

SETTLEMENT AGREEMENT

I. DEFINITIONS

1. "Agency" or "KDOC" means the Kansas Department of Corrections.
2. "USDOJ" shall refer to the United States Department of Justice, which represents the United States in this matter.
3. "TCF" or "Facility" refers to the Topeka Correctional Facility located in Topeka, Kansas, and includes all buildings located on the TCF campus and any building that is built, leased, or otherwise used, to replace or supplement the current TCF or any part of TCF.
4. "Agency head" means the principal official of KDOC.
5. "Employee" means a person who works directly for the Agency or Facility.
6. "Contractor" means a person who provides services on a recurring basis pursuant to a contractual agreement with the Agency.
7. "Staff" or "staff member" includes all persons who work at TCF or provide services to prisoners at TCF, including corrections staff, medical practitioners, mental health practitioners, and employees of any agency of the State.
8. "Corrections staff" means all TCF employees and contractors, irrespective of job title, whose regular duties include the supervision and control of prisoners throughout TCF.

9. A “body cavity search” is a search of an individual’s anus or vagina that involves touching or probing with hands or an instrument.
10. “Compliance” is discussed throughout this Agreement in the following terms: substantial compliance, partial compliance, and non-compliance. “Substantial Compliance” indicates that KDOC and TCF have achieved compliance with most or all components of the relevant provision of the Agreement. “Partial Compliance” indicates that KDOC and TCF have achieved compliance on some of the components of the relevant provision of the Agreement, but significant work remains. “Non-compliance” indicates that KDOC and TCF have not met most or all of the components of the relevant provision of the Agreement.
11. “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.
12. “Effective Date” shall mean the date the Agreement is signed by the parties.
13. To “Implement” a policy means: the policy has been drafted and disseminated to all staff responsible for following or applying the policy; all relevant staff have been trained on the policy; compliance with the policy is monitored and tracked through audit tools; the policy is consistently applied, as demonstrated by the audit tools; and there are corrective action measures to address lapses in application of the policy.
14. “Include” or “including” means “include, but not be limited to” or “including, but not limited to.”

15. "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.
16. A "qualified 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 and who has also successfully completed specialized training for treating sexual abuse victims.
17. "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.
18. A "qualified 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 and who has also successfully completed specialized training for treating sexual abuse victims.
19. "Monitor" shall mean an individual selected to oversee implementation of the Agreement.
20. "Pat-down search" means a running of the hands over the clothed body of a prisoner by an employee to determine whether the individual possesses contraband.
21. "Prisoner" or "Prisoners" shall be construed broadly to refer to one or more individuals detained at, or otherwise housed, held, in the custody of, or confined at either the existing Facility or any institution that is built or used to replace or supplement the Facility.

22. "Sexual abuse of a prisoner by another prisoner" 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:
- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 - (2) Contact between the mouth and the penis, vulva, or anus;
 - (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
 - (4) 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.
23. "Sexual abuse of a prisoner by a staff member, contractor, or volunteer" includes any of the following acts, with or without consent of the prisoner:
- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 - (2) Contact between the mouth and the penis, vulva, or anus;
 - (3) 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;
 - (4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties and/or where the staff member, contractor, or volunteer has the intent to abuse, arouse or gratify sexual desire;
 - (5) 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 and/or where the staff member, contractor, or volunteer has the intent to abuse, arouse or gratify sexual desire;

- (6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5);
 - (7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of a prisoner, and
 - (8) Voyeurism by a staff member, contractor, or volunteer.
24. "Sexual harassment" includes:
- (1) Unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one prisoner directed toward another; and
 - (2) Repeated verbal comments or gestures of a sexual nature to a prisoner 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.
25. "Sexual misconduct" refers to behavior used to obtain sexual gratification against another's will or at the expense of another.
26. "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.
27. "Substantiated allegation" means an allegation that was investigated and determined to have occurred.
28. "Supervisory staff" means any employee who has the responsibility to oversee the work of another employee or inmate or groups of employees or inmates and includes anyone that the Facility designates as having the responsibility to oversee the work of another employee and/or inmate or group of employees and/or inmates.

29. “Train” means to instruct in the skills addressed to a level at which the trainee has the demonstrated proficiency to implement those skills as, and when called for, in the training. “Trained” means a demonstration of staff proficiency.
30. “Unfounded allegation” means an allegation that was investigated and determined not to have occurred.
31. “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.
32. “Volunteer” means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the Agency.
33. “Voyeurism by a staff member” means an invasion of privacy of a prisoner by staff for reasons unrelated to official duties, such as peering at a prisoner who is using a toilet in her cell to perform bodily functions; requiring a prisoner to expose her buttocks, genitals or breasts; or taking images of all or part of a prisoner’s naked body or of a prisoner performing bodily functions.

