

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
INVESTIGATION NO. 2018-001

INVESTIGATION OF ALLEGATIONS OF SEXUAL MISCONDUCT
LITTLE SANDY CORRECTIONAL COMPLEX

PERSONNEL BOARD'S ORDER ACCEPTING
THE REPORT AND RECOMMENDATION


*** **

The Board at its regular June 2019 meeting, having considered the report and recommendation dated May 14, 2019, the response filed by the Justice and Public Safety Cabinet, and being duly advised,

IT IS HEREBY ORDERED that the Report and Recommendation are accepted and adopted by the Personnel Board.

SO ORDERED this 20th day of June, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof mailed to:

Board Members
Secretary Thomas Stephens
Secretary John Tilley
Hon. Edward Baylous
Hon. Ned Pillersdorf
Hon. Joe Childers
Hon. Bethany Baxter
Ms. Linda Smith
Mr. Stephen Harper

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PERSONNEL BOARD
INVESTIGATION NO. 2018-001**

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LITTLE SANDY CORRECTIONAL COMPLEX**

REPORT AND RECOMMENDATION

** ** * * ** * *

SUMMARY OF INVESTIGATION

At the request of Personnel Cabinet Secretary Thomas B. Stephens, in December 2017, the Personnel Board opened an investigation into allegations of sexual harassment of female Correctional Officers by Correctional Sergeant Stephen Harper at the Little Sandy Correctional Complex. In this investigation, the Personnel Board was primarily tasked with answering two questions: 1. Did Sergeant Stephen Harper engage in sexual harassment of multiple female employees at the Little Sandy Correctional Complex? 2. Was the Department of Corrections' response and investigation of sexual harassment complaints legally sufficient, and does the Department of Corrections' handling of those allegations offer lessons for other agencies going forward?

After conducting a thorough investigation, the Investigator finds:

1. Stephen Harper harassed multiple female employees of the Little Sandy Correctional Complex ("LSCC"), violating 1) the Executive Branch's Sexual Harassment Policy, 2) Corrections Policy and Procedure 3.5 on Sexual Harassment, and 3) KRS 18A.140(1).

2. The Department of Corrections' response and investigation of the harassment claims against Harper were insufficient. Although the Department of Corrections had a harassment policy in place and conducted annual training on sexual harassment with its employees, the Department of Corrections: 1) did not conduct adequate investigations of allegations that came to its attention, 2) did not ensure that the individual who conducted the investigations was properly trained, 3) did not maintain adequate documentation of its investigations, and 4) did not include an independent review of investigation findings and procedures. In one instance, a report of sexual harassment was not investigated at all. Many

interviews were conducted without an investigation plan. In addition, the investigation revealed that a culture existed within LSCC, which may have contributed to acts of sexual harassment and a reluctance to report allegations of sexual harassment.

INITIATION OF THE INVESTIGATION

At the December 2017 Personnel Board meeting, Personnel Cabinet Secretary Thomas B. Stephens submitted a written request to the Personnel Board to conduct an investigation into sexual harassment allegations at the Little Sandy Correctional Complex (LSCC). A copy of this letter is attached hereto and incorporated herein as **Report and Recommendation Attachment A**. The Personnel Board assigned the investigation to Executive Director Mark A. Sipek.

At the January 2018 Personnel Board meeting, the Board was informed that, at Mr. Sipek's request, Board members Katie Monteiro and Tanya Lawrence would be assisting with the investigation. Based on Secretary Stephens' letter, the investigators were aware of a general timeline of events; these allegations of sexual harassment first came to light in 2013, a lawsuit was initiated in 2014, and a jury verdict occurred in 2017. The investigators decided that they would conduct their own interviews of witnesses, but would also review previous investigations and testimony provided during litigation.

After contact with the Justice and Public Safety Cabinet Secretary John Tilley and General Counsel Andrew English, the investigators learned that the Hon. Edward Baylous was designated as the representative of the Justice and Public Safety Cabinet for this investigation. Baylous also was the counsel of record for the underlying litigation, Donna Adkins vs. Stephen Harper, 2014-CI-061 and 2017-CI-075, as well as other related cases.

THE BOARD'S INVESTIGATIVE TEAM

1. During the course of the investigation, the investigative team reviewed thousands of pages of documentation, including personnel files, occurrence reports, investigation reports, emails, policies, shift rosters, logs, medical records, training materials, and calendars. In addition, the team also reviewed court records, including legal complaints, court orders, depositions, and settlement agreements. Moreover, court records from other relevant civil and criminal litigation were reviewed. Video recordings were reviewed, including the Steptoe

interviews, the New York Times report, Internal Affairs interviews, a Kentucky State Police interview, deposition testimony, in addition to testimony from both the injunction hearing and the jury trial in the matter of Adkins v. Harper. Audio recordings from Internal Affairs and the LSCC Personnel Office were also reviewed.

2. The investigators reviewed all sexual harassment complaints and investigations conducted at LSCC since the facility opened in 2005. The investigators also reviewed other investigations conducted by the Department of Corrections from 2013 through 2018.

3. The investigators also conducted 68 interviews with 57 witnesses. All interviews were recorded and all witnesses testified under oath.

4. General Counsel Stafford Easterling was available to assist the investigative team with background matters including, but not limited to, legal research, strategy, logistics, document review, and editing. However, it was determined that he would not be involved in conducting interviews of witnesses based on his employment with the Justice and Public Safety Cabinet while these matters were investigated and litigated.

5. Although Board Members Katie Monteiro and Tanya Lawrence participated in all aspects of the investigation, this Report and Recommendation is solely the work of Investigator Mark A. Sipek.

FACTUAL BACKGROUND

1. **Stephen Harper** was a Correctional Sergeant employed at LSCC. He was hired as a Correctional Officer in 2005 and was promoted to a Correctional Sergeant in 2009. In 2012, 2013, and most of 2014, Harper was a Correctional Sergeant assigned to first shift. He resigned his position as a Correctional Sergeant at LSCC in November 2018.

2. On May 24, 2013, Correctional Officers (“CO”) **Colleen Payton** and **Laura Mayse** approached Shift Captain **Terry Wallace** with complaints regarding Harper. Payton and Mayse were not willing to put a report in writing so, pursuant to policy, Wallace filed a report based on what they had told him. A copy of Wallace’s report, dated May 24, 2013, is attached hereto and incorporated herein as **Report and Recommendation Attachment B**. In the written report, **Wallace** stated **Payton** alleged she was sexually harassed by **Harper** on at least three (3) occasions. She stated Harper had unzipped his pants, exposed his penis to her, attempted to place his hands down her shirt, and had attempted to put his hands down the back of her pants.

Mayse stated that Harper had attempted to remove her shirt, exposed his penis to her in the Tower, and attempted to pull her into the chemical closet in the Special Management Unit ("SMU"). **Wallace** wrote that both Payton and Mayse stated that Harper was also harassing another Correctional Officer, **Angie Markwell**. One incident with Markwell was alleged to have been witnessed by **Sgt. Shawn Ramey**. Wallace reported that he asked Harper if any of this was going on, and Harper denied it. Wallace told Harper that if anything was going on, it needed to stop immediately, and that he was not to have any contact with the officers mentioned in the report. Wallace's report was forwarded to the Warden's office. Warden **Joseph Meko** was not at work and the report was reviewed by acting Warden **Mary Godfrey**.

