

## 1.1.C.13 Screening of Staff, Volunteers and Contractors for Prior Sexual Abuse

### I Policy Index:



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### II Policy:

The Department of Corrections will not hire or promote a facility staff member, or enlist the services of any volunteer or contractor who may have contact with inmates, who has engaged in institutional sexual abuse, sexual abuse in the community or sexual harassment or whose criminal history reveals a history of sexual misconduct. The Department shall conduct pre-employment screening of job applicants for a position within a DOC facility and current staff members of the facility considered for promotion by asking questions concerning previous sexual misconduct, conducting criminal records background checks, and contacting prior facility employers and inquiring about prior sexual misconduct. Criminal records background checks will be conducted on all new hires, volunteers and contractors prior to initial assignment to a DOC facility.

### III Definitions:

#### **Contractor:**

For the purposes of this policy, a contractor is someone employed by a private company or other state or government agency who provides a service to a DOC facility on a **reoccurring** basis and who may have contact with inmates while not under the constant, direct supervision of staff. Examples include, but are not limited to, vocational training, counseling, general education classes, reentry planning guidance, medical or dental treatment, behavioral health services, technical support (Bureau of Information and Technology (BIT)) and Bureau of Human Resources (BHR) staff.

#### **Facility:**

A place, institution, building (or part thereof), set of buildings, structure or area (whether or not enclosing a building or set of buildings) that is used by the Department of Corrections for the confinement of inmates.

#### **Institutional Sexual Abuse:**

Sexual activity by a staff member with a prisoner, inmate, offender, resident or student in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution.

#### **NCIC III:**

National Crime Information Center (NCIC) III is a computerized index of criminal justice information (i.e. criminal record history information, fugitives, stolen properties, missing persons).

**Sexual Abuse in the Community:**

A conviction or civil or administrative adjudication for engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse.

**Sexual Harassment:**

- (1) Unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature; or
- (2) Verbal comments or gestures of a sexual nature, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

**Sexual Misconduct:**

Includes prior acts of institutional sexual abuse, sexual abuse in the community, or sexual harassment.

**Staff Member:**

For the purposes of this policy, a staff member is any person employed by the DOC in a facility, full or part time. This includes individuals under contract, employees of another State agency and student interns who are assigned to a DOC facility.

**Volunteer:**

For the purposes of this policy, a volunteer means a level 1 or level 2 volunteer who donates time and effort on a recurring basis to enhance the activities and programs provided at a DOC facility. See DOC Policy 1.1.D.3 [Facility Access & ID Requirements](#).

**IV Procedures:****1. Criminal Records Checks:**

- A. A criminal records background check shall be conducted by the DOC and Bureau of Human Resources (BHR) utilizing the NCIC III for all staff members, volunteers and contractors assigned to, or providing a service within a DOC facility every five (5) years, beginning in the year 2012 and continuing every five (5) years thereafter.
- B. The staff member assigned to review the results of the criminal records check/background check shall identify any convictions that exist within the record for engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion or if the victim did not consent or was unable to consent or refuse. All charges, arrests, or convictions involving any sexual offense shall be noted and reported to the Warden or designee.
- C. Sexual offenses shall include all offenses contained within SDCL § [22-24B-1](#) and Chapter [22-22 - Sex Offenses](#).
- D. The facility or department may hire or contract with an individual who would otherwise be prevented from such employment or contracting due to a history of sexual misconduct without violating the standards only if the Secretary of Corrections (1) determines that the individual does not pose a safety threat, based on considerations such as the length of time that has passed since the activity described in standard 115.17 (a) (1)-(3), the evidence of rehabilitation on the part of the individual, or other relevant factors, and documents all relevant factors and rationale leading to the safety threat determination; (2) considers the individual to be important to the success of a specialized inmate rehabilitative program; and (3) does not permit the individual to have contact with inmates without direct staff supervision.