II. SUBSTANTIVE PROVISIONS

1. Protection From Harm

- a. KDOC and the TCF shall provide prisoners with a safe and secure environment and continue to take all reasonable steps to protect them from harm.

- b. KDOC and TCF shall continue to implement a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment that is designed to prevent, detect, and respond to such conduct. Such policy shall apply to TCF's prisoner workers and govern conduct in buildings other than living units.
- c. KDOC and TCF shall develop and submit to USDOJ and the Monitor for approval facility-specific policies regarding supervision of prisoners. These policies shall include measures necessary to prevent prisoners from being exposed to an unreasonable risk of harm by other prisoners or staff, including sexual abuse and harassment, and must include the following:
 - i. Post orders and first-line supervision of corrections staff in each housing unit based on an assessment of staffing needs;
 - ii. Communication to and from corrections staff assigned to housing units;
 - iii. Supervision by corrections staff assigned to cellblocks, including (1) conducting of adequate rounds by corrections staff and security supervisors in all cellblocks, and (2) conducting of adequate rounds by corrections staff and security supervisors in areas of the prison other than cellblocks. Such rounds shall occur every 30 minute period, at irregular times, inside each general population housing unit and more often if necessary. TCF shall provide direct supervision in its "I" cell house. Video surveillance may be used to supplement, but must not be used to replace, rounds by correctional officers; and
 - iv. Documentation of all security rounds on forms or logs that do not contain pre-printed rounding times.

- d. KDOC shall continue to revise, as necessary, and implement policies and procedures to prevent, detect, report, and investigate sexual abuse, including prisoner-on-prisoner and staff-on-prisoner sexual abuse. These policies and procedures shall continue to include all of the elements set forth in this Agreement, as well as clearly delineated steps that staff must take to investigate reports of sexual abuse. Such policies and procedures shall apply to TCF's prisoner workers and govern conduct in buildings other than living units.
- e. KDOC and TCF shall continue to implement a written institutional plan to coordinate all actions to be taken in response to an allegation of sexual abuse or sexual harassment.

2. Staffing

- a. Within 90 days of the Effective Date, KDOC and TCF shall develop and submit to the Monitor a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect prisoners against sexual abuse and to implement this Agreement. This staffing plan shall include the following:
 - i. Identification of all posts and positions, the number and qualification of staff to cover each post and position, and shift relief and coverage for vacations;
 - ii. Timetables to implement the results of the staffing plan;
 - iii. Policies and procedures for periodic reviews of, and necessary amendments to, TCF's staffing plan. Such reviews shall be documented in a report ("staffing plan report") to USDOJ and the Monitor quarterly in the first year after the Effective Date and every six months thereafter until termination of this Agreement. Each staffing plan report will include the following information:

1. a listing of each post and position needed;
2. the number of hours needed for each post and position;
3. a listing of staff hired and positions filled;
4. a listing of staff working overtime and the amount of overtime worked by each staff member; and
5. a listing of supervisors working overtime.

b. In calculating adequate staffing levels KDOC and TCF shall include consideration of:

- i. Generally accepted detention and correctional practices;
- ii. Any findings of inadequacy from any investigative agencies;
- iii. Any findings of inadequacy from internal or external oversight bodies;
- iv. TCF's physical plant (including "blind-spots," areas where staff or prisoners may be isolated, and/or non-living areas on campus);
- v. The composition of the prisoner population;
- vi. The number and placement of supervisory staff;
- vii. Institution programs occurring on a particular shift; and
- viii. Any applicable state or local laws, regulations, or standards.

c. KDOC shall continue to employ an upper-level, Department-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee its efforts to comply with the PREA standards, 28 CFR § 115.05 et seq.

d. TCF shall continue to maintain an upper management level PREA compliance officer with sufficient time and authority to coordinate the Facility's efforts to comply with the PREA standards.

- e. Whenever necessary, but no less frequently than once each year, KDOC and TCF, in consultation with the PREA coordinators shall assess, determine, and document, whether adjustments are needed, and, taking into account available resources, implement such adjustments to:
 - i. The staffing plan;
 - ii. TCF's deployment of video monitoring systems and other monitoring technologies; and
 - iii. The resources TCF has available to commit to ensure adherence to the staffing plan.
- f. KDOC and TCF shall continue to implement a policy and practice for having intermediate level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts.
- g. KDOC and TCF shall continue to implement a policy that requires, at a minimum:
 - i. That KDOC and TCF not hire or promote anyone who may have contact with prisoners, and shall not enlist the services of any contractor who may have contact with prisoners, who has been convicted of engaging or attempting to engage in sexual misconduct or who has been civilly or administratively adjudicated to have engaged or attempted to engage in such activity.
 - ii. Before hiring staff who may have contact with prisoners, KDOC and TCF shall perform a criminal background records check.