3. Wallace's report was reviewed by Warden Meko on May 29, 2013. Meko stated that the report should be forwarded to **Serena Waddell**, LSCC Human Resource Administrator-Institutional, for a sexual harassment investigation. Meko also ordered that Harper should be ordered to cease and desist and the employees should be kept separated.

4. **Stephanie Appel**, Executive Director, Justice and Public Safety Cabinet, Office of Management and Administrative Services, was informed of the complaint. This may have been by a telephone call, as no documentation of this communication exists. Appel agreed with the selection of Waddell to conduct the investigation.

5. Waddell conducted her investigation, which included interviewing Payton, Mayse, Ramey, Markwell, and Harper. After summarizing the statements of the witnesses, Waddell concluded her report by stating:

Upon speaking to all of the individuals involved in Captain Wallace's report, I have come to the conclusion that the claim of sexual harassment is unsubstantiated. Because both CO Payton and CO Dennis¹ refuse to put the claim in writing, and because CO Dennis refused to give me details about her experience. If it did happen, I think she would have told me what happened. CO Payton did not give vivid details about where she was and what happened in those places. Sgt. Harper, on the other hand, was very matter of fact with me, as if he had nothing to hide, and denied doing any of the things he was being accused of.

Also, CO Angela Markwell stated that Sgt. Harper had not done anything to her and Sgt. Ramey said he did not witness Sgt. Harper

¹ At the time of the alleged incidents, Laura Mayse was married to **Dwight Dennis**. In this report, she is referred to as "Laura Mayse," however, in some attached documentation she is referred to as "Laura Dennis."

doing anything inappropriate at entry post to CO Markwell. When I learned that CO Markwell contacted Sgt. Harper about this matter after I spoke to her, I could not help but think that she wouldn't have contacted him if Sgt. Harper did in fact expose himself to CO Markwell.

In conclusion, I find that the allegations made by CO Colleen Payton and CO Laura Dennis are unsubstantiated, and Sgt. Harper has been falsely accused.

6. **Waddell** submitted her report to Warden **Meko** on June 19, 2013. In a handwritten note, Meko stated that he reviewed the investigation on the same date and wrote "not sustained." A copy of Waddell's report entitled "Investigation of Incidents Reported to Captain **Terry Wallace** by **Colleen Payton** and **Laura Dennis** on May 24, 2013" is attached hereto and incorporated herein as **Report and Recommendation Attachment C**.

7. Correctional Officer **James Griffith** prepared an undated report alleging that he was working in Segregation with Correctional Officers **Greg Banas**, **Steffan Jones**, Payton, and Harper when Payton showed a tattoo on her "right butt cheek" to the other staff members. The tattoo was described as 1 1/2" to 2" in diameter and looked like a flower. This Occurrence Report was reviewed by Meko on June 21, 2013. He wrote a note stating, "Referred to include in investigation of staff with Personnel." Waddell investigated this matter, interviewing Harper, Banas, Griffith, and Payton. Griffith and Harper said that the tattoo was on Payton's butt cheek, and she pulled her pants down and showed the tattoo. Payton denied she pulled her pants down, said the tattoo was on her hip, and she pulled the edge of her pants down to show the tattoo. At that time, **Payton** said the incident happened three or four months ago; **Harper** said this happened two or three months ago. **Waddell** reviewed day shift duty rosters beginning January 1, 2013, and only found one day in which Harper, **Jones**, **Banas**, **Griffin**, and Payton were working in Segregation together, which was May 2, 2013. At the end of her report, Waddell noted, "If May 2, 2013, is in fact the date that this took place, this would have happened during the time CO Payton claimed she was being sexually harassed." A copy of the investigation report prepared by Waddell entitled "Investigation of Segregation Incident Involving Sergeant Stephen Harper, CO Colleen Payton, CO James Griffith, CO Gregory Banas, and CO Steffan Jones as Reported by CO **James Griffith** on June 21, 2013" is attached hereto and incorporated

herein as **Report and Recommendation Attachment D**. Waddell completed this report on July 9, 2013.

8. **Meko** prepared a memo, dated July 22, 2013, informing Payton and Harper of the outcome of the sexual harassment investigation. **Mayse** was not informed of the outcome of the sexual harassment investigation. The memo to Payton read, "This is to notify you that the investigation on the claim of alleged sexual harassment you filed against Sergeant Stephen Harper is complete. I have determined that this claim is not sustained." Deputy Warden **David Green** issued this memorandum to Payton on August 1, 2013, at 1:13 p.m. On the same date, Payton and Harper both received written reprimands. Payton was reprimanded for showing her tattoo in the Segregation Unit. Harper was reprimanded for not reporting the tattoo incident.

9. Before she heard the results of the sexual harassment or tattoo investigation, Payton sent an email to **Stephanie Appel**, Executive Director, Justice and Public Safety Cabinet, Office of Management and Administrative Services. A copy of this email is attached hereto and incorporated herein as **Report and Recommendation Attachment E**. In her email, Payton outlines the allegations she told to Captain **Terry Wallace**, as well as the allegations involving Laura Mayse and **Angie Markwell**. She added that Harper had been placed in the Central Control most of the time since the alleged sexual harassment occurred. Harper had also been the Yard supervisor and Segregation supervisor. Payton asked Appel to check into this matter because she feared retaliation. She felt as though "this matter had been put aside with no real corrective action." Appel emailed Deputy Commissioner **James Erwin** on August 1, 2013, asking if Erwin knew if the Professional Standards Unit ("PSU") investigated or followed-up on this complaint. **Erwin** responded on the same date that LSCC completed the investigation and took action. He did not see any need for PSU to investigate. Erwin stated he asked LSCC to send the investigation for Appel's review to make sure it was done appropriately.

10. Later, in a series of emails from August 20, 2013, through August 22, 2013, **Appel** requested a copy of the investigation from **Waddell** and Warden **Meko**.

11. On August 30, 2013, after reviewing copies of the investigation report, Appel emailed **Payton** and stated, "It appears this matter was investigation (sic) was completed and final action has been taken on this issue."

12. On December 16, 2013, Sergeant **Dovie Kelly** submitted a written report to Deputy Warden **Green** detailing reports of sexual harassment she had heard. Kelly advised

Green of a conversation she had with Payton. Payton advised that she filed a sexual harassment complaint against **Harper** and it did not go anywhere because of a lack of evidence. She also advised that the same Sergeant harassed another CO, **Angie Markwell**. Kelly further reported that the last time she worked with CO **Lisa Suliman**, she heard about the lack of action on Payton's allegations and her perception that LSCC management wrote her up for the tattoo incident because she could not prove her allegations against Harper. Suliman stated that is why she would not report Harper's harassment, because nothing would be done. Suliman also said she believed Payton's allegations because he has done something similar to her as well. Kelly wrote that she had advised Payton to speak to an attorney. She stated she wrote the report "under duress and duty," and she wanted to "protect the female staff." A copy of Kelly's report is attached hereto and incorporated herein as **Report and Recommendation Attachment F**.

13. According to an email exchange between Waddell and Appel, the two of them spoke on the telephone on December 17, 2013. Waddell sent an email to Appel, asking if they need to do anything else regarding the Harper harassment investigation in response to Kelly's statement. Waddell stated, "We consider our investigation of the harassment claim complete." Waddell also asked if they needed to respond to Kelly, either verbally or in writing, letting her know the investigation is complete. Waddell ended by asking, "We don't need to get anyone else involved, do we, such as start up another investigation?"

