

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 (DOC) will not hire or promote a staff member, or enlist the services of any volunteer or contractor who may have contact with inmates, who has engaged in institutional or community sexual abuse or sexual harassment, or whose criminal history reveals a history of sexual misconduct. The DOC shall conduct pre-employment screening of those identified for a possible job or assignment within a DOC facility, and current staff members considered for promotion. Designated staff may ask questions concerning any previous sexual misconduct, sexual abuse or sexual harassment, conduct, review criminal record background checks, and contact prior employers about any prior sexual misconduct, sexual abuse or sexual harassment perpetrated by the person.

III Definitions:

Contractor:

A person employed by a private company or other state or government agency who provides a service to a DOC institution on a **reoccurring** basis, and who may have contact with inmates when not under the constant, direct supervision of DOC 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).

Facility:

An institution and its grounds, a building (or part thereof), set of buildings, structure or area (whether or not enclosing a building or set of buildings) owned or leased 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 that is assigned to work within an institution housing DOC offenders, full or part time. This includes individuals under contract, employees of another State agency and student interns.

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 on all staff members, volunteers and contractors assigned to, or providing a service within a DOC facility who have unsupervised contact with inmates, 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 offenses 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. The reviewer shall have proper training and authorization to possess, access and review criminal records. 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 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) and evidence of rehabilitation and other relevant factors supporting the person is unlikely to reoffend or pose a risk to inmate safety; (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 when there is evidence to support substantiated allegations of sexual misconduct, or resignation by the applicant during a pending investigation of sexual misconduct or in lieu of termination.
- 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 applicant with a demonstrated history of sexual misconduct, unless so approved by the Secretary of Corrections.

3. Promotional Hires:

- A. During the interview/promotion 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 misconduct. Authorized staff will review the personnel file of the staff member being considered for promotion for any reports or information supporting sexual misconduct.
- B. Prior institutional employers will be contacted if this was not completed during the initial hiring process or there is new information supporting an incident of sexual misconduct has occurred since the person was initially hired.
- C. A criminal records background check will be conducted for those considered for promotion if the results of the most recent background check are not available for review, or five (5) years or more has elapsed since the criminal background check was last conducted.
- 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 who are required to comply with the requirements set forth within this policy.
- 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 or sexual offenses.

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; are indicted, charged or convicted of any sexual 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 Bureau of Human Resources.
- B. Requests for such information/records must be in writing and accompanied by an authorization, release, and waiver and are subject to all state and federal laws regarding confidentiality and employment records.

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.

November 2018: Language updates.

Denny Kaemingk (original signature on file)

Denny Kaemingk, Secretary of Corrections

01/02/2019

Date