- iii. KDOC shall inform TCF of any allegations of sexual misconduct at any prior institution(s) against any current staff or new hires, regardless of the outcome.
- iv. KDOC and TCF shall perform a criminal background records check before enlisting the services of any contractor who may have contact with prisoners.
- v. KDOC and TCF shall conduct criminal background records checks of current or newly hired staff who may have contact with prisoners and have in place a system for capturing such information and any allegations of sexual misconduct for current employees at any other institution.
- vi. KDOC and TCF shall also impose upon employees a continuing affirmative duty to disclose any sexual misconduct or allegations of sexual misconduct. Failure to report will lead to documented disciplinary sanctions up to and including termination.

3. Correctional Practices

- a. KDOC and TCF shall develop and submit to the Monitor for approval a proposal for a gender-normed, objective, and validated internal classification system specific to the female population at TCF. Such proposal shall be based on adequate data collection, data analysis, a proposed format, appropriate testing, and adjustments to the system based upon such testing. As implemented, such classification system shall:
 - i. Contain variables that are relevant to women prisoners at TCF; and

- ii. Provide, regardless of classification level, programs that account for the needs of women prisoners at TCF, including those addressing sexual assault, abuse, and trauma; domestic violence; dating violence; parenting and childcare; self-esteem and assertiveness; vocational skills; and medical and mental health care.
- b. KDOC and TCF shall continue to maintain a risk assessment process that adequately identifies potential predators and victims. Such process shall include the following:
- i. All prisoners shall be assessed during an intake screening and upon transfer to another facility within 72 hours of arrival. The screening shall include an assessment of a prisoner's risk of being sexually abused by other prisoners or sexually abusive toward other prisoners;
 - ii. The intake screening shall include the following criteria to assess prisoners for risk of sexual victimization:
 - 1. Whether the prisoner has a mental, physical, or developmental disability;
 - 2. The age of the prisoner;
 - 3. The physical build of the prisoner;
 - 4. Whether the prisoner has previously been incarcerated;
 - 5. Whether the prisoner's criminal history is exclusively nonviolent;
 - 6. Whether the prisoner has prior convictions for sex offenses against an adult or child;
 - 7. Whether the prisoner is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
 - 8. Whether the prisoner has previously experienced sexual victimization; and
 - 9. The prisoner's own perception of vulnerability.

- iii. In assessing prisoners for risk of being sexually abusive, the initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence and/or sexual abuse;
 - iv. Within a set time period, not to exceed 30 days from the prisoner's arrival at TCF, the Facility shall reassess the prisoner's risk of victimization or abusiveness based upon any additional, relevant information received by the Facility since the intake screening;
 - v. A prisoner's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the prisoner's risk of sexual victimization or abusiveness;
 - vi. If the screening indicates that a prisoner has experienced prior sexual victimization or perpetuated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the prisoner is offered a follow-up with a medical or mental health practitioner within 14 days of the intake screening;
 - vii. KDOC and TCF shall use information from the risk screening to inform housing, bed, work, education, and program assignments; and
 - viii. Placement and programming assignments for prisoners at high risk of sexual victimization shall be reassessed at least twice each year to review any threats to safety experienced by the prisoner and such prisoner's own views with respect to her own safety shall be given serious consideration.
- c. KDOC and TCF shall continue to maintain policies and procedures to manage women identified as a potential or actual victim of sexual abuse that includes the following:

- i. When KDOC or TCF learns that a prisoner is subject to a substantial risk of imminent sexual abuse, the Agency or Facility shall take immediate action to protect the prisoner;
- ii. Prisoner victims of sexual abuse shall receive timely, unimpeded access to emergency medical and mental health care and treatment and crisis intervention services;
- iii. If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff and first responders shall take preliminary steps to protect the victim and shall immediately notify the appropriate medical and mental health practitioners;
- iv. The Facility shall offer further non-emergent medical and mental health care and treatment, as appropriate, to all prisoners who have been victimized by sexual abuse;
- v. The care and treatment of sexual abuse victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody;
- vi. Prisoner victims of sexual abuse while incarcerated shall be offered timely information about and access to emergency contraception and sexually transmitted infections prophylaxis;
- vii. Prisoner victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests;
- viii. If pregnancy results, such victims shall receive timely and comprehensive information about and access to pregnancy-related medical services;
- ix. Prisoner victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections;
- x. All treatment services in this subsection shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with an investigation;