14. A Cease and Desist Memorandum was prepared from Warden Meko to Kelly, dated December 20, 2013. The short directive is attached hereto and incorporated herein as **Report and Recommendation Attachment G**. The Memo to **Kelly** reads as follows: "It has come to our attention that you may be conducting an independent, private investigation regarding a sexual harassment complaint during your work hours. If you are doing so, you are being ordered at this time to not conduct this activity during work hours, as this is not your assigned duty as a Correctional Sergeant. You are to cease and desist this activity immediately." Deputy Warden **David Green** issued the memorandum to Kelly on December 23, 2013.

15. On December 26, 2013, **Waddell** sent an email to **Appel** regarding Kelly's harassment report and the Cease and Desist memo. In this email, Waddell stated, in part: "Sergeant Dovie Kelly has been using state time to ask other staff questions regarding a sexual harassment case we have already investigated and closed. We feel that she is doing so in order to get information to try to 'benefit' her case regarding her grievance, where she was not selected

for C and T Officer (Classification and Treatment Officer) I. The staff she has been questioning complained about this.” No investigation was conducted on **Kelly’s** December 16, 2013 report, despite the fact that **Suliman’s** complaint of being sexually harassed by Harper had never been investigated.

16. Kelly was issued another Cease and Desist memo in June 2014.

17. Next, a series of Occurrence Reports were filed on August 28, 2014. These reports were filed by Kelly, Officer **Linda Smith**, and Senior Captain **Danny McGraw**. Kelly reported that Smith was upset while they were both working in Central Control. Smith was upset because she had been moved out of working in Laundry and was told that **Harper** had said that a female should not be working in Laundry. She also reported that, when she was walking to her vehicle in the parking lot, someone was approaching behind her in a vehicle, driving fast and still accelerating. Smith turned around, looked, and saw that it was Harper driving the vehicle.

18. Smith filed a written report alleging that she had been told that, according to Harper, females were not to work in Laundry. As set out in Smith’s report, **Donna Adkins** told Smith that Harper had grabbed Adkins in a stairwell, was hugging on her, had her pinned up against a wall, unzipped his pants, and had his penis out. Adkins had been seeing a psychiatrist as a result of that incident. Adkins told Smith not to report this because of previous problems Adkins had at LSCC.

19. In **McGraw’s** report, McGraw stated he was called to Central Control by **Kelly**, stating that **Smith** needed to talk to him. Smith detailed the allegations set out above to McGraw. McGraw told Smith to put the allegations in an Occurrence Report and turn them in to him immediately. Kelly then asked to speak with McGraw privately. Kelly told McGraw that she had additional information that **Lisa Suliman** was told by **Adkins** that Adkins had been harassed by **Harper**. Kelly said she was told by Suliman about the harassment “about a week ago.” McGraw informed Kelly that her delay in reporting these allegations was against the applicable policy and procedure. Kelly stated she knew that the delay was contrary to policy, but said that, if she again reported harassment, she was in fear of retaliation from the administration.

20. On August 29, 2014, Danny McGraw spoke with Stephen Harper and asked if he had done anything inappropriate with Donna Adkins. Harper stated that he did not do anything inappropriate with Adkins and prepared a written report. He also stated that McGraw advised

him not to speak with Adkins until the investigation was complete. This report was sent to Warden **Meko** for review.

21. On September 11, 2014, Adkins, who had been off work since the August 28, 2014 reports, returned to work and filed a handwritten report, outlining her complaints against Harper. A copy of this complaint is attached hereto and incorporated herein as **Report and Recommendation Attachment H**. In her report, Adkins stated she was working in E-Dorm and CO **Doug Preston** was working in H-Dorm the day Harper assaulted her. She could not recall the date. Harper came in E-Dorm doing his Fire, Safety, & Sanitation walk-through. Harper asked Adkins to go with him to check out the stairwell to make sure it was clean. While coming down the stairs, she stated Harper slapped her on the butt. She told him to stop. When they got to the bottom of the stairs, Harper unzipped his pants and pulled out his penis. She told him to stop. Harper then grabbed her from behind, started kissing her neck and hugging her. Next, Harper pushed her against the wall and started touching her breasts. Harper grabbed Adkins' hand and put it on his penis. Adkins freed her hand and, while her hand was free, Adkins hit him in the stomach and said, "Here comes an inmate." She exited the stairwell. Adkins recalled that Preston was standing in the Cab, bouncing a ball, and stated, "I thought you were having a drill." Harper laughed. When Adkins got home from work, she called **Linda Smith** and told her what had happened. Adkins also included in her report that **Harper** had tried to follow her home several times on various Sundays.

22. Adkins' report was reviewed by **McGraw**, Deputy Warden **David Green**, and Warden **Meko**. Upon reviewing the report, they believed that Adkins had alleged criminal conduct on the part of Harper. As a result, they contacted the Kentucky State Police Detective **Donnie McGraw** who investigated events at LSCC. Detective McGraw is the twin brother of Senior Captain Danny McGraw.

23. Detective McGraw arrived at LSCC and interviewed Adkins regarding her allegations. Adkins related to Detective McGraw the events she had outlined in her handwritten report. Detective McGraw recorded this interview on a digital audio recorder. **Detective McGraw** also conducted a short interview with **Stephen Harper** on the same date. Detective McGraw is not sure if Harper's interview was recorded; however, during the interview, Harper denied the allegations and said that it did not happen.

24. Detective McGraw stated that based on what he had heard, he thought it sounded like sexual abuse, third degree, which was a misdemeanor. He based this on all of the information from these two interviews, including statements Adkins made about the timeframe of the incident. Based on Adkins' description of events, McGraw concluded the events were well over a year old at the time of the interview. He contacted the Commonwealth Attorney, who confirmed there would be no charge after a year. After the interview, Adkins was supposed to contact Detective McGraw if she wished to pursue criminal charges. Detective McGraw stated he never heard from Adkins regarding these events. No criminal charges were ever filed against Harper based on Adkins' allegations.

25. On November 11, 2014, Adkins reported that **Linda Smith** had told her that Harper had inappropriately touched her and that Smith was afraid to report it because of retaliation. This matter was forwarded to Warden **Meko** for review, who indicated it should be made a part of the investigation by **Serena Waddell**.

26. Adkins, Linda Smith, **Colleen Payton**, and **Lisa Suliman** ("the Plaintiffs") met with attorneys **Bill Slone** and **Ned Pillersdorf** on September 16, 2014. They filed a lawsuit against Harper, Warden Joseph Meko, and the Department of Corrections on September 22, 2014. The lawsuit claimed violations of the Kentucky Civil Rights Act, including discrimination based on sex and a hostile work environment. The complaint also included tort claims, including assault, battery, negligence, gross negligence, intentional infliction of emotional distress, and outrageous conduct. The Plaintiffs sought compensatory damages for pain and suffering, humiliation, medical expenses, as well as punitive damages.

27. Along with the complaint, the Plaintiffs filed a Motion for Temporary Injunction and/or Restraining Order with affidavits attached. All four of the Plaintiffs in the lawsuit filed affidavits outlining the instances of sexual harassment they alleged against **Harper**. The affidavits from **Suliman** and **Smith** were the first time the specifics of their complaints had been placed in writing. All four affidavits are attached hereto and incorporated herein as **Report and Recommendation Attachment I**.

