

## § 549.93

substance, and thereby substantially impairing the ability of the victim to appraise or control conduct; or

(e) Engaging in such conduct with a victim who is incapable of appraising the nature of the conduct, or physically or mentally incapable of declining participation in, or communicating unwillingness to engage in, that conduct.

## § 549.93 Definition of “child molestation.”

For purposes of this subpart, “child molestation” includes any unlawful conduct of a sexual nature with, or sexual exploitation of, a person under the age of 18 years.

## § 549.94 Definition of “sexually dangerous to others.”

For purposes of this subpart, “sexually dangerous to others” means that a person suffers from a serious mental illness, abnormality, or disorder as a result of which he or she would have serious difficulty in refraining from sexually violent conduct or child molestation if released.

## § 549.95 Determining “serious difficulty in refraining from sexually violent conduct or child molestation if released.”

In determining whether a person will have “serious difficulty in refraining from sexually violent conduct or child molestation if released,” Bureau mental health professionals may consider, but are not limited to, evidence:

(a) Of the person’s repeated contact, or attempted contact, with one or more victims of sexually violent conduct or child molestation;

(b) Of the person’s denial of or inability to appreciate the wrongfulness, harmfulness, or likely consequences of engaging or attempting to engage in sexually violent conduct or child molestation;

(c) Established through interviewing and testing of the person or through other risk assessment tools that are relied upon by mental health professionals;

(d) Established by forensic indicators of inability to control conduct, such as:

(1) Offending while under supervision;

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(2) Engaging in offense(s) when likely to get caught;

(3) Statement(s) of intent to re-offend; or

(4) Admission of inability to control behavior; or

(e) Indicating successful completion of, or failure to successfully complete, a sex offender treatment program.

## PART 550—DRUG PROGRAMS

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### Subpart A [Reserved]

## Bureau of Prisons, Justice

## § 550.41

### Subpart B—Alcohol Testing

#### § 550.10 Purpose and scope.

The Bureau of Prisons maintains a surveillance program in order to deter and to detect the illegal introduction or use of alcohol in its institutions. In an effort to reduce the introduction or use of alcohol, the Warden shall establish procedures for monitoring and testing individual inmates or groups of inmates who are known or suspected to be users of alcohol, or who are considered high risks based on behavior observed or on information received by staff.

(a) Staff may prepare a disciplinary report on an inmate who shows a positive substantiated test result for alcohol.

(b) Staff may initiate disciplinary action against an inmate who refuses to submit to an alcohol test.

[45 FR 33940, May 20, 1980]

### Subpart C [Reserved]

### Subpart D—Urine Surveillance

SOURCE: 62 FR 45292, Aug. 26, 1997, unless otherwise noted.

#### § 550.30 Purpose and scope.

The Warden shall establish programs of urine testing for drug use, to monitor specific groups or individual inmates who are considered as high risk for drug use, such as those involved in community activities, those with a history of drug use, and those inmates specifically suspected of drug use. Testing shall be performed with frequency determined by the Warden on at least 50 percent of those inmates who are involved in community activities. In addition, staff shall randomly sample each institution's inmate population during each month to test for drug use.

#### § 550.31 Procedures.

(a) Staff of the same sex as the inmate tested shall directly supervise the giving of the urine sample. If an inmate is unwilling to provide a urine sample within two hours of a request for it, staff ordinarily shall file an incident report. No waiting period or extra

time need be allowed for an inmate who directly and specifically refuses to provide a urine sample. To eliminate the possibility of diluted or adulterated samples, staff shall keep the inmate under direct visual supervision during this two-hour period, or until a complete sample is furnished. To assist the inmate in giving the sample, staff shall offer the inmate eight ounces of water at the beginning of the two-hour time period. An inmate is presumed to be unwilling if the inmate fails to provide a urine sample within the allotted time period. An inmate may rebut this presumption during the disciplinary process.

(b) Institution staff shall determine whether a justifiable reason exists, (e.g., use of prescribed medication) for any positive urine test result. If the inmate's urine test shows a positive test result for the presence of drugs which cannot be justified, staff shall file an incident report.

### Subpart E—Drug Services (Urine Surveillance and Counseling for Sentenced Inmates in Contract CTCs)

SOURCE: 48 FR 24624, June 1, 1983, unless otherwise noted.