- xi. KDOC and TCF shall ensure appropriate counseling services are made available to victims of sexual abuse, provided by a qualified staff member or a victim advocate from a community-based organization that provides services to sexual abuse victims;
 - xii. KDOC and TCF shall enter into and maintain memoranda of understanding or other agreements with community service providers that are able to provide prisoners with confidential emotional support services related to sexual abuse. KDOC and TCF shall maintain copies of agreements;
 - xiii. Prisoners at high risk for sexual victimization shall not be placed in involuntary segregation due to their risk of victimization;
 - xiv. Prisoners placed in segregated housing due to potential victimization shall have full access to programs, privileges, education, and work opportunities; and
 - xv. Every 30 days, TCF shall afford each such prisoner a review to determine whether there is a continuing need for separation from the general population.
- d. KDOC and TCF shall continue to maintain policies and procedures to manage women who TCF identifies as sexual predators, including attempting to conduct a mental health evaluation of all known prisoner-on-prisoner abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.
- e. KDOC and TCF shall collect, consolidate, analyze, track and otherwise use its data to assess its operations on a routine basis. To this end, KDOC and TCF shall:
- i. Collect accurate, uniform data for every allegation of sexual abuse using a standardized instrument and set of definitions;

- ii. Aggregate the incident-based sexual abuse data at least annually;
 - iii. Maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews; and
 - iv. Review data collected in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:
 - 1. Identifying problem areas; and
 - 2. Taking corrective action on an ongoing basis.
- f. If KDOC and/or TCF contracts for services with private agencies or other entities, including other government agencies, they shall include in any new contracts or contract renewals the entity's obligation to adopt and comply with the Facility's policies and procedures governing sexual abuse.
- g. Any new contracts or contract renewals shall provide that TCF monitors the contract to ensure that the contractor is complying with the Facility's sexual abuse policies and procedures.
- h. TCF shall not conduct cross-gender strip searches or visual body cavity searches except in exigent circumstances. Body cavity searches shall only be performed, if at all, by a qualified physician in a clinical setting.
- i. TCF shall not permit cross-gender pat-down searches of female prisoners, absent exigent circumstances.
- j. TCF shall document all cross-gender strip searches, cross-gender visual body cavity searches, and cross-gender pat-down searches of female prisoners conducted pursuant to exigent circumstances.

- k. KDOC and TCF shall train corrections staff in how to conduct cross-gender pat-down searches, when required, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.
- l. KDOC and TCF shall continue to maintain policies and procedures that enable prisoners to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering a prisoner housing unit.

4. Training

- a. KDOC and TCF shall train all staff who may have contact with prisoners on the following:
 - i. Its policy regarding sexual abuse and sexual harassment;
 - ii. How to fulfill their responsibilities under their sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
 - iii. Prisoners' right to be free from sexual abuse and sexual harassment;
 - iv. The right of prisoners and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
 - v. The dynamics of sexual abuse and sexual harassment in confinement;
 - vi. The common reactions of sexual abuse and sexual harassment victims;
 - vii. How to detect and respond to signs of threatened and actual sexual abuse;
 - viii. How to preserve physical evidence of sexual abuse;
 - ix. How to avoid inappropriate relationships with prisoners;

- x. How to respond effectively and professionally to victims of sexual abuse;
 - xi. How and to whom to report allegations or suspicions of sexual abuse; and
 - xii. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
- b. Within 60 days of the Effective Date, all staff shall have received sexual abuse and sexual harassment training.
- c. KDOC and TCF shall provide annual refresher training to all staff to ensure that they know the current sexual abuse and sexual harassment policies and procedures.
- d. The KDOC shall document that all staff have received and understand the training.
- e. The KDOC and TCF shall ensure that all volunteers and contractors who have contact with prisoners have been trained on their responsibilities under its sexual abuse and sexual harassment prevention, detection, and response policies and procedures.
- f. The KDOC and TCF shall maintain documentation confirming that volunteers and contractors have received and understand the training.
- g. KDOC and TCF shall ensure that all newly admitted prisoners receive information, through a prisoner handbook and, at the discretion of KDOC and TCF, an orientation video, including the following: facility rules and regulations, how to report misconduct, how to report sexual abuse or assault, the process for accessing medical and mental health care, the disciplinary process, and how to access the grievance process.

- h. Within 30 days of intake, KDOC and TCF shall provide comprehensive education to prisoners either in person or via video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding their policies and procedures for responding to such incidents.
- i. Within 30 days of intake KDOC and TCF shall educate prisoners on their rights, as outlined in the paragraph above. This training shall be made available in formats accessible to all prisoners, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled as well as to prisoners who have limited reading skills.
- j. KDOC and TCF shall maintain documentation of prisoner participation in these education sessions.
- k. In addition to providing such education, KDOC and TCF shall ensure that key information is continuously and readily available or visible to prisoners through posters, prisoner handbooks, or other written formats.

