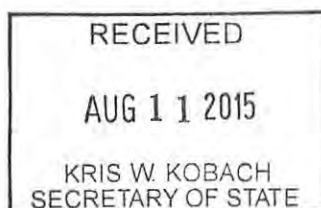
(vii) any display by a staff member, contractor, or volunteer of that individual's uncovered genitalia, buttocks, or breast in the presence of an offender; or

(viii) voyeurism by a staff member, contractor, or volunteer.

(2) "Voyeurism by a staff member, contractor, or volunteer" means an invasion of privacy of an offender by staff for reasons unrelated to official duties, including peering at an offender who is using a toilet in the offender's cell to perform bodily functions; requiring an offender to expose the offender's buttocks, genitals, or breasts; or taking images of all or part of an offender's naked body or of an offender performing bodily functions.

(3) "Sexual harassment" means either of the following:

(A) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal



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comments, gestures, or actions of a derogatory or offensive sexual nature by one offender directed to another; or

(B) repeated verbal comments or gestures of a sexual nature to an offender by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(b) Submission of grievances concerning sexual abuse.

(1) Each offender submitting a grievance concerning sexual abuse alleged to have already occurred shall state that offender's intentions by marking "sexual abuse grievance" where indicated on the grievance form.

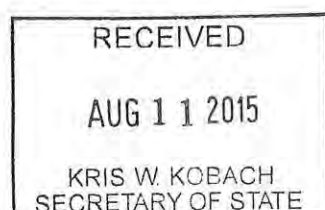
(2) Offenders shall not be required to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse of an offender by a staff member, contractor, or volunteer or a grievance in which it is alleged that sexual abuse of an offender by another offender or sexual abuse of an offender by a staff member, contractor, or volunteer was the result of staff neglect or violation of responsibilities.

(3) Any offender may submit a grievance to security staff, a program team member, or administrative personnel in person or by utilizing the offender internal mail system.

(4) Any offender who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint. The grievance shall not be referred to a staff member who is the subject of the complaint.

(c) Superintendent's response.

(1) Upon receipt of each grievance report form alleging sexual abuse, a serial number



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shall be assigned by the superintendent or designee, and the date of receipt shall be indicated on the form by the superintendent or designee.

(2) Each grievance alleging sexual abuse shall be returned to the offender, with an answer, within 10 working days from the date of receipt.

(3) Each answer shall contain findings of fact, conclusions drawn, the reasons for those conclusions, and the action taken by the superintendent. Each answer shall inform the offender that the offender may appeal by submitting the appropriate form to the secretary of corrections (secretary).

(4) In all cases, the original and one copy of the grievance report shall be returned by the superintendent to the offender. The copy shall be retained by the offender for the offender's files. The original may be used for appeal to the secretary if the offender desires. The necessary copies shall be provided by the superintendent.

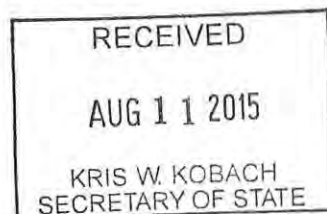
(5) A second copy shall be retained by the superintendent.

(6) Each facility shall maintain a file for grievance reports alleging sexual abuse, with each grievance report indexed by offender name and coded as a sexual abuse complaint. Grievance report forms shall not be placed in the offender's institution file.

(7) If no response is received from the superintendent in the time allowed, any grievance may be sent by an offender to the secretary with an explanation of the reason for the delay, if known, with a notation that no response from the superintendent was received.

(d) Appeal to the secretary.

(1) If the superintendent's answer is not satisfactory to the offender, the offender may appeal to the secretary's office by indicating on the grievance appeal form exactly what the offender is displeased with and what action the offender believes the secretary should take.



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(2) The offender shall send the appeal directly and promptly by U.S. mail to the department of corrections' central office in Topeka.

(3) If an appeal of the superintendent's decision is made to the secretary, the secretary shall have 20 working days from receipt to return the grievance report form to the offender with an answer. The answer shall include findings of fact, conclusions made, and actions taken.

(4) If a grievance report form is submitted to the secretary without prior action by the superintendent, the form may be returned to the superintendent for further action, at the option of the secretary.

