

CF OPERATING PROCEDURE
NO. 155-6

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, September 15, 2021

Mental Health/Substance Abuse

SOCIOSEXUAL BEHAVIORS AT STATE CIVIL MENTAL HEALTH TREATMENT FACILITIES

1. Purpose. This operating procedure provides guidelines for staff and residents regarding appropriate behavior in the therapeutic environment of the state civil mental health treatment facilities with respect to sociosexual behaviors.

2. Scope. This operating procedure applies to residents and staff at all state civil mental health treatment facilities to include Florida State Hospital, Northeast Florida State Hospital, and South Florida State Hospital. This operating procedure does not apply to state forensic facilities or the Florida Civil Commitment Center.

3. References.

- a. Chapter 394, Florida Statutes (F.S.), Mental Health, ss. 394.459, Rights of Patients.
- b. Chapter 394, F.S., Mental Health, ss. 394.4593, Sexual Misconduct Prohibited.
- c. Chapter 744, F.S., Guardianship, ss. 744.331, Procedures to Determine Incapacity.
- d. Chapter 916, F.S., General Provisions, ss. 916.1075, Sexual Misconduct Prohibited.
- e. Chapter 65E-5, Florida Administrative Code (F.A.C.), Rule 65E-5.1601, General Management of the Treatment Environment; Rule 65E-5.330, Training; and Rule 65E-5.602, Rights of Residents of State Mental Health Treatment Facilities.
- f. CFOP 155-4, HIV/AIDS Screening and Treatment in State Mental Health Treatment Facilities.
- g. CFOP 155-24, Guidelines for Infection Prevention and Control Program in State Mental Health Treatment Facilities.
- h. CFOP 155-28, Sexual Misconduct in State Mental Health Treatment Facilities.
- i. CFOP 155-25, Incident Reporting and Processing in State Mental Health Treatment Facilities.
- j. CFOP 180-4, Mandatory Reporting Requirements to the Office of Inspector General.
- k. Chapter 794, F.S., Sexual Battery, ss. 794.011 Sexual Battery.

4. Definitions. For the purpose this operating procedure, the following means:

a. Adjudicated Incapacity. A court order stating that a resident is incapacitated with respect to the exercise of a particular right, or all rights, based on evidence presented by a court-appointed examination committee.

This operating procedure supersedes CFOP 155-6 dated July 16, 2019.

OPR: SMF

DCF Tracker Assignment Number: A21-004119.

b. Capacity To Consent To Sexual Interactions. A resident's ability to understand the nature and consequences of his/her sexual behavior as determined by a professional assessment.

c. Employee. Any paid staff member, volunteer, or intern of the Department; any person under contract with the Department; and any person providing care or support to a resident on behalf of the Department or its providers.

d. Employees and Other Covered Persons and Sexual Misconduct. Any sexual activity between an employee and a resident of a facility, regardless if the resident consented to the activity. Florida Statutes prohibits sexual misconduct by employees and other covered persons in Section 916.1075, F.S., and Section 394.4593, F.S. Valid medical practices are not considered as sexual misconduct.

e. Inappropriate Sociosexual Behavior. Sexual behaviors are governed by rules set by societal norms to include laws as to the parameters of socially acceptable and socially unacceptable and/or inappropriate behavior. Those sociosexual behaviors identified as socially unacceptable and/or prohibited by law are unacceptable in the treatment facilities. Such behaviors include, but are not limited to, lewd or lascivious remarks, undressing or masturbating in public, and displaying sexually assertive behaviors.

f. Resident. A resident who resides in a state mental health treatment facility. The term is synonymous with "resident," "consumer," "patient," "resident served," "individual served," or "person served."

g. Sexual Abuse/Exploitation. Acts on or in the presence of a resident and committed for the purpose of the sexual gratification or material gain of the perpetrator. Sexual abuse includes, but is not limited to, the acts defined in ss. 794.011(1)(h), F.S., fondling, exposure of a vulnerable adult's sexual organs, or the use of the vulnerable adult to solicit or engage in prostitution or sexual performance.

h. Acceptable Sociosexual Behavior. Socially acceptable, healthy relationships developed and maintained between mutually consenting adults. Appropriate sociosexual behavior is further explored and defined throughout this operating procedure.

i. Alleged Sexual Battery. An allegation consistent with the legal criteria for Sexual Battery in Section 794.011, F.S.

j. Sexual Battery. Oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

k. Supportive Counseling. Nondirective counseling provided to offer support and comfort to a resident. This intervention focuses on assisting the resident with finding and strengthening coping skills and does not specifically address issues which could be more effectively dealt with via the use of a best practice model of intervention requiring clinical specialized training.