5. Investigations

- a. KDOC and TCF shall ensure that an administrative and/or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.

- b. KDOC and TCF shall continue to maintain a policy and procedure to ensure that allegations of sexual abuse or sexual harassment are referred for criminal investigation or prosecution by an agency with the appropriate law enforcement authority, unless the allegation does not involve potentially criminal behavior. The policy and procedure shall ensure that the administrative investigation is completed regardless of the results of the criminal investigation and regardless of the subject's continued employment by KDOC or TCF. KDOC and TCF shall document all criminal referrals.
- c. Investigations into allegations of sexual abuse and sexual harassment shall be prompt, thorough, and objective for all allegations, including third-party and anonymous reports.
- d. KDOC and TCF shall issue a written report promptly after any investigation findings. This report shall evaluate staff actions or failures to act, a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings. Such report shall contain a summary sheet that provides an overview of the current status of the investigation or the final outcomes. The summary information shall include, among other things, basic information such as staff name(s), prisoner names(s), location of incident, time of day, and day of the week.
- e. KDOC and TCF shall continue to maintain guidelines for timely initiating and concluding investigations, including the immediate initiation of an investigation and/or review upon learning of an allegation of sexual misconduct and/or abuse and develop a process for monitoring those timelines.

- f. KDOC and TCF shall use investigators who have received special training in sexual misconduct. Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.
- g. KDOC and TCF shall maintain documentation that their investigators have completed the required specialized training in conducting sexual abuse investigations.
- h. Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- i. The departure of the alleged abuser or victim from the employment or control of KDOC or TCF shall not provide a basis for terminating an investigation.
- j. When outside agencies investigate sexual abuse, KDOC and TCF shall cooperate with outside investigators and shall endeavor to remain informed, to the extent appropriate, about the progress of the investigation.
- k. The Facility shall maintain a methodology for receiving third-party reports of sexual abuse and sexual harassment and shall continue to distribute public information on how to report sexual abuse and sexual harassment on behalf of a prisoner.

- l. KDOC and TCF shall require all staff to report immediately any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred at TCF, retaliation against prisoners or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
- m. Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary to make treatment, investigation, and other security and management decisions.
- n. Medical and mental health practitioners shall be required to report sexual abuse and to inform prisoners of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.
- o. Following an investigation into a prisoner's allegation that she suffered sexual abuse in an Agency facility, KDOC and TCF shall inform the prisoner as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
- p. If KDOC or TCF did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the prisoner.
- q. Following a prisoner's allegation that a staff member has committed sexual abuse against the prisoner, KDOC and TCF shall subsequently inform the prisoner whenever:
 - i. The staff member is no longer posted within the prisoner's unit;
 - ii. The staff member is no longer employed at TCF;

- iii. KDOC and/or TCF learn that the staff member has been indicted on a charge related to sexual abuse within TCF;
or
 - iv. KDOC and TCF learn that the staff member has been convicted on a charge related to sexual abuse within TCF.
- r. All such notifications or attempted notifications shall be documented.
- s. Upon learning of an allegation that a prisoner was sexually abused, the first security staff member to respond to the report shall be required to:
- i. Separate the alleged victim and abuser; and
 - ii. Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence.
- t. If the first staff responder is not a security staff member, the responder shall be required to request the alleged victim not to take any actions that could destroy physical evidence, and then notify security staff.
- u. KDOC and TCF shall require all employees to report immediately:
- i. Any knowledge, suspicion or information regarding an incident or alleged incident of sexual abuse that occurred in transport vehicles and any off-site facilities under the immediate control and supervision of KDOC or TCF; and
 - ii. Retaliation against prisoners or staff who reported abuse.

- v. KDOC and TCF shall provide prisoners and staff with multiple ways for privately reporting possible abuse and/or retaliation, including sexual abuse and/or harassment, and retaliation by other prisoners or staff for reporting sexual abuse and sexual harassment. This includes accepting reports made verbally, in writing, confidentially, or anonymously, and from third parties including other prisoners, TCF staff, contractors, volunteers, and the prisoner's family or legal representation.
- w. All reports of sexual abuse shall be forwarded immediately to the sexual abuse prevention coordinator and KDOC and TCF shall investigate, as appropriate, and document any resulting investigations.
- x. KDOC shall continue to maintain a policy to protect all prisoners and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other prisoners or staff, and shall designate which staff members or departments are charged with monitoring retaliation.
- y. KDOC and TCF shall employ multiple protection measures, such as housing changes or transfers for prisoner victims or abusers, removal of alleged staff or prisoner abusers from contact with victims, and emotional support services for prisoners or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