(5) In all cases, a final decision on the merits of any portion of a grievance alleging sexual abuse, or an appeal thereof, shall be issued by the secretary within 90 days of the initial filing of the grievance.

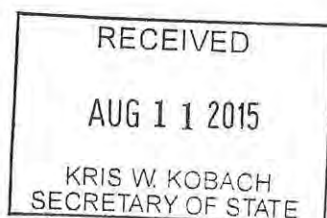
(6) Computation of the 90-day time period shall not include time taken by offenders in preparing and submitting any administrative appeal.

(7) At any level of the administrative process, including the final level, if the offender does not receive a response within the time allotted for reply, including any properly noticed extension, the offender may consider the absence of a response to be a denial at that level and may proceed to the next level of appeal.

(8) An appropriate official may be designated by the secretary to prepare the answer.

(e) Imminent sexual abuse.

(1) Each offender submitting a grievance concerning imminent sexual abuse shall state that offender's intentions by marking "emergency sexual abuse grievance" where indicated



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on the grievance form.

(2) Each grievance alleging that an offender is subject to a substantial risk of imminent sexual abuse shall be treated as an emergency grievance under K.A.R. 123-15-106.

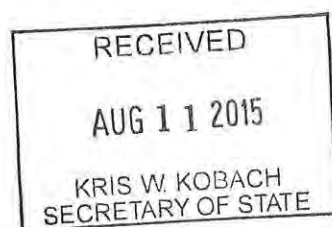
(3) After receiving an emergency grievance alleging imminent sexual abuse, the superintendent or designee shall provide an initial response within 48 hours and shall issue a final decision within five calendar days. The initial response and final decision shall document the determination whether the offender is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

(f) Submission of grievances concerning sexual harassment or concerning retaliation for submission of a report or grievance concerning sexual abuse or sexual harassment.

(1) Each offender shall be required to use the informal grievance process specified in K.A.R. 123-15-101 and 123-15-102 for grievances concerning sexual harassment or concerning retaliation for submission of a report or grievance concerning sexual abuse or sexual harassment. These grievances shall otherwise be treated and processed according to the ordinary grievance procedure specified in K.A.R. 123-15-101 and 123-15-102.

(2) Any offender who alleges sexual harassment or retaliation may submit a grievance without submitting it to a staff member who is the subject of the complaint. The grievance shall not be referred to a staff member who is the subject of the complaint.

(3) Each facility shall maintain a file for grievance reports alleging sexual harassment or retaliation for submission of a report or grievance alleging sexual abuse or sexual harassment, with each grievance report indexed by offender name and coded accordingly. No grievance report form shall be placed in the offender's institution file.



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(g) Time limits.

(1) There shall be no time limit for submission of a grievance regarding an allegation of sexual abuse.

(2) The time limits for any grievance or portion thereof that does not allege an incident of sexual abuse or imminent sexual abuse shall be the limits specified in K.A.R. 123-15-101b.

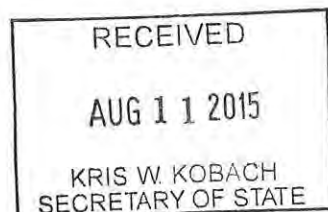
(h) Third-party submissions.

(1) Third parties, including fellow offenders, staff members, family members, attorneys, and outside advocates, shall be permitted to assist any offender in filing requests for administrative remedies relating to allegations of sexual abuse and shall also be permitted to file these requests on behalf of any offender.

(2) If a third party files such a request on behalf of an offender, the alleged victim shall agree to have the request filed on behalf of the alleged victim. The alleged victim shall personally pursue any subsequent steps in the administrative remedy process.

(3) If the offender declines to have the request processed on that individual's behalf, the facility shall document the offender's decision.

(i) Grievances in bad faith. Any offender may be disciplined for filing a grievance related to alleged sexual abuse only if it can be demonstrated that the offender filed the grievance in bad faith. In this instance, a disciplinary report alleging violation of K.A.R. 123-12-303 or 123-12-317, as appropriate, may be issued. (Authorized by and implementing K.S.A. 2014 Supp. 75-7024 and 76-3203; effective P-_____.)