28. As a result of the complaints involving Smith and Adkins, **Serena Waddell** conducted additional interviews. With respect to Smith's allegations, Waddell interviewed Smith on September 10, 2014, regarding the allegations that women should not work in the Laundry and the parking lot incident. Waddell was unaware that Smith would go on to allege

that Harper harassed her while Smith and Harper worked together in the Laundry, so Waddell did not investigate those harassment allegations. Coincidentally, Waddell interviewed **Pam Griffith** and Harper regarding the Laundry and parking lot allegations on the same day the Plaintiffs filed their civil suit, on September 22, 2014.

29. In Waddell's interview with Harper on September 22, 2014, she did, however, discuss **Adkins'** allegations of sexual harassment or assault against Harper. Waddell then interviewed **Lisa Suliman** on September 22, 2014, and interviewed **Doug Preston** on September 24, 2014, both regarding Adkins' allegations. Recordings were produced of all of the interviews, except for Suliman's interview. Suliman stated she did not want to discuss these matters with Waddell based on the advice of counsel. Suliman said she was afraid of getting fired and mentioned a former Correctional Officer who complained about a former Deputy Warden at LSCC. Suliman started to cry and stated that she had been harassed. According to Waddell's report, Suliman would not give any additional information.

30. On October 23, 2014, the Elliott Circuit Court conducted a hearing on Plaintiffs' motion for injunctive relief. All four of the Plaintiffs testified about Harper's alleged harassment.

31. Warden **Joseph Meko** also testified at the hearing that, of the four Plaintiffs, only the complaint of **Colleen Payton** had been investigated to conclusion. He said the investigation's finding was that her complaint was unsubstantiated; however, he indicated that additional information could result in a different determination. All of the other investigations were ongoing, and Meko stated he was willing to receive any additional information from the Plaintiffs. With regard to the criminal investigation of **Donna Adkins'** allegations against **Harper**, Meko advised that, at the time of the hearing, he had received no final determination from the Kentucky State Police regarding the criminal complaint.

32. **Serena Waddell** also interviewed **Debbie Fraley** on November 14, 2014, regarding a report Fraley had written, which is attached hereto and incorporated herein as **Report and Recommendation Attachment J**. This report was regarding Suliman telling Fraley that Harper had harassed her sometime in 2013.

33. At the request of **Ed Baylous**, counsel for the Justice and Public Safety Cabinet, the Internal Affairs Branch from the Department of Corrections' Central Office conducted an investigation on February 2, 2015, and February 3, 2015. This investigation consisted of

interviews of **Laura Mayse** and **Fraley**, conducted by Internal Affairs Investigators **Mark Wasson** and Captain **Michael Williams**. In addition, members of the DOC's IA investigative team attempted contact with several former female employees of LSCC. They were able to contact five (5) former employees, one of whom said she had been the victim of sexual harassment while she was employed at LSCC. A second stated she was never the victim of sexual harassment, however, she did report she was uncomfortable around certain supervisors. The other three former employees said they had never been the victim or the witness to any sexual harassment. None of the incidents of sexual harassment involved Harper.

34. **Jennifer Dennis** joined the lawsuit on or about April 1, 2015. She made allegations of harassment against Harper. No documentation exists regarding these allegations. Dennis alleged she reported these incidents to **Laura Mayse** at a time when Mayse was a supervisor and was an appropriate party to whom to report such complaints. No investigation was conducted by the DOC regarding these allegations before Dennis became a party to the lawsuit.

35. While the litigation was underway, a report was prepared by Captain **Terry Wallace** on August 13, 2015, stating that **Colleen Payton** came to his office and told him about an event that happened at the 2012 Joint Corrections Emergency Response Team (CERT) training. She stated that, amongst other actions, **Harper** came to her hotel room and knocked on the door. She did not answer the knock. She stated that Harper had harassed her so much at that training, she had asked Lieutenant **Alvin Gillum** to tell Harper to stop. Wallace asked Payton to write a report and she refused. Although she would not write a report, Payton signed Wallace's report. **Serena Waddell** interviewed Payton about these allegations, and also obtained a written report from Gillum. No report was requested or obtained from Harper. No one interviewed Harper regarding these allegations.

CONDENSED SUMMARY
OF THE ALLEGATIONS OF HARASSMENT
AGAINST STEPHEN HARPER

The following summary of the allegations against Sergeant Stephen Harper are presented in the order they became known to LSCC management.

Colleen Payton

1. On May 24, 2013, Colleen Payton reported to Captain Terry Wallace that Harper had sexually harassed her on at least three (3) occasions. Payton alleged Harper had unzipped his pants and exposed his penis to her. Harper had also walked up behind Payton while she was seated and attempted to place his hands down her shirt. On another occasion, Harper attempted to put his hands down the back of Payton's pants. Payton refused to write a report.

2. Payton alleged that Harper harassed her on four occasions. She alleged that Harper harassed her on February 2, 2013, in Central Control; February 20, 2013, in the Tower; and on two occasions in April 2013, while working in Segregation. Payton alleges Harper exposed his penis and groped her on all occasions.

Laura Mayse

3. Also on May 24, 2013, Mayse told Wallace that Harper had attempted to remove her shirt while he was inspecting the Tower. She also alleged Harper exposed his penis to her while they were in the Tower. On another occasion, Harper attempted to pull her into a chemical closet in Segregation. Mayse refused to write a report.

4. Mayse denied that Harper harassed her when she was interviewed in this investigation.

Angie Markwell

5. On May 24, 2013, Payton and Mayse both told Wallace that Harper was also harassing another correctional officer, Angie Markwell. No additional details were provided, except that Sergeant Shawn Ramey witnessed that one incident of harassment.

6. Markwell has consistently denied that Harper harassed her or did anything inappropriate towards her.

Lisa Suliman

7. On December 16, 2013, Sergeant Dovie Kelly reported to Deputy Warden David Green that the last time she worked with Lisa Suliman, Suliman told Kelly she had heard about "Payton's thing" and "he" had done the same thing to her. She stated she was not going to report it, because nothing is ever done.

8. **Suliman** submitted an affidavit, dated September 16, 2014, along with her lawsuit and a Motion for a Temporary Injunction. The lawsuit was filed September 22, 2014. In the affidavit, Suliman alleged that, in March 2013, **Harper** followed her into a bathroom in the Segregation Unit and exposed his private parts. She estimated that on thirty (30) different occasions, Harper had touched her in an inappropriate manner. She alleged these inappropriate touchings included grabbing her breasts, grabbing her buttocks, and grabbing her hand in an attempt to make her touch his penis. She stated she did not make a formal report because she believed if an LSCC employee complained about such sexual assaults, they would lose their job or would be reprimanded in some fashion.

9. Suliman determined that the date Harper harassed her in Segregation was January 17, 2013. She also alleged that, later that same day, Harper pinned her to the desk in the Segregation supervisor's office.

Donna Adkins

10. On August 28, 2014, **Dovie Kelly** told Senior Captain **Danny McGraw** that she had been told by Suliman that **Donna Adkins** had been harassed by Harper. On the same date, **Linda Smith** filled out an Occurrence Report stating Adkins had told Smith that she was grabbed by Harper in the stairwell of a dorm, that he was hugging on her, kissing her neck, had her pinned up against the wall, and had unzipped his pants. He had his penis out.