- z. KDOC and TCF shall monitor the conduct and treatment of prisoners or staff who have reported sexual abuse and of prisoners who have been reported to have suffered sexual abuse, such as any prisoner disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff, for at least 90 days following the report, to see if there are changes that may suggest possible retaliation by prisoners or staff, and shall act promptly to remedy any such retaliation. The Agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need. In the case of prisoners, such monitoring shall also include periodic status checks.
- aa. If any other individual who cooperates with an investigation expresses a fear of retaliation, KDOC and TCF shall take appropriate measures to protect that individual against retaliation.
- bb. KDOC and TCF shall conduct a sexual abuse incident review within 30 days of the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.
- cc. The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
- dd. The review team shall:
 - i. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

- ii. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at TCF;
- iii. Examine the area in TCF where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
- iv. Assess the adequacy of staffing levels in that area during different shifts;
- v. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
- vi. Prepare a report of its findings and any recommendations for improvement and submit such report to the Facility head and PREA compliance manager.

6. Disciplinary Actions

- a. KDOC and TCF shall ensure prompt corrective action following any finding or recommendation resulting from either an administrative or criminal investigation surrounding sexual abuse or sexual harassment. This will include, but not be limited to:
 - i. Documented disciplinary sanctions;
 - ii. Removal from post where sexual abuse or harassment occurred; and
 - iii. Documented review of TCF practices following verified occurrence of sexual abuse or sexual harassment and changes to policy and/or practice, if warranted.
- b. Staff shall be subject to disciplinary sanctions up to and including termination for violating the Agency's sexual abuse or sexual harassment policies.

- c. Termination shall be the presumptive disciplinary sanction for staff who has engaged in sexual abuse.
- d. Disciplinary sanctions shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.
- e. All terminations for violations of KDOC's and TCF's sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.
- f. Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with prisoners and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.
- g. KDOC and TCF shall take appropriate remedial measures, and shall prohibit further contact with prisoners, in the case of any other violation of KDOC or TCF sexual abuse or sexual harassment policies by a contractor or volunteer.

7. Grievances

- a. KDOC and TCF shall continue to maintain a grievance process that provides multiple internal ways for prisoners to privately report sexual abuse and sexual harassment, retaliation by other prisoners or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

- b. KDOC and TCF shall ensure that grievance forms are available on all units. KDOC and TCF shall assist prisoners who are limited or non-English speakers, prisoners with low literacy, and prisoners who have physical or cognitive disabilities in accessing the grievance system.
- c. KDOC and TCF shall also provide at least one way for prisoners to report abuse or harassment to a public or private entity or office that is not part of KDOC or TCF, and that is able to receive and immediately forward prisoner reports of sexual abuse and sexual harassment to KDOC and/or TCF officials, allowing the prisoner to remain anonymous upon request.
- d. Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.
- e. KDOC and TCF shall provide a method for staff to privately report sexual abuse and sexual harassment of prisoners.
- f. KDOC and TCF shall ensure that a prisoner who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and such grievance is not referred to a staff member who is the subject of the complaint.
- g. KDOC and TCF shall not require a prisoner to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.
- h. KDOC and TCF shall issue a final decision on the merits of any portion of a grievance alleging sexual abuse within 30 days of the initial filing of the grievance.

- i. Third parties, including fellow prisoners, staff members, family members, attorneys, and outside advocates, shall be permitted to assist prisoners in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of prisoners.
- j. KDOC and TCF shall continue to maintain procedures for the filing of an emergency grievance where a prisoner is subject to a substantial risk of imminent sexual abuse.
- k. After receiving an emergency grievance alleging a prisoner is subject to a substantial risk of imminent sexual abuse, the Agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, 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 KDOC's and/or TCF's determination whether the prisoner is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

III. COMPLIANCE AND QUALITY IMPROVEMENT

- 1. KDOC and TCF shall revise and/or develop, as necessary, any policies, practices, procedures, protocols, training curricula, and other written documents, including but not limited to, screening tools, logs, handbooks, manuals, and forms, to effectuate the provisions of this Agreement. KDOC and TCF shall send pertinent newly-drafted and revised policies and procedures to USDOJ and the Monitor as they are promulgated. The Monitor shall provide comments on the policies to KDOC and TCF and USDOJ within 60 days. USDOJ may provide comments on the Monitor's comments within 30 days. At that point, the Monitor will consider the comments of USDOJ, KDOC, and TCF and mediate any disputes.

During the period of any review by the Monitor and USDOJ, KDOC and TCF are free to implement any of the policies, practices, procedures, protocols, training curricula, and other written documents described in this Section. KDOC and TCF need not postpone the implementation until the completion of any review by the Monitor and USDOJ. To the extent that the Monitor and/or USDOJ request modifications to the policies, practices, procedures, protocols, training curricula, or other written documents that are submitted for review, such modifications will be addressed in the mediation process.