#### § 550.40 Purpose and scope.

The Bureau of Prisons requires that an inmate who is serving a sentence in a contract community treatment center (CTC) participate in a program of urine testing for drug use. An inmate who is serving a sentence in a contract CTC, and who has drug aftercare as a condition of release also shall receive drug counseling during the inmate's stay at the contract CTC.

#### § 550.41 Urine surveillance.

A program of urine testing for drug use shall be established in contract CTCs.

(a) Urine surveillance shall be conducted on all inmates serving their sentence in a contract CTC:

- (1) Who have drug aftercare as a condition of release;
- (2) Who have a known history of drug abuse; or
- (3) Who are suspected of using drugs.

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Center staff shall collect a minimum of six samples per month from an inmate who meets one or more of the criteria listed in paragraphs (a) (1) through (3) of this section.

(b) The Center Director shall establish a schedule for random collection for all other sentenced inmates not identified in paragraph (a) of this section.

## § 550.42 Procedures for urine surveillance.

(a) Contractor authorized personnel of the same sex as the inmate must witness collection of the inmate's urine sample. Inmates may not be involved in the collection, recording, mailing, or processing of the test results.

(b) If an inmate fails to provide a urine sample within two hours of a request for it, center staff may file a disciplinary report. To eliminate the possibility of diluted or adulterated samples, center staff shall keep the inmate under direct supervision during this two-hour period.

(c) Center staff shall have each positive urine test validated to substantiate the positive result. Center staff shall file a disciplinary report if the inmate's urine test shows a positive result for the presence of drugs which the inmate cannot satisfactorily justify to center staff.

(d) The results of disciplinary hearings and a copy of positive urine testing results which the inmate cannot satisfactorily justify to center staff shall be sent to the appropriate Regional U.S. Parole Commission Office, the Community Programs Manager (CPM), and the U.S. Probation Office.

## § 550.43 Drug counseling.

(a) Drug counseling shall be provided to sentenced inmates in contract community treatment centers who have drug aftercare as a condition of release.

(b) Counseling shall include a minimum of a 30-minute session each week, provided by qualified staff.

(c) Center staff shall document in the inmate's file the date and time of each counseling session. The counselor must prepare a monthly summary of each inmate's progress. This report shall be placed in the inmate's file.

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## § 550.44 Procedures for arranging drug counseling.

The contract center staff shall hold a program planning conference with a sentenced inmate who has drug aftercare as a condition of release. At this meeting, held within one week of the inmate's arrival at the center, plans are made for the inmate to receive drug counseling. The meeting is attended by center staff, the inmate, and the Chief U.S. Probation Officer or designee.

## Subpart F—Drug Abuse Treatment Program

SOURCE: 74 FR 1897, Jan. 14, 2009, unless otherwise noted.

## § 550.50 Purpose and scope.

The purpose of this subpart is to describe the Bureau's drug abuse treatment programs for the inmate population, to include drug abuse education, non-residential drug abuse treatment services, and residential drug abuse treatment programs (RDAP). These services are provided by Psychology Services department.

[81 FR 24490, Apr. 26, 2016]

## § 550.51 Drug abuse education course.

(a) *Purpose of the drug abuse education course.* All institutions provide a drug abuse education course to:

(1) Inform inmates of the consequences of drug/alcohol abuse and addiction; and

(2) Motivate inmates needing drug abuse treatment to apply for further drug abuse treatment, both while incarcerated and after release.

(b) *Course placement.* (1) Inmates will get primary consideration for course placement if they were sentenced or returned to custody as a violator after September 30, 1991, when unit and/or drug abuse treatment staff determine, through interviews and file review that:

(i) There is evidence that alcohol or other drug use contributed to the commission of the offense;

(ii) Alcohol or other drug use was a reason for violation either of supervised release (including parole) or Bureau community status;

(iii) There was a recommendation (or evaluation) for drug programming during incarceration by the sentencing judge; or

(iv) There is evidence of a history of alcohol or other drug use.

(2) Inmates may also be considered for course placement if they request to participate in the drug abuse education program but do not meet the criteria of paragraph (b)(1) of this section.

(3) Inmates may not be considered for course placement if they:

- (i) Do not have enough time remaining to serve to complete the course; or
- (ii) Volunteer for, enter or otherwise complete a RDAP.