11. On September 11, 2014, Adkins turned in a written report to McGraw stating that she did not remember the date or time the incident occurred, but she was working in E-Dorm and **Doug Preston** was working in H-Dorm. Harper came into her dorm doing his Fire, Safety, and Sanitation walk-through. Harper asked her to go with him to the stairwell to make sure it was clean. They walked up to the upper level. When they were coming down the stairs, she stated Harper slapped her on the butt. She told him to stop. When they got to the bottom level, he unzipped his pants and pulled his penis out. She told him to stop again. Harper grabbed her from behind, started kissing her neck, and hugging her. Harper pushed her up against the wall and started touching her breasts. Harper grabbed Adkins' hand and put it on his penis. Adkins freed her hand and, while her hand was free, she hit him in the stomach. She then said, "Here comes an inmate," and exited the stairwell. She stated Preston was standing in the Cab,

bouncing a ball. When Adkins got home, she called Smith and told her what had happened. Adkins also alleged that Harper tried to follow her home several times on various Sundays.

Linda Smith

12. On September 11, 2014, **Adkins** told **McGraw** that **Smith** told her that **Harper** had inappropriately touched her. Smith was afraid to report it, because Harper was her supervisor and she feared retaliation. Adkins put this in an Occurrence Report and turned it into McGraw.

13. In an affidavit attached to the lawsuit and the Motion for a Temporary Injunction, Smith alleged that Harper had touched her breasts and buttocks on numerous occasions in the Laundry at LSCC. Smith stated Harper sexually attacked her when he approached her from behind and began to rub his private parts against her buttocks. She stated this attack stopped when an inmate entered the room. Smith further alleged, in July 2014, Harper was with Smith in a chemical room, exposed himself, and told her to touch his private parts. Smith refused and left the room. Smith stated she did not report this incident because she was afraid of reprisals.

Lisa Brickey

14. **Payton** alleged that she witnessed Harper comment on Unit Administrator **Lisa Brickey's** weight loss. Payton alleged that Harper approached Brickey, grabbed her by the rear end, and stated, "Don't lose any more weight in your butt." Payton believed this incident happened in April 2013. When Payton approached Brickey and asked her about it, Brickey stated, "Oh, that's just Harper."

Jennifer Dennis

15. **CO Jennifer Dennis** alleged that she witnessed Harper engage in a series of "perverted" sexual behaviors while she was on duty at LSCC during 2011 and 2012. She alleged she saw Harper standing in the bathroom with the lights off, exposing his penis while he was in the process of masturbating. She alleged Harper also would touch her in a sexually offensive manner. Dennis alleged, in July 2012, while working in the Segregation Unit, Harper exposed his penis to Dennis and asked her to touch it. She also alleged that Harper assaulted her by causing his penis to touch her arm. **Dennis** screamed and ran away from this event. Dennis

immediately reported this incident to her supervisor, **Laura Mayse**², who failed to properly report this sexual assault to her supervisors. Other than this alleged report, Dennis' allegations were unknown until April 1, 2015.

Former Employee 1

16. A **former employee** of LSCC alleges that when she was on duty at Building Entry Post, **Harper** called out from a chemical closet to get her attention. When she looked over at Harper, he had exposed his penis. The former employee yelled at Harper, at which time he stopped. The former employee did not report this incident and did not consider it to be sexual harassment because Harper stopped this behavior.

STANDARD FOR DETERMINING IF ALLEGATIONS ARE TRUE

1. The main purpose of this investigation is to determine if Stephen Harper sexually harassed women at the Little Sandy Correctional Complex. The Investigator heard the testimony of a number of witnesses that Harper harassed multiple women at the prison. The Investigator also heard from a number of witnesses who stated that the women lied about Harper and they were not harassed. The Findings of Facts in this investigation involved making credibility determinations with respect to these witnesses.

2. Here are the standards the Investigator used in determining credibility in this investigation:

a. **Is the witness impartial?**

Does the witness have an economic gain to testify a particular way? Does the witness have motivation to fabricate? Is the witness a close friend or sworn enemy of the accused or accuser?

b. **Is there corroboration for this witness' story?**

Are there other witnesses or documents that support or rebut this story?

c. **Is the story consistent or has the witness' story substantially changed during the investigation?**

² Laura Mayse was a Correctional Sergeant from October 1, 2009, to January 16, 2013, when she was demoted to Correctional Officer. See Personnel Board Appeal No. 2013-018.

Further, are the witness' answers vague or are they evasive?

d. **What is the chronology?**

Does the witness' timing of events match other witnesses or documents?

e. **Is the story logically plausible?**

3. The Investigator did not rely on witness demeanor in determining the credibility of their testimony. The Investigator does not consider himself an expert in his ability to read witnesses. It is hard to judge what is being communicated by a witness' facial expression, body language, or tone of voice. The Investigator recognizes that many of the witnesses were placed in stressful situations answering questions during this investigation.

4. The Investigator applied a preponderance of the evidence standard in finding facts. In other words, a fact is true if it is more likely than not.

I. FINDINGS OF FACT

Sexual Harassment Allegations Against Stephen Harper

The following Findings of Fact regarding the allegations against Sergeant Stephen Harper are presented in order from the most credible allegations to the least. The Investigator hereby incorporates the LSCC Investigative Summaries as if they were fully set out herein.

Former Employee 1

1. The Investigator finds that **Former Employee 1** was sexually harassed by Stephen Harper when he exposed his penis to her.

2. Former Employee 1 is a credible witness because she is impartial. She had nothing to gain by testifying a particular way in this investigation. She had no reason to fabricate her testimony that she was harassed by Harper. Former Employee 1 was a reluctant witness who did not want to come forward and be a part of this investigation. She had no bias against Harper. She did not think his conduct constituted sexual harassment because he stopped and it never happened again. She was not biased in favor of the other women alleging Harper harassed them and did not wish to be associated with them in any way.

3. Former Employee 1's testimony is corroborated by Former Employee 2 who testified she told him about Harper's conduct. Her testimony is also corroborated by documents produced during the investigation that she worked the Building Entry Post frequently and was assigned there on a regular basis in 2012. Former Employee 1's testimony was consistent with her actions. She did not report Harper's conduct because she did not believe it constituted sexual harassment.

4. The Investigator finds that Harper's conduct towards Former Employee 1 was unwelcome, demeaning, offensive, and directed at her because she is a female. The Investigator finds that Harper's conduct included vulgar and indecent gestures.

Colleen Payton

5. The Investigator finds **Colleen Payton** was sexually harassed by Stephen Harper on four occasions prior to May 24, 2013. The Investigator finds Payton's testimony that she was harassed by Harper more credible than Harper's denials.

6. The Investigator finds that neither Payton nor Harper are impartial.

7. There is corroboration for Payton's story in that the documentary evidence establishes that she worked Central Control with Harper on February 2, 2013. The documents also demonstrate that Payton worked the Tower and Segregation during the general timeframe of her allegations. Payton's testimony is also corroborated by Greg Banas who said she told him of Harper's harassment.