5. General.

a. Socialization with friends and loved ones is a valued and culturally normative experience. Residents form interpersonal relationships and need a variety of opportunities in which to enjoy these relationships. While the Department recognizes that human sexuality is a normal, healthy part of life and residents should be granted as many rights as are possible without having an adverse effect on treatment and recovery, the primary concern of the state civil mental health treatment facilities is the health and safety of residents at all times, especially in view of the impaired decisional capacity of many residents served in the facilities.

b. Staff members will, to the extent possible, ensure that personal space is provided to allow residents privacy and dignity. This will include such courtesies as knocking on doors when possible before entering bedrooms, bathrooms, or other personal space.

6. Resident Sociosexual Behaviors in the Therapeutic Environment and in Recovery Planning.

a. Socializing with friends is a common, every day, spontaneous occurrence within mental health treatment facilities. Residents will be provided daily opportunities for interaction with peers such as those which naturally occur in therapy groups, coeducational programs, and social activities.

b. While certain expressions of affection will be respected in the facilities, there are limitations as to what constitutes acceptable sociosexual conduct in this environment. Residents will be advised against having intimate sexual relationships with other residents or any other person (i.e., staff member, visitor, etc.) on the grounds of the facility while receiving services. Residents who make personal choices inconsistent with this guidance will be afforded counseling and education as needed, based on his/her own unique situation.

c. Expressions of intimate sexual behavior performed in public or observable by others are prohibited. Staff will immediately intervene in a quiet, non-threatening manner and notify a supervisor, who will evaluate the incident to determine if immediate counseling of the resident(s) and/or medical attention is needed and to refer the incident to the resident(s)' recovery team, to include the medical provider.

d. Mutually consenting residents may show socially acceptable displays of affection such as hugging or holding hands. Staff should immediately intervene if any other public displays of affection are exhibited by residents. Counseling, support and education will be available as needed, as a means to assist a resident in recognizing and establishing healthy relationships.

e. Day passes or home visits for a resident with a spouse or significant other outside the facility may be determined to be appropriate to allow for personal privacy and intimacy. This decision will be considered on a case by case basis by a resident's recovery team in concert with the best interest of the resident based on his/her recovery plan. The cultural and moral values of residents will be respected and considered by the facilities in all areas of planning and programming.

f. Family planning services are a resident's/guardian's personal choice and will be made available upon request.

7. Employee and Resident Education.

a. Employee Education. Training regarding sexual conduct in state mental health treatment facilities will be provided in some form to all employees. Training will be provided at the time of orientation and as determined by specific resident and unit needs. Training will be culturally sensitive and designed to increase awareness of the rights and needs of residents receiving services. Training records for all staff members will be maintained in an easily retrievable manner.

(1) Staff training for all employees shall include:

- (a) Human sexuality and facility policy regarding sociosexual behaviors;
- (b) Appropriate staff interventions and reporting responsibilities;
- (c) Therapeutic relationships, workplace behavior, staff boundaries, and ethical standards;

standards;

- (d) Disciplinary consequences of sexual contact between staff and residents;

and,

- (e) Universal or standard practices for infection control and mandatory HIV/AIDS training.

training.

(2) Clinical and supervisory staff training shall include:

- (a) Procedures for reporting and managing allegations of sexual assault/abuse;

and,

(b) Information to assist staff in recognizing and responding to behaviors that may indicate unreported sexual assault or abuse/exploitation.

(3) Clinical staff with assessment responsibilities will receive training regarding Trauma Informed Care, and related screening and assessment requirements.

b. Resident Education.

(1) Generally acceptable sociosexual conduct will be identified by the facility, and residents will be informed of appropriate boundaries and facility rules of accepted sociosexual conduct within the context of the facility upon admission.

(2) Staff will instruct residents regarding access to grounds and boundaries as part of the admission process and ongoing as a resident's access to grounds changes.

(3) Human Sexuality.

(a) Additional education in human sexuality will be available for all residents from trained staff. Training will be available when requested by the resident/guardian and will be offered when determined by the resident's recovery team to be needed.

(b) At a minimum, education in human sexuality will provide information to:

1. Assist residents in the development of healthy personal relationships;
2. Assist residents in managing unwanted sexual advances and protecting themselves from sexual assault or abuse/exploitation;

3. Teach residents how to protect themselves from sexually transmitted diseases; and,
4. Teach residents about family planning services.

