

	JUSTICE AND PUBLIC SAFETY CABINET DEPARTMENT OF JUVENILE JUSTICE POLICY AND PROCEDURES	REFERENCES: 505 KAR 1:170 28 C.F.R. 115
CHAPTER: Prison Rape Elimination Act of 2003 (PREA)		AUTHORITY: 28 C.F.R. 115
SUBJECT: Definitions		
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I. POLICY

The following definitions shall apply in the Department of Juvenile Justice Policy and Procedures Manual Chapters 901 through 912.

II. DEFINITIONS

- A. "Agency" means the unit of a State, local, corporate, or nonprofit authority, or of the Department of Justice, with direct responsibility for the operation of any facility that confines inmates, detainees, or residents, including the implementation of policy as set by the governing, corporate, or nonprofit authority as established in 28 C.F.R. § 115.5.
- B. "Agency head" means the principal official of an agency as established in 28 C.F.R. § 115.5.
- C. "Contractor" means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency as established in 28 C.F.R. § 115.5.
- D. "Direct staff supervision" means that security staff are in the same room with, and within reasonable hearing distance of, the resident or inmate as established in 28 C.F.R. § 115.5.
- E. "Employee" means a person who works directly for the agency or facility as established in 28 C.F.R. § 115.5.
- F. "Exigent circumstances" means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility as established in 28 C.F.R. § 115.5.
- G. "Facility" means a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals as established in 28 C.F.R. § 115.5.
- H. "Facility head" means the principal official of a facility as established in 28 C.F.R. § 115.5.

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- I. “Gender nonconforming” means a person whose appearance or manner does not conform to traditional societal gender expectations as established in 28 C.F.R. § 115.5.
- J. “Grooming” means behavior that is exhibited to cultivate an inappropriate sexualized relationship with a juvenile, including special treatment, favors, inappropriate gifts, flirtation, sexual innuendo, sexually suggestive statements or behavior, promises, rewards, games, bribes, threats, intimidation, or force used to get a juvenile to comply.
- K. “Intersex” means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development as established in 28 C.F.R. § 115.5.
- L. “Juvenile” means:
 1. Any person in the custody of or committed to the Department of Juvenile Justice under KRS Chapter 600 subject to the jurisdiction of the juvenile court;
 2. Any youthful offender in the custody of the Department of Juvenile Justice prior to final sentencing; and
 3. Any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail as established in 28 C.F.R. § 115.5.
- M. “Juvenile facility” means a facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system as established in 28 C.F.R. § 115.5.
- N. “Law enforcement staff” means employees responsible for the supervision and control of detainees in lockups as established in 28 C.F.R. § 115.5.
- O. “Medical practitioner” means a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified medical practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims as established in 28 C.F.R. § 115.5.
- P. “Mental health practitioner” means a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified mental health practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims as established in 28 C.F.R. § 115.5.
- Q. “Pat-down search” means a running of the hands over the clothed body of an inmate, detainee, or resident by an employee to determine whether the individual possesses contraband as established in 28 C.F.R. § 115.5.

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- R. “Private child care” means any of the following settings if a juvenile is placed pursuant to a contract with the Department of Juvenile Justice: foster family homes, child placing facilities, child caring facilities, staff secure facilities for residential treatment, secure juvenile facilities, and residential treatment facilities as defined in KRS 600.020.
- S. “Resident” means any person confined or detained in a juvenile facility or in a community confinement facility as established in 28 C.F.R. § 115.5.
- T. “Secure juvenile facility” means a juvenile facility in which the movements and activities of individual residents may be restricted or subject to control through the use of physical barriers or intensive staff supervision. A facility that allows residents access to the community to achieve treatment or correctional objectives, such as through educational or employment programs, typically will not be considered to be a secure juvenile facility as established in 28 C.F.R. § 115.5.
- U. “Security staff” means employees primarily responsible for the supervision and control of inmates, detainees, or residents in housing units, recreational areas, dining areas, and other program areas of the facility as established in 28 C.F.R. § 115.5.
- V. “Sexual abuse” means:
1. The behavior described by KRS 510.110 (1) (d) and 510.120 (1) (c); or
 2. As established in 28 C.F.R. § 115.6.
 - a. Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and
 - b. Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident 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:

 - 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, object, or other instrument; and
 - 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.

Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident

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- 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. 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;
 - iv. 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;
 - 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 where 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 activities described in paragraphs (i)-(v) of this section;
 - vii. Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
 - viii. Voyeurism by a staff member, contractor, or volunteer.
- W. “Sexual contact” means any intentional touching or physical contact of the sexual or other intimate parts of a person, including the genitalia, anus, groin, breasts, inner thighs or buttocks, either directly or through clothing, that is unrelated to official duties or done for the purpose of arousing or gratifying the sexual desire of any person or humiliating, harassing, or degrading any person.
- X. “Sexual harassment” means as established in 28 C.F.R. § 115.6:
- 1. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one resident toward another resident; and
 - 2. Repeated verbal comments or gestures of a sexual nature to a resident 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.
- Y. “Sexual misconduct” means any behavior or act of a sexual nature directed toward a resident by a staff member, visitor, or other resident. This includes completed, attempted, threatened, or requested acts including sexual abuse, sexual harassment, voyeurism, sexual contact, conduct of a sexual nature or implication, obscenity, and unreasonable invasion of privacy. Sexual misconduct also includes conversations or correspondence, which suggest a romantic or sexual relationship between a resident and an employee.

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- Z. “Staff” means employees as established in 28 C.F.R. § 115.5.
- AA. “Strip search” means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person’s breasts, buttocks, or genitalia as established in 28 C.F.R. § 115.5.
- BB. “Transgender” means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person’s assigned sex at birth as established in 28 C.F.R. § 115.5.
- CC. “Substantiated allegation” means an allegation that was investigated and determined to have occurred as established in 28 C.F.R. § 115.5.
- DD. “Unfounded allegation” means an allegation that was investigated and determined not to have occurred as established in 28 C.F.R. § 115.5.
- EE. “Unsubstantiated allegation” means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred as established in 28 C.F.R. § 115.5.
- FF. “Volunteer” means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency as established in 28 C.F.R. § 115.5.
- GG. “Voyeurism” means:
1. The behavior described by KRS 531.090; or
 2. An invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at a resident who is using a toilet in his or her cell to perform bodily functions; requiring a resident to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a resident’s naked body or of a resident performing bodily functions as established in 28 C.F.R. § 115.6.