8. Payton's testimony has stayed consistent throughout. Payton's answers were not vague or evasive and she gave precise detail about Harper's actions. The Investigator finds that Payton did not fabricate her allegations of harassment against Stephen Harper because: 1) she came forward with her allegations that Harper exposed his penis to her before she knew of the allegations of Former Employee 1 and 2) she came forward on four separate occasions offering the Department of Corrections a chance to take remedial measures regarding her complaints.

9. The Investigator finds that Harper's conduct towards Payton, including exposing his penis, was unwelcome, demeaning, offensive, and directed at Payton because she is a female. The Investigator finds that Harper's conduct included vulgar or indecent gestures or language.

Donna Adkins

10. The Investigator finds that Stephen Harper sexually harassed Donna Adkins on April 21, 2013, in E-Dorm. The Investigator finds Adkins testimony more credible than Harper's denial.

11. Adkins testimony is corroborated by the E-Dorm log from April 21, 2013, which shows that Donna Adkins was working in E-Dorm on that date. The log also demonstrates that Stephen Harper entered the dorm to do a sanitation check in preparation for the ACA mock audit. The log further demonstrates that the Yard supervisors, Sgt. Shawn Ramey and Lt. Alvin Gillum, entered the dorm for their routine rounds. The shift rosters show that CO Doug Preston was working in H-Dorm. Finally, the documentation for the ACA mock audit demonstrate that the audit began on April 29, 2013.

12. Adkins' testimony is also corroborated by the testimony of CO Timmy Wagoner. Wagoner testified that Adkins told him about Harper's conduct and he witnessed her reaction when Harper would enter the dorm.

13. Moreover, Adkins' testimony is corroborated by her medical records, which demonstrate that she told her therapist about Harper's conduct.

14. Adkins' testimony of the events with Stephen Harper have been completely consistent. Although she has changed the alleged date of the incident, she has always stated these events occurred in preparation for the ACA mock audit. The Investigator finds this discrepancy does not detract from her credibility.

15. The Investigator finds that Adkins did not fabricate her story because she accused him of the exact misconduct he committed with Former Employee 1.

16. The Investigator finds that Harper's conduct was unwelcome, demeaning, offensive, and directed at Adkins because she is a female. The Investigator finds that Harper's conduct included vulgar or indecent gestures and language.

Lisa Suliman

17. The Investigator finds that Stephen Harper sexually harassed Lisa Suliman on January 17, 2013, and other unspecified dates. The Investigator finds Suliman's testimony more credible than Harper's denials.

18. The Investigator finds that both Suliman and Harper are biased witnesses.

19. The Investigator finds that Suliman's testimony is corroborated by: 1) the Segregation log for January 17, 2013, 2) the shift roster for January 17, 2013, 3) the eyewitness testimony of CO Barry Davis, CO Debbie Fraley, Sgt. Dovie Kelly, and Tim Suliman.

20. The Investigator finds Suliman's testimony is consistent with the exception that she added the incident of Stephen Harper pinning her to a desk. The Investigator finds that this testimony does not detract from her credibility because it is supported by eyewitness testimony of Barry Davis.

21. The Investigator finds that Suliman did not fabricate her testimony because she came forward in December 2013 before she would have known there was credible evidence that Harper exposed his penis to Former Employee 1.

22. The Investigator finds that Harper's conduct towards Suliman was unwelcome, demeaning, offensive, and directed at Suliman because she is a female. The Investigator finds that Harper's conduct included vulgar or indecent gestures and language.

Jennifer Dennis

23. The Investigator is unable to make a determination that Stephen Harper sexually harassed Jennifer Dennis.

24. The Investigator cannot determine that Dennis is more credible than Stephen Harper.

25. The Investigator finds that both Dennis and Harper are biased witnesses.

26. The Investigator did not find corroborating witnesses for Dennis' testimony. Laura Mayse denies that Dennis reported Harper's harassment to her.

27. Dennis' story has not stayed consistent. She initially alleged that Harper exposed his penis to her on two occasions. She later testified that he exposed himself on three occasions.

28. Based on the standards for determining a witness' credibility set out above, the Investigator does not make a finding that Stephen Harper harassed Jennifer Dennis. The Investigator reaches this conclusion based on Dennis' inability to establish dates or times of the incidents, and the fact that the number of incidents changed in her testimony. Accordingly, the lack of corroboration from **Laura Mayse** and the lack of a contemporaneous report also make it difficult to determine that these events happened.

Linda Smith

29. The Investigator is unable to make a determination that Stephen Harper sexually harassed Linda Smith.

30. The Investigator cannot determine that Smith is more credible than Stephen Harper.

31. The Investigator does not find any corroborating witnesses or documentation for Smith's claims.

32. Smith's testimony has not been consistent, as she cannot recall the number of times she was harassed by Harper during her interview. Many of her answers were vague and she stated she was having memory problems on the date of her interview. Therefore, based on the standards for determining a witness' credibility, the Investigator does not make a finding that Harper harassed Linda Smith.

Laura Mayse

33. The investigation revealed conflicting evidence regarding the allegations that Stephen Harper harassed Laura Mayse. The Investigator finds he is without sufficient probative evidence to determine whether Harper harassed Mayse.

Angie Markwell

34. The Investigator does not find that **Stephen Harper** engaged in any sexually harassing conduct towards **Angie Markwell**. Markwell and Harper deny that Harper engaged in any inappropriate conduct. Their testimony is supported by Sgt. **Shawn Ramey**, who was determined to be an impartial witness.

Lisa Brickey

35. The Investigator does not find that Harper engaged in any sexually harassing conduct towards **Lisa Brickey**. Harper denied that he engaged in any inappropriate conduct and Brickey stated she did not know whether Harper did or did not. There is insufficient evidence to corroborate the eyewitness account of Colleen Payton.

Stephen Harper

36. Stephen Harper has consistently denied all allegations involving all of the nine women discussed in this report. Nonetheless, the Investigator finds that Harper harassed Former Employee 1, Colleen Payton, Donna Adkins, and Lisa Suliman when he exposed his penis and engaged in other inappropriate conduct.

II. Department of Corrections' Investigation of Sexual Harassment Complaints

Sexual Harassment Policies and Training

1. As set out in the EEOC guidelines and in United States Supreme Court cases, employers have an obligation to try and prevent sexual harassment in the workplace. The best way to do this is to have a policy in place, which prohibits sexual harassment and allows for a complaint procedure, calls for prompt and effective investigation of complaints, and the availability of prompt remedial action.

2. The Personnel Cabinet, in the Employee Handbook, has a Sexual Harassment Policy, as well as a Policy Statement on Harassment Prevention. This policy statement makes clear that unwelcome sexual advances and physical conduct of a sexual nature that creates or has the intention of creating a hostile or offensive working environment is prohibited. The provisions apply to all employees discussed in this investigation.

3. In addition, the Department of Corrections has its own policy in place, Corrections Policy and Procedures (CPP) 3.5, Sexual Harassment and Anti-Harassment. This policy states that "Corrections employees shall avoid offensive or inappropriate conduct or sexually harassing behavior at work." As defined in the policy, prohibited behavior includes, "vulgar or indecent gesture" and "threatening, demeaning, or offensive conduct directed toward or regarding an individual because of his sex." This policy provides that prohibited behavior shall be reported to a supervisor, an EEO counselor, or the personnel administrator. CPP 3.5 also provides for supervisors to document a complaint if the complaining employee is not willing to. Another provision of this policy states that the supervisor is supposed to report this matter directly to the Warden, who is to contact the Division of Personnel Services before taking further action. With respect to investigations, this policy reads as follows:

Depending upon the type and nature of the complaint, the personnel director shall determine whether the investigation shall be conducted at the district or institutional level, or by an outside investigator. The complainant, the alleged harasser, and any witness may be asked to submit additional written statements and may be interviewed. During the course of the investigation, the complainant and the alleged harasser may be temporarily reassigned. The alleged harasser may be placed on special investigative leave pursuant to 101 KAR 2:102.