8. Resident Safety and Risk Management.

a. Each facility will provide a safe environment which protects residents and enables and supports a therapeutic milieu. While residents will not be deprived of their rights while in a treatment facility, their rights may be limited due to adjudicated incapacity, lack of capacity to consent to sexual interactions, or in response to the facility's responsibility for protection of vulnerable residents.

b. Considerations for residents' protection must include their cognitive capacity, their vulnerability to victimization or exploitation while exhibiting symptoms of mental illness severe enough to require hospitalization, type(s) of prescribed medications, and their demonstrated behaviors, along with any history of victimization as well as other variables relevant to each resident's unique needs and situation.

c. To ensure a safe environment, residents with a history of predatory behavior, sexual exploitation of others, or deviant sexual behaviors will be closely monitored and known inappropriate behaviors must be addressed in the resident's recovery plan.

d. If coercive, abusive or exploitive relationships between residents are observed by staff members, the residents will be immediately reported to the recovery team. Recovery teams will ensure that supportive counseling and additional education are made available and provided as needed by residents.

e. Each facility must have an effective Sexually Transmitted Disease Control Program as outlined in CFOP 155-24 that provides for early detection of disease and promotes the prevention of disease transmission. All residents must have access to sexually transmitted disease and HIV infection prevention services necessary to meet their individual needs. Current requirements for counseling, testing, and educating residents about HIV/AIDS are outlined in CFOP 155-4.

f. Sexual Assault, Abuse, or Exploitation.

(1) Non-consensual sex between residents is prohibited and will be considered to constitute sexual assault. As such, local law enforcement will be called to investigate the situation which may result in criminal prosecution against the alleged perpetrator. Staff shall be supportive of the alleged assault victim (resident) and assist law enforcement as requested by either the resident and/or the investigating officer.

(2) Each facility will have procedures addressing management of sexual assault and sexual abuse/exploitation allegations between residents. These procedures will include:

(a) Immediate notification of facility administration of all allegations of sexual assault, abuse, or exploitation.

(b) Immediate administrative investigation and notification of law enforcement if it is determined that an alleged sexual assault, abuse, or exploitation may have occurred.

(3) The following steps are to be taken if a resident is known to have been or reports to have been assaulted:

(a) Do not touch or disturb the scene of the assault or remove any items.

(b) Remove the alleged perpetrator from contact with the resident pending the outcome of an investigation. Both residents may need protection.

(c) Do not leave the resident alone.

(d) Offer provision of a comfort object (i.e., blanket, pillow, stuffed animal, photograph, etc.).

(e) Take the resident to the hospital emergency room or designated Sexual Assault Treatment Center as soon as possible after the assault for a medical and gynecological examination. The resident should not change clothes, wash, douche, go to the bathroom, or have anything to drink or to rinse her/his mouth before the medical exam.

(f) The resident should be provided counseling by a person trained to provide post-sexual assault counseling. If the facility does not have a counselor that can meet those needs, the services of a trained victim advocate should be sought at the emergency room outside the facility. Additional follow-up counseling services should be arranged as needed.

(g) A resident may be too embarrassed or unable to tell everything that happened and may refuse to have any part of or all of a medical examination. If possible and permissible, attempt to have a trusted staff member accompany resident for any requested interviews or examinations.

(h) Supportive counseling, as needed, will be provided to help the resident.

(4) Allegations of sexual assault/abuse where there is evidence that an incident occurred will be reported in the Facilities Incident Tracking System, as required by CFOP 155-25.

g. An act of sexual activity between a staff member and a resident is prohibited and is considered an act of sexual assault or sexual abuse/exploitation. An allegation of sexual abuse/exploitation or sexual misconduct by a staff member will result in the immediate removal of the accused staff from any resident contact pending the outcome of the investigation. Any allegation of employee sexual misconduct must be reported as outlined in CFOP 155-28. Required reporting includes:

(1) The Florida Abuse Hotline (1-800-962-2873);

(2) The Department's Office of Inspector General as outlined in CFOP 180-4;

(3) Local law enforcement;

(4) The Department of Health using the DOH complaint form (found on the DOH web site) or other similar written format if the employee involved has a professional license; and,

(5) The Chief Hospital Administrator and the Director of Policy and Programs State Mental Health Treatment Facilities.

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

JACQUELINE A. YOUNG
Director, State Mental Health Treatment Facilities, Policy and Programs

SUMMARY OF REVISED, DELETED, OR ADDED MATERIAL

Substantive changes or major rewording has been made throughout this operating procedure. A complete review of the revised operating procedure is recommended. The changes include, but are not limited to, the following: throughout the operating procedure, respelling of sociosexual from socio-sexual; in paragraph 4, reworded definition of inappropriate sociosexual behavior; clarifying intent of sentences throughout the operating procedure; in paragraph 8f(3), rearranging steps to be taken in addition to rewording paragraphs 8f(3)(d), (f), and (g), and deleting paragraph 8f(3)(i); and, rewording paragraph 8f(4)g(4).