## 2. Staff Member New Hires:

- A. During the interview process, the applicant will be asked about any involvement in sexual misconduct.
- B. Prior to an offer of employment, all prior institutional employers listed by the applicant will be contacted for information on substantiated allegations of sexual misconduct, or any resignation during a pending investigation of sexual misconduct by the applicant.
- C. A criminal records background check will be conducted prior to an offer of employment.
- D. The supervisor of the vacant position must take into consideration the results of sections A, B and C above in making an offer of employment and may not make an offer of employment to an individual with a demonstrated history of sexual misconduct.

## 3. Promotional Hires:

- A. During the interview process, a staff member being considered for a promotion will be asked if they have had any personal involvement in institutional sexual abuse, sexual abuse in the community, or sexual harassment (sexual misconduct). Interviewing staff will review the personnel file of the staff member being considered for promotion for any reports of institutional sexual misconduct.
- B. Prior institutional employers will be contacted and asked about the staff member's prior history of institutionally based sexual misconduct if the staff member's original pre-employment checks are not available for review.
- C. A criminal records background check will be conducted on the staff member being considered for the promotion if the results of the pre-employment or most recent five-year background check are not available for review.
- D. The supervisor of the vacant position must take into consideration the results of sections A, B and C above in making a promotional offer of employment and may not make a promotional offer of employment to staff member with a demonstrated history of sexual misconduct.

## 4. Volunteers and Contractors:

- A. Criminal records background checks will be conducted on all Level 1 and 2 volunteers and contractors providing a service to a DOC facility on a reoccurring basis where they may have contact with an inmate outside of the constant, direct supervision of staff, prior to admission to the facility, in accordance (See DOC policy 1.1.D.3 [Facility Access & ID Requirements](#)).
- B. A volunteer or contractor assigned to, or providing a service to a DOC facility, will not be admitted to the facility if the criminal records background checks reveals a prior history of sexual misconduct.

## 5. Staff Members, Volunteers, and Contractors Required to Disclose Sexual Misconduct:

- A. Staff members, volunteers, and contractors assigned to or providing a service to a DOC facility are required to notify their supervisor or agency contact within one business day if they become involved in any sexual misconduct investigation in a facility or community setting; are indicted, charged or convicted of any sexual misconduct offense; or disciplined for sexual misconduct in an employment setting (See DOC policy 1.1.C.1 [Staff Code of Ethics](#)).

- B. Material omissions regarding such or the provision of materially false information shall be grounds for staff member termination and volunteer and contractor restriction from admission to the facility.

**6. Responding to Requests for Information About Staff Misconduct:**

- A. Requests, pursuant to an application for employment from an outside institutional employer for information about a current or previous staff member's involvement in substantiated allegations of sexual misconduct shall be forwarded to the facility's Bureau of Human Resources Manager. Requests for this information must be in writing and accompanied by an authorization, release, and waiver.

**V Related Directives:**

Chapter [22-22](#) and SDCL § [22-24B-1](#)  
 DOC policy 1.1.C.1 -- [Staff Code of Ethics](#)  
 DOC policy 1.1.D.3 -- [Facility Access & ID Requirements](#)

**VI Revision Log:**

**October 2012:** New policy  
**April 2013:** Reviewed with no changes  
**November 2013:** Reviewed with no changes  
**November 2014:** Reviewed with no changes  
**November 2015:** Deleted "Repeated" from definition of Sexual Harassment.  
**November 2016:** Added examples language and Added "and may not be under the constant, direct supervision of security staff" to the definition of "Contractor". Added definition of "Facility". Added "by the DOC and Bureau of Human Resources (BHR)" in Section 1 A. Added B. to Section 1. Added D. to Section 1. Added "Interviewing staff will review the personal file of the staff member being considered for promotion for any reports of institutional sexual abuse or sexual harassment" in Section 3 A. Revised language in Section 4 A. to be consistent with the definitions. Added "business day" to Section 5 A.  
**November 2017:** Reviewed with no changes.

<i>Denny Kaemingk (original signature on file)</i>	<i>12/09/2017</i>
Denny Kaemingk, Secretary of Corrections	Date