This policy was applicable to all events reviewed during this investigation. A copy of Corrections Policy and Procedures (CPP) 3.5, Sexual Harassment and Anti-Harassment is attached hereto and incorporated herein as **Report and Recommendation Attachment K**.

4. All of the employees involved in this matter, including Stephen Harper, received sexual harassment training. They received this training in their initial training when they were hired, as well as yearly in-service training. Sometimes sexual harassment was a classroom course, and other times it was on-line training.

LSCC's Investigations of the allegations against Harper

5. This investigation revealed that there were four separate written reports that employees were being harassed by Stephen Harper. All of these reports should have been followed by a prompt, fair, and thorough investigation, conducted by a trained, impartial investigator.

6. This investigation also revealed that LSCC supervisors additionally received numerous verbal reports of harassment. Pursuant to policy, these reports should have also received some amount of appropriate follow-up, which did not happen in these matters.

7. All investigations in this matter were conducted by Serena Waddell, who admitted that she had no training in EEO investigations or in investigations at all.

8. Only the May 24, 2013 investigation was completed by LSCC. Moreover, as determined during the course of this investigation, it is unclear whether LSCC's interviews were recorded or not. If they were recorded, the recordings were lost. Notes were not maintained with the investigation report. Witnesses who might have had crucial information were not

interviewed. It appears only limited questions were asked of many witnesses without necessary follow-up.

9. No investigation at all was done of the December 16, 2013 report. Instead, the supervisor who filed this report, Dovie Kelly, was given a Cease and Desist memo instructing her to stop conducting sexual harassment investigations, if she was. These actions were counter-productive as they discouraged employees from coming forward with complaints and discouraged supervisors from reporting complaints through the chain of command.

10. Interviews were conducted following the August 28, 2014, and September 11, 2014 reports. There was no investigation planned and no investigation was completed. With respect to the Donna Adkins' complaint, it appears that LSCC relied on the Kentucky State Police investigation; however, no one from LSCC communicated with the State Police regarding the progress of this investigation.

11. It is clear that an independent investigator was needed to review the reports of sexual harassment in this matter. Both the investigator and the warden who looked at these matters were too close to the situation to be impartial. Further, without any legal or policy support for their position, both the investigator and the warden believed that reports of sexual harassment submitted more than 24 hours after the event lacked credibility. These allegations of sexual harassment were challenging to investigate fully and adequately; however, there was no way to determine the facts with an incomplete and biased investigation.

12. DOC's investigation should have included a consultation with the Justice and Public Safety Cabinet's Office of Legal Services as soon as possible. This is because, based on the nature of the allegations, litigation had to be considered a possibility no matter what LSCC found during their investigation.

13. On receiving the first complaint, Harper was ordered to have no contact with the female officers. He was assigned to a post where he would have no physical contact with them. However, stronger measures should have been considered, such as a temporary shift change or even investigative leave pursuant to 101 KAR 2:102.

Atmosphere at LSCC

14. The Investigators heard from a number of witnesses at LSCC that there was a history of sexually harassing behavior by supervisors at the facility.

15. Many employees felt that management did not take these matters seriously, and thought of it as a joking matter. Several witnesses referenced sexual harassment allegations against a former Deputy Warden. It is alleged that a female employee who complained of sexual harassment by the Deputy Warden lost her job. There were also general feelings from a number of witnesses that sexual harassment complaints are “swept under the rug.” The Board’s investigation revealed a supervisor who had a number of complaints filed against him, none of which were ever substantiated and no disciplinary action was ever taken. He has been promoted three times since these complaints were made. Female employees told us they knew of his reputation and they knew to stay away from him.

16. In another instance, on three occasions, a current Lieutenant at LSCC has been accused of sexual harassment and has admitted to the conduct all three times. Even more concerning, scant record of these allegations are contained in that lieutenant’s personnel file. On the first occasion, he received a written reprimand, which has since been removed from his file, pursuant to 101 KAR 1:335. On the second occasion, he was serving promotional probation as a Lieutenant, and was reverted back to Sergeant. As a matter of law, a reversion from a promotion is not deemed disciplinary in nature. Therefore, even though the lieutenant admitted to the harassing behavior, no disciplinary action was taken. On the third occasion, it was found that he hugged and kissed a female employee, but he did not have any romantic intentions, so, once again, he faced no disciplinary action. In spite of this significant history of acknowledged sexual harassment, this individual has since been re-promoted to Lieutenant.

17. These examples send a clear message to employees at LSCC that LSCC’s supervisors can get away with sexual harassment without serious consequences. Directly or indirectly, this leads to a reluctance on the part of LSCC’s employees to come forward with complaints of sexual harassment.

New Practices and Procedures

18. During the course of this investigation, the Justice and Public Safety Cabinet has changed the way it handles sexual harassment complaints. These complaints are now all forwarded to the Justice Cabinet’s Internal Investigations Branch (IIB). All harassment complaints are placed in a database, and, in consultation with the Justice Cabinet HR Director,

the IIB Director makes a decision regarding appropriate steps in those investigations. Some investigations are conducted at the institutional level. Serious matters are assigned to IIB Investigators, who are all trained investigators and also trained in EEO matters. There is an effort to make sure that all such investigations are conducted by trained investigators.

19. During the course of this investigation with LSCC, the Investigators learned of an ongoing complaint at LSCC. That investigation was completed and, from a review of the documentation, it appears the new policy has corrected many of the problems found in the Harper investigation. The trained investigators were thorough, impartial, followed all leads, and appeared to find exactly what happened.

II. FINDINGS OF FACT

Department of Corrections' Investigation of Sexual Harassment Complaints

The following Findings of Fact pertain to the Department of Corrections' investigation of the sexual harassment complaints against Stephen Harper. The Investigator hereby incorporates the LSCC Investigative Summaries as if they were fully set out herein.

1. The Investigator finds the Department of Corrections' investigation of the sexual harassment complaints against Stephen Harper was insufficient. The DOC failed to follow the Executive Branch's sexual harassment policy, failed to follow their own applicable policy, and failed to conduct an adequate investigation of these allegations.

2. The DOC erred in allowing these matters to be investigated by Serena Waddell, Human Resource Administrator at LSCC. Stephanie Appel, Executive Director, Justice and Public Safety Cabinet, Office of Management and Administrative Services, stated that she felt Waddell would be a good choice for the investigation because she was a long-term employee and would have had some kind of training. Joseph Meko, former Warden of LSCC, thought Waddell did a good job as HR Administrator, including on sexual harassment investigations. However, it is clear that Waddell did not have any specific training on investigations or on sexual harassment investigations. Waddell had attended EEO conferences where the topic had been discussed, but never received training on exactly how to conduct an investigation. She relied on her general advice on investigations, which was just to gather the facts. These were serious reports of

alleged sexually harassing behavior that would be a challenge for anyone to investigate. Asking an HR employee, untrained in sexual harassment investigations, was not an appropriate response no matter how many years' experience she had in human resource administration.