2. Within 180 days of the Effective Date, KDOC and TCF shall develop and submit to USDOJ and the Monitor for approval written quality improvement policies and procedures adequate to assess and ensure compliance with the terms of this Agreement on an ongoing basis. These policies and procedures shall include the development and implementation of corrective action plans, as necessary, within 30 days of each biannual review.

IV. IMPLEMENTATION

1. KDOC and TCF shall begin implementing the requirements of this Agreement immediately upon the Effective Date.
2. KDOC and TCF shall have fully implemented, including the training of staff, all policies and procedures required under this Agreement within one (1) year of the Effective Date.

V. MONITORING

1. **Monitor Selection:** KDOC, TCF, and USDOJ shall jointly select a Monitor to oversee implementation of the Agreement. Any person or entity that is not mutually agreed upon by KDOC, TCF, and USDOJ to serve as a Monitor may not serve in such role under this Agreement. Neither KDOC, TCF, USDOJ, nor any of their employees or agents shall have any supervisory authority over the Monitor's activities, reports, findings, or recommendations. The cost for the Monitor's fees and expenses shall be borne by KDOC and TCF. If KDOC, TCF, and USDOJ jointly agree, they may remove and replace the Monitor for any reason.
2. **Monitor Qualifications:** The Monitor and his or her staff shall have appropriate experience and education or training related to the subject areas covered in this Agreement. KDOC, TCF, and/or USDOJ reserve the right to object for good cause to any member of the Monitor's staff.
3. **Monitor Access:** The Monitor shall have full and complete access to TCF, all TCF records, prisoner medical and mental health records, staff, and prisoners. KDOC and TCF shall direct all employees to cooperate fully with the Monitor. All information obtained by the Monitor shall be maintained in a confidential manner.
4. **Monitor Ex Parte Communications:** The Monitor shall be permitted to engage in ex parte communications with KDOC, TCF, and USDOJ regarding this Agreement.
5. **Monitor Distribution of KDOC and TCF Documents, Reports, and Assessments:** Within seven days of receipt, the Monitor shall distribute all KDOC and TCF assessments and reports to USDOJ. The Monitor also shall provide any of TCF's compliance-related documents within seven days to USDOJ upon request.

6. Limitations on Public Disclosures by the Monitor: Except as required or authorized by the terms of this Agreement, or KDOC, TCF, and USDOJ acting together, the Monitor shall not make any public or press statements (at a conference or otherwise) or issue findings with regard to any act or omission of KDOC or TCF or their agents, representatives or employees, or disclose information provided to the Monitor pursuant to this Agreement. The Monitor shall not testify in any other litigation or proceeding with regard to any act or omission of KDOC or TCF or any of their agents, representatives, or employees related to this Agreement, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this Agreement, nor serve as a non-testifying expert regarding any matter or subject that he or she may have learned as a result of his or her performance under this Agreement. Unless such conflict is waived by KDOC, TCF, and USDOJ, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against KDOC or TCF, their departments, officers, agents or employees. The Monitor is not a State/County or local agency or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records subject to public inspection. Neither the Monitor nor any person or entity hired or otherwise retained by the Monitor to assist in furthering any provision of this Agreement shall be liable for any claim, lawsuit or demand arising out of the Monitor's performance pursuant to this Agreement. This provision does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.

7. **Monitor's Reports:** The Monitor shall provide KDOC, TCF, and USDOJ with reports describing the steps taken by KDOC and TCF to implement this Agreement and evaluate the extent to which KDOC and TCF have complied with each substantive provision of the Agreement. The Monitor shall issue an initial report 180 days after the Effective Date, and then every 180 days thereafter. The reports shall be provided to KDOC, TCF, and USDOJ in draft form for comment at least 30 days prior to their issuance. The Monitor shall consider the responses of KDOC, TCF, and USDOJ and make appropriate changes, if any, before issuing the report. These reports shall be written with due regard for the privacy interests of individual prisoners and staff and the interest of KDOC and TCF in protecting against disclosure of information not permitted by this Agreement.
8. **Compliance Assessments:** In the Monitor's report, the Monitor shall evaluate the status of compliance for each relevant provision of the Agreement using the following standards: (1) Substantial Compliance; (2) Partial Compliance, and (3) Non-compliance. In order to assess compliance, the Monitor shall review a sufficient number of pertinent documents and interview a sufficient number of staff and prisoners to accurately assess current conditions. The Monitor shall be responsible for independently verifying representations from KDOC and TCF regarding progress toward compliance, and examining supporting documentation. Each Monitor report shall describe the steps taken by each member of the monitoring team to analyze conditions and assess compliance, including documents reviewed and individuals interviewed, and the factual basis for each of the Monitor's findings. The Monitor shall provide recommendations for each of the provisions in the Agreement outlining proposed actions for the next six months for KDOC and TCF to complete toward achieving compliance with the particular provision.