(c) *Consent.* Inmates will only be admitted to the drug abuse education course if they agree to comply with all Bureau requirements for the program.

(d) *Completion.* To complete the drug abuse education course, inmates must attend and participate during course sessions and pass a final course exam. Inmates will ordinarily have at least three chances to pass the final course exam before they lose privileges or the effects of non-participation occur (see paragraph (e) of this section).

(e) *Effects of non-participation.* (1) If inmates considered for placement under paragraph (b)(1) of this section refuse participation, withdraw, are expelled, or otherwise fail to meet attendance and examination requirements, such inmates:

- (i) Are not eligible for performance pay above maintenance pay level, or for bonus pay, or vacation pay; and
- (ii) Are not eligible for a Federal Prison Industries work program assignment (unless the Warden makes an exception on the basis of work program labor needs).

(2) The Warden may make exceptions to the provisions of this section for good cause.

#### § 550.52 Non-residential drug abuse treatment services.

All institutions must have non-residential drug abuse treatment services, provided through the institution's Psychology Services department. These services are available to inmates who voluntarily decide to participate.

#### § 550.53 Residential Drug Abuse Treatment Program (RDAP).

(a) *RDAP.* To successfully complete the RDAP, inmates must complete each of the following components:

(1) *Unit-based component.* Inmates must complete a course of activities provided by the Psychology Services Department in a treatment unit set apart from the general prison population. This component must last at least six months.

(2) *Follow-up services.* If time allows between completion of the unit-based component of the RDAP and transfer to a community-based program, inmates must participate in the follow-up services to the unit-based component of the RDAP.

(3) *Community Treatment Services (CTS).* Inmates who have completed the unit-based program and (when appropriate) the follow-up treatment and transferred to a community-based program must complete CTS to have successfully completed RDAP and receive incentives. The Warden, on the basis of his or her discretion, may find an inmate ineligible for participation in a community-based program; therefore, the inmate cannot complete RDAP.

(b) *Admission criteria.* Inmates must meet all of the following criteria to be admitted into RDAP.

(1) Inmates must have a verifiable substance use disorder.

(2) Inmates must sign an agreement acknowledging program responsibility.

(3) When beginning the program, the inmate must be able to complete all three components described in paragraph (a) of this section.

(c) *Application to RDAP.* Inmates may apply for the RDAP by submitting requests to a staff member (ordinarily, a member of the unit team or the Drug Abuse Program Coordinator).

(d) *Referral to RDAP.* Inmates will be identified for referral and evaluation for RDAP by unit or drug treatment staff.

(e) *Placement in RDAP.* The Drug Abuse Program Coordinator decides whether to place inmates in RDAP based on the criteria set forth in paragraph (b) of this section.

(f) *Completing the unit-based component of RDAP.* To complete the unit-based component of RDAP, inmates

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must have satisfactory attendance and participation in all RDAP activities.

(g) *Expulsion from RDAP.* (1) Inmates may be removed from the program by the Drug Abuse Program Coordinator because of disruptive behavior related to the program or unsatisfactory progress in treatment.

(2) Ordinarily, inmates must be given at least one formal warning before removal from RDAP. A formal warning is not necessary when the documented lack of compliance with program standards is of such magnitude that an inmate's continued presence would create an immediate and ongoing problem for staff and other inmates.

(3) We may return an inmate who withdraws or is removed from RDAP to his/her prior institution (if we had transferred the inmate specifically to participate in RDAP).

(h) *Effects of non-participation.* (1) If inmates refuse to participate in RDAP, withdraw, or are otherwise removed, they are not eligible for:

(i) A furlough (other than possibly an emergency furlough);

(ii) Performance pay above maintenance pay level, bonus pay, or vacation pay; and/or

(iii) A Federal Prison Industries work program assignment (unless the Warden makes an exception on the basis of work program labor needs).

(2) Refusal, withdrawal, and/or expulsion will be a factor to consider in determining length of community confinement.

(3) Where applicable, staff will notify the United States Parole Commission of inmates' needs for treatment and any failure to participate in the RDAP.

[74 FR 1897, Jan. 14, 2009, as amended at 81 FR 24490, Apr. 26, 2016]

### § 550.54 Incentives for RDAP participation.

(a) An inmate may receive incentives for his or her satisfactory participation in the RDAP. Institutions may offer the basic incentives described in paragraph (a)(1) of this section. Bureau-authorized institutions may also offer enhanced incentives as described in paragraph (a)(2) of this section.