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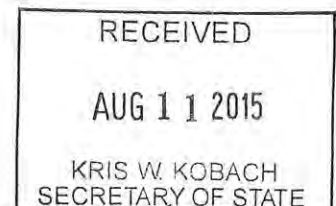
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**KANSAS DEPARTMENT OF CORRECTIONS
ECONOMIC IMPACT STATEMENT
K.A.R. 123-15-107**

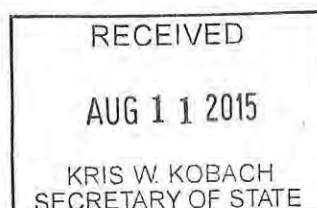
I. Summary of Proposed New Regulation, Including Its Purpose

K.A.R. 123-15-107 is proposed for permanent adoption. This new regulation is designed to aid the Department of Corrections in its efforts to comply with the National Standards promulgated by the Attorney General of the United States pursuant to the Prison Rape Elimination Act of 2003, (or PREA, codified at 42 U.S.C. §15601, et seq.) which are found at 28 CFR Part 115. The particular standard and regulation in question is 28 CFR 115.352, **Exhaustion of administrative remedies**, which prescribes rules governing grievance procedures for airing complaints by offenders of sexual abuse and sexual harassment by other offenders, staff members, contract employees, and other third parties, as well as complaints of retaliation by staff members for filing of such grievances. It is proposed as a separate, stand-alone regulation on grievances pertaining to sexual misbehavior.

The regulation first adopts from 28 CFR 115.6 definitions of certain terms dealing with sexual abuse and sexual harassment, including a definition of voyeurism, which when engaged in by staff, contractors, or volunteers, is recognized as a form of sexual abuse. It then provides for procedural steps to handle and dispose of such grievances, consisting of a facility-level disposition by the superintendent of the offender's assigned facility, and an optional appeal to the Secretary. Important features of the procedure are provisions that stipulate that:



- complaints of sexual abuse, as opposed to complaints of sexual harassment and retaliation, are not subject to the usual requirement of attempting to informally resolve the grievance with members of the offender's unit team prior to filing it with the superintendent;
- complaints of sexual abuse, sexual harassment, and retaliation for filing complaints of abuse or harassment, shall not be referred to any staff member(s) who is the subject of the complaint;
- complaints of sexual abuse may include allegations that the abuse perpetrated by another offender or staff member was the result of neglect or other violation of duty by a staff member;
- complaints of sexual abuse which has not actually occurred yet, but which the offender alleges to be imminent, are handled in an expedited manner as an "Emergency Sexual Abuse Grievance," according to a special procedure within the regulation;
- complaints made on behalf of an offender by third parties are to be accepted and handled just as if the offender complainant had filed the grievance, but the offender must expressly consent to the filing, and then must directly participate in going forward with the grievance after it is filed; and
- the entire procedure, including disposition of any appeal by the offender complainant, is to be finished no later than 90 days after the date of initial filing of the grievance, though time spent by the offender in preparing and submitting an appeal to the Secretary is not counted against that time limit.



II. Reason or Reasons the Proposed New Regulation Is Required, Including Whether or Not the Regulation is Mandated by Federal Law.

Though promulgation of such a grievance procedure in itself is not technically mandated or required by PREA or the National Standards, the Secretary has nonetheless chosen to exercise his discretionary authority under Kansas law to propose adoption of this regulation encompassing the elements of the relevant, aforementioned standard at 28 CFR 115.352. This new regulation does not violate federal law, or exceed requirements of federal law.

III. Anticipated Economic Impact upon the Kansas Department of Corrections

The Department does not anticipate any economic impact upon its operations as a result of this new regulation.

IV. Anticipated Economic Impact upon Offenders, Other Governmental Agencies and upon Private Business or Individuals.

The Department does not anticipate economic impact upon offenders, other governmental agencies, private businesses, or other private individuals as a result of this new regulation.

V. Less Costly or Intrusive Methods That Were Considered, but Rejected, and the Reason for Rejection.

Due to the fact that absolutely no economic impact is now foreseen as a result of this new regulation, the Department of Corrections has had no occasion to consider less costly or intrusive methods in accomplishing its goals.