9. Technical Assistance by the Monitor: The Monitor shall provide KDOC and TCF with technical assistance as requested. Technical assistance should be reasonable and should not interfere with the Monitor's ability to assess compliance.

VI. REPORTING REQUIREMENTS AND RIGHT OF ACCESS

1. KDOC and TCF shall submit a bi-annual compliance report to USDOJ until the Agreement is terminated, the first of which shall be filed within 150 days of the Effective Date.
2. Each compliance report shall describe the actions KDOC and TCF have taken during the reporting period to implement this Agreement and shall make specific reference to the Agreement provisions being implemented. The report shall also summarize audits and continuous improvement and quality assurance activities, and contain findings and recommendations that would be used to track and trend data compiled at TCF.
3. KDOC and TCF shall maintain sufficient records to document that the requirements of this Agreement are being properly implemented and shall make such records available to the USDOJ at all reasonable times for inspection and copying. In addition, KDOC and TCF shall maintain and submit upon request records or other documents to verify that they have taken such actions as described in their compliance reports (e.g., census summaries, policies, procedures, protocols, training materials and incident reports) and will also provide all documents reasonably requested by USDOJ.
4. USDOJ and its attorneys, consultants, and agents shall have mutually agreed upon access to TCF prisoners, KDOC and TCF staff (including contractors from any other outside medical or mental health services provider) and documents as is reasonably necessary to address issues affected by this Agreement.

5. Excluding on-site tours, within 30 days (or such longer period of time as the parties may mutually agree upon) of receipt of written questions from USDOJ concerning KDOC and TCF's compliance with the requirements of this Agreement, KDOC and TCF shall provide USDOJ with written answers and any requested documents.
6. KDOC shall promptly notify the United States upon any substantiated findings of sexual misconduct and/or injury requiring emergency medical attention related to an allegation and/or incident of sexual misconduct. With this notification, KDOC and TCF shall forward to the USDOJ any related incident reports and medical and/or mental health reports and investigations as they become available.

VII. CONSTRUCTION AND TERMINATION

1. If any unforeseen circumstance occurs that causes a failure to timely carry out any requirements of this Agreement, KDOC and TCF shall notify USDOJ in writing within 20 calendar days (or as soon as reasonably practicable) after KDOC and TCF become aware of the unforeseen circumstance and its impact on KDOC's and TCF's ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. KDOC and TCF shall implement all reasonable measures to avoid or minimize any such failure.
2. The Agreement shall be applicable to, and binding upon, all parties, elected officials and their respective officers, agents, employees, assigns, and their successors in office. However, this Agreement is not intended to, and does not, create any new rights or enlarge or expand upon any current rights – whether legal or equitable – for individuals who are not parties to the Agreement.

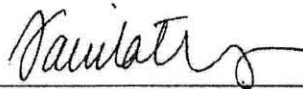
3. This Agreement shall terminate when KDOC and TCF achieve compliance with the substantive provisions of this Agreement and maintain compliance for one (1) year.
4. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure by KDOC and TCF to maintain substantial compliance.
5. The burden shall be on KDOC and TCF to demonstrate it has achieved substantial compliance with a particular section of this Agreement.

For the UNITED STATES OF AMERICA:

ERIC H. HOLDER, JR.
Attorney General



BARRY R. GRISSOM
United States Attorney
District of Kansas



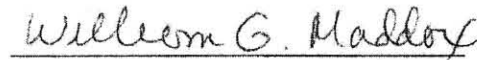
VANITA GUPTA
Acting Assistant Attorney General
Civil Rights Division

MARK KAPPELHOFF
Deputy Assistant Attorney General
Civil Rights Division

JONATHAN M. SMITH
Chief

JULIE ABBATE
Deputy Chief

Date: 12/22/14



WILLIAM G. MADDUX
Trial Attorney
Civil Rights Division
Special Litigation Section
950 Pennsylvania Avenue, NW
Washington, DC 20530
Tel. (202) 514-6255
Fax. (202) 514-0212

For the STATE OF KANSAS:


RAY ROBERTS

Secretary of Corrections
Kansas Department of Corrections


LINDEN APPEL

Chief Legal Counsel
Kansas Department of Corrections
714 S.W. Jackson St., Ste. 300
Topeka, KS 66603
Tel. (785) 296-4508


BRADLEY SCHLOZMAN

Hinkle Law Firm LLC
301 North Main St., Ste. 2000
Wichita, KS 67230
Tel. (316) 267-2000
Counsel to the State of Kansas