(1) *Basic incentives.* (i) Limited financial awards, based upon the inmate's

achievement/completion of program phases.

(ii) Consideration for the maximum period of time in a community-based treatment program, if the inmate is otherwise eligible.

(iii) Local institution incentives such as preferred living quarters or special recognition privileges.

(iv) Early release, if eligible under § 550.55.

(2) *Enhanced incentives.* (i) Tangible achievement awards as permitted by the Warden and allowed by the regulations governing personal property (see 28 CFR part 553).

(ii) Photographs of treatment ceremonies may be sent to the inmate's family.

(iii) Formal consideration for a nearer release transfer for medium and low security inmates.

(b) An inmate must meet his/her financial program responsibility obligations (see 28 CFR part 545) and GED responsibilities (see 28 CFR part 544) before being able to receive an incentive for his/her RDAP participation.

(c) If an inmate withdraws from or is otherwise removed from RDAP, that inmate may lose incentives he/she previously achieved.

### § 550.55 Eligibility for early release.

(a) *Eligibility.* Inmates may be eligible for early release by a period not to exceed twelve months if they:

(1) Were sentenced to a term of imprisonment under either:

(i) 18 U.S.C. Chapter 227, Subchapter D for a nonviolent offense; or

(ii) D.C. Code § 24–403.01 for a nonviolent offense, meaning an offense other than those included within the definition of “crime of violence” in D.C. Code § 23–1331(4); and

(2) Successfully complete a RDAP, as described in § 550.53, during their current commitment.

(b) *Inmates not eligible for early release.* As an exercise of the Director's discretion, the following categories of inmates are not eligible for early release:

(1) Immigration and Customs Enforcement detainees;

(2) Pretrial inmates;

(3) Contractual boarders (for example, State or military inmates);

(4) Inmates who have a prior felony or misdemeanor conviction within the ten years prior to the date of sentencing for their current commitment for:

(i) Homicide (including deaths caused by recklessness, but not including deaths caused by negligence or justifiable homicide);

(ii) Forcible rape;

(iii) Robbery;

(iv) Aggravated assault;

(v) Arson;

(vi) Kidnaping; or

(vii) An offense that by its nature or conduct involves sexual abuse offenses committed upon minors;

(5) Inmates who have a current felony conviction for:

(i) An offense that has as an element, the actual, attempted, or threatened use of physical force against the person or property of another;

(ii) An offense that involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device);

(iii) An offense that, by its nature or conduct, presents a serious potential risk of physical force against the person or property of another; or

(iv) An offense that, by its nature or conduct, involves sexual abuse offenses committed upon minors;

(6) Inmates who have been convicted of an attempt, conspiracy, or solicitation to commit an underlying offense listed in paragraph (b)(4) and/or (b)(5) of this section; or

(7) Inmates who previously received an early release under 18 U.S.C. 3621(e).

(c) *Early release time-frame.* (1) Inmates so approved may receive early release up to twelve months prior to the expiration of the term of incarceration, except as provided in paragraphs (c)(2) and (3) of this section.

(2) Under the Director's discretion allowed by 18 U.S.C. 3621(e), we may limit the time-frame of early release based upon the length of sentence imposed by the Court.

(3) If inmates cannot fulfill their community-based treatment obligations by the presumptive release date, we may adjust provisional release dates by the least amount of time nec-

essary to allow inmates to fulfill their treatment obligations.

[74 FR 1897, Jan. 14, 2009, as amended at 81 FR 24490, Apr. 26, 2016]

#### **§ 550.56 Community Treatment Services (CTS).**

(a) For inmates to successfully complete all components of RDAP, they must participate in CTS. If inmates refuse or fail to complete CTS, they fail RDAP and are disqualified for any additional incentives.

(b) Inmates with a documented drug use problem who did not choose to participate in RDAP may be required to participate in CTS as a condition of participation in a community-based program, with the approval of the Supervisory Community Treatment Services Coordinator.

[81 FR 24490, Apr. 26, 2016]

#### **§ 550.57 Inmate appeals.**

Inmates may seek formal review of complaints regarding the operation of the drug abuse treatment program by using administrative remedy procedures in 28 CFR part 542.

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