3. The Investigator finds that, given the seriousness of the allegations, including the allegations contained in Captain Terry Wallace's May 24, 2013 Report, these matters should have been given the highest priority and should have been assigned to a trained investigator.

4. The DOC also failed to ensure the independence and impartiality of its investigator. As a general matter, an investigator may be called on to make credibility determinations of all parties. An independent investigator sends the message that the employer takes the allegations seriously, wants to find out what happened, and take the appropriate action. An independent investigator is impartial and does not have preconceived ideas about the parties involved. Here, it was clear early on that the allegations against Harper, if proven true, would probably result in Harper's dismissal from LSCC. It was also clear that an investigation of these allegations would require credibility determinations of all parties. Further, included in the allegations against Harper were allegations that another supervisor may be subject to disciplinary action for failure to report an incident of harassment. Yet, Waddell was neither independent nor impartial. Waddell admitted she had preconceived ideas about witnesses. Waddell had recently found a previous sexual harassment complaint brought by Payton unsubstantiated; Waddell admitted this impacted her assessment of Payton's credibility. Waddell had also recently been accused of shredding a sexual harassment complaint from Mayse when Mayse stated she wished to withdraw her complaint. Waddell was neither independent nor impartial and the DOC erred in relying on her to conduct its investigation.

5. The DOC failed to ensure its institutional leadership was adequately trained on policy and the law regarding sexual harassment. Warden Meko testified that he believed complaints should be filed within 24 hours of the event occurring. He thought complaints filed later were less credible. Waddell testified she agreed with Meko. Such beliefs betray a fundamental misunderstanding of sexual harassment allegations. The DOC failed to ensure that LSCC's leadership, including Warden Meko, whom the DOC entrusted with significant amounts of discretion, understood sexual harassment, sexual harassment prevention, sexual harassment law, or the policies pertaining thereto. Lacking sufficient training, Meko and Waddell did not believe that an investigation was warranted and Appel agreed. However, based on the

incomplete information they provided her, Appel did not function as an independent review of these allegations. Too much discretion was afforded Warden Meko, who was too close to this situation.

6. The DOC failed to adequately protect its female employees after they made their allegations of sexual harassment. As set out in Corrections Policy and Procedures 3.5, stronger measures should have been considered, including a temporary shift change during the investigation or even investigative leave pursuant to 101 KAR 2:102. Moreover, regardless of what method of separation was chosen, the decision should have been documented with an explanation of the DOC's action. The DOC failed to do so here.

7. The DOC failed to adequately document its actions and failed to adequately retain those records. Whomever conducted the investigation of the allegations against Harper, it should have been documented better and maintained in an organized fashion. For instance, Waddell was not sure if she recorded the interviews she conducted. There should not be confusion on such a simple point. Colleen Payton stated her interview was recorded and that Waddell lost the recording. Either the interviews were recorded or not. If they were recorded, the recording should be maintained with the rest of the investigation file. If they were not recorded and notes were taken, the notes should have remained with the investigation file.

8. The DOC failed to ensure it conducted a thorough investigation as Waddell did not conduct adequate follow-up on a number of issues. For instance, Payton said she was harassed four times over the past three months; she stated twice in Segregation Cab, once in the Tower, and once in Central Control. No effort was made with the witness or through documentation to try to figure when these dates might have been. Payton gave a description of what happened with one of the incidents in Segregation. It is not clear from the report whether she was even asked to describe the other three incidents. Payton also stated she reported it at that time because Mayse had come to her (Payton) and told her about an incident with Harper. Waddell's report does not reflect that Payton was asked at all about the allegations of Mayse being harassed by Harper. Waddell's investigation was riddled with failures to ask obvious questions, loose ends going unaddressed, and missed opportunities to adequately investigate these allegations. It is also worth noting that the DOC determined that Harper would be provided free legal representation to defend against the Plaintiffs' lawsuit even though three of

the four Plaintiffs' claims had never been investigated. The Investigator is unclear if such a decision would have been made if these allegations had been adequately investigated.

CONCLUSIONS OF LAW

1. The Investigator finds that Stephen Harper's conduct, as described in the Findings of Fact, violated the Executive Branch's sexual harassment policy. Specifically, the Investigator concludes that Harper's conduct included sexual advances, requests for sexual acts or favors, and physical conduct of a sexual nature that created, or had the intention of creating, a hostile or offensive work environment. Harper's conduct was also unwelcome, demeaning, offensive, and was directed at Former Employee 1, Colleen Payton, Donna Adkins, and Lisa Suliman because they are female.

2. Harper's conduct, as described in the Findings of Fact, violated Corrections Policy and Procedure 3.5. His conduct was threatening, demeaning, offensive, and was directed towards Former Employee 1, Colleen Payton, Donna Adkins, and Lisa Suliman because they are female. His conduct also included vulgar or indecent gestures and language.

3. Harper's conduct constituted a violation of KRS 18A.140(1), which states that no person shall be discriminated against with respect to employment in the classified services because of her sex.

4. Lastly, Harper's conduct also constituted a willful violation of 101 KAR 1:345. This provision is general in nature, and merely states, "Appointing Authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties." Despite the fact that the language in this regulation is general, the Investigator concludes that any reasonable person would have recognized that Harper's conduct constituted a lack of good behavior and that Harper subjectively knew that his conduct constituted a lack of good behavior.

RECOMMENDATIONS

The Investigator recommends that the Personnel Board:

1. Request the Secretary of the Personnel Cabinet to invoke the provisions of KRS Chapter 18A and refuse to certify Stephen Harper as an eligible on any register, due to his willful violation of the provisions of KRS 18A.032(1)(k). This provision reads, as follows:

Except as provided by the provisions of this chapter, the Secretary may refuse to examine an applicant or, after examination, may disqualify an applicant, remove his name from a register, refuse to certify any eligible any on a register, or may consult with the appointing authority in taking steps to remove such person already person if:

(k) he has otherwise willfully violated the provisions of this chapter.

2. Encourage the Executive Branch to ensure that all sexual harassment complaints or reports should be promptly, thoroughly, and adequately investigated. Serious allegations should be assigned to trained independent investigators. Documentation of all aspects of the investigation should be maintained.

3. Acknowledge the cooperation of the management and employees of the Justice and Public Safety Cabinet and the Department of Corrections in this investigation. Special recognition goes to the Hon. Edward Baylous and to Elisha Mahoney who provided the investigators with all the materials and access to all the witnesses to complete this investigation.

RESPONSES TO REPORT AND RECOMMENDATION

This matter is on the agenda for the Personnel Board meeting on **June 14, 2019** meeting at 9:30 a.m. Any party who has received a copy of this report shall file any written response they wish the Board to review by **June 7, 2019**. Any requests to appear and address the Board in person at the June 14, 2019 meeting shall be filed by **June 7, 2019**.

So **ISSUED** at the direction of the Executive Director this 14th day of May, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Board Members
Secretary Thomas Stephens
Secretary John Tilly
Hon. Edward Baylous
Hon. Ned Pillersdorf
Hon. Joe Childers
Hon. Bethany Baxter
Linda Smith
Stephen Harper