

1.1.C.2 Staff Supervision of Offenders

I Policy Index:



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II Policy:

All staff members of the Department of Corrections (DOC) will maintain objective and professional attitudes and actions while instructing and supervising offenders.

III Definitions:

Excessive Use of Force:

While not subject to a precise definition, excessive force includes situations in which staff use more force than necessary to control the threat or use force when force is not necessary. When the force used was excessive will be judged from the perspective of a hypothetical reasonable person on the scene and in light of the particular circumstances.

Offender:

An inmate in the custody of the DOC institutional system, a parolee under parole or suspended sentence supervision by South Dakota Parole Services or a juvenile committed to the Division of Juvenile Services who is in private placement or aftercare.

Sexual Abuse:

Engaging or attempting to engage in sexual activity by force, overt or implied threats of force, 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; and 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.

Staff Member:

For the purposes of this policy, a staff member is any person employed by the DOC, full or part time, including an individual under contract assigned to the DOC, an employee of another State agency assigned to the DOC, authorized volunteers and student interns.

IV Procedures:

1. Staff Guidelines for Supervising Offenders:

- A. Instruct and supervise offenders in a consistent and fair manner.
- B. Avoid fraternization with offenders.
- C. Learn and acknowledge levels of control and authority of offenders; e.g., policies, procedures, operational memorandums, rules, chain of command.
- D. Maintain professional distance while interacting with offenders and a positive demeanor.
- E. Be respectful in tone and actions when interacting with offenders.

2. Self-Disclosure by Staff Members:

- A. Staff members will exercise sound, professional judgment when disclosing information to offenders or to others while in the presence of offenders; both in terms of work and personal information.
- B. Staff members will not engage in discussions with offenders that includes personal or confidential information pertaining to staff members or other offenders. Personal or confidential information includes information not available within a public forum; such as family status, relationships, finances, medical or health information, etc.
- C. Staff will not communicate with offenders through social media (on or off-duty) unless such communication is part of the staff member's official duties and the staff member's supervisor is aware of the communication.
 - 1. The DOC does not monitor staff personal use of social media. However, the DOC may investigate and take responsive action when it becomes aware of, or suspects staff's conduct or communication on a social media site adversely impacts the DOC, violates applicable DOC policies or compromises a staff member's ability to adequately perform their duties, including supervision of offenders.

3. Personalization Between Staff Members and Offenders:

- A. Staff members will avoid over-personalization with offenders by not becoming personally involved with an offender's personal problems.
- B. If a staff member's duties include dealing with the personal lives of offenders; e.g., therapists, chaplains, counselors, case managers, volunteers, etc., an objective, professional relationship will be maintained by the staff member to prevent an offender's problems from compromising the staff member's role as a supervisor, authority figure and professional.

4. Physical Contact and Use of Force:

- A. Any physical contact by a staff member with an offender, other than physical contact approved within applicable DOC policies or unit OMs, shall be limited to gestures of support or a friendly greeting, such as a handshake.

- B. Under no circumstance, other than conducting a clothed hand pat search for legitimate reasons, approved reasons, will an offender be touched on their genital area, buttocks, or breasts by a staff member.
- C. Corporal punishment (See SDCL § 24-2-9), brutality, cruelty, abuse or neglect of an offender by a staff member, including intentionally demeaning or humiliating any offender, is strictly prohibited.
- D. The DOC has zero tolerance for excessive use of force.
 - 1. Any staff member who observes or witnesses a staff member using excessive or inappropriate force upon an offender, must take action to attempt to stop the excessive or inappropriate use of force. If verbal intervention or physical intervention is unsuccessful or determined to be unsafe, the staff member must immediately take action to request assistance. Within a DOC institution, staff shall initiate the Incident Command System, in accordance with DOC policy 1.3.B.1 *Emergency Response*. In the community, responding staff shall dial 911 and request assistance. The first priority of staff responding to an incident involving excessive or inappropriate force is life safety, followed by stabilization of the incident.
 - 2. Any staff member who becomes aware of any incident of excessive or inappropriate use of force involving an offender and staff member, shall report the information/incident immediately to his/her supervisor (See DOC policy 1.1.C.1 *Staff Code of Ethics*). All allegations or reports of excessive use of force received shall be investigated.
- E. Any staff member who inflicts injury upon an inmate, whose actions are not authorized by law (See Use of Force policies), is subject to disciplinary action and possible criminal prosecution (See SDCL § 24-2-10).

5. Staff Member Communication:

- A. Staff members will communicate in a professional manner.
 - 1. Written documents, reports, statements, emails or notes will not contain profanity, offensive or graphic language or derogatory remarks or terms.
 - a. This does not apply when inclusion of such is essential to accurately describe an offender's actions, comments, statements, remarks.
- B. Staff members will not use derogatory terms when addressing offenders. Sexual remarks, suggestive comments or jokes, ethnic or derogatory terms or remarks or profane descriptions, will not be used when addressing or describing offenders.
- C. Staff members will model appropriate language. A consistent pattern of profanity in routine communication with offenders is not acceptable.

6. Sexual Abuse, Harassment, Discrimination and Offensive Behavior:

- A. Sexual abuse or sexual harassment or harassment based on race, color, religion, national origin, sex, pregnancy, genetic information, disability or other protected status or characteristic of an offender is expressly forbidden and a violation of DOC policy.
 - 1. Any staff member who engages in sexual abuse or sexual harassment or other forms of harassment of an offender or has knowledge of the sexual abuse or sexual harassment or other forms of harassment inflicted upon an offender by a staff member, who does not report the abuse

or harassment immediately to their supervisor, is subject to disciplinary action, including termination of employment.

2. Any person employed by the state or within any state prison who knowingly engages in an act of sexual penetration with an offender in detention and under the custodial, supervisory, or disciplinary authority of the person, is guilty of a class 6 felony (See SDCL § 24-1-26.1).
 3. The Prison Rape Elimination Act (PREA) requires the reporting of any act of a staff member engaging in sexual misconduct with an inmate in a DOC facility (See DOC policy 1.3.E.4 *Prevention of Offender Sexual Assault/Rape*).
 4. Staff will not engage in harassment, discriminatory or offensive behavior when interacting with offenders and shall avoid any conduct which could be viewed as harassing, discriminatory or offensive. Such behavior may be verbal, nonverbal or physical in nature.
- B. Staff members should always keep in mind the following:
1. Some offenders have been the victims of sexual abuse and may not know when or how to say “no” to others.
 2. Even if an offender consents to a sexual relationship/activity, legal/criminal action may determine that sexual abuse has occurred as offenders are detained and under the custodial, supervisory and disciplinary authority of the DOC/staff member.
 3. If and when practical, it is better to have at least one (1) other staff member present when dealing with offenders of the opposite sex in an isolated area.
 4. Offenders do not have a right to complete privacy; however, it is a responsibility of each staff member to balance offender privacy interests with the staff member’s responsibility and duty to properly perform their job. Preservation of safety and security shall remain the priority.
- C. Staff shall not use personal video, recording devices or still cameras to aid or further any harassing, discriminatory, manipulative, offensive or illegal behavior which involves recordings of an offender.
1. As part of or in furtherance of any illegal activity.
 2. For recording any image of an offender which is lewd, obscene or pornographic.
 3. For taking any image or recording of any offender without their express written consent, unless taken for an authorized purpose and within the scope of the staff member’s duties.

7. Ethnic Consideration:

- A. Staff members will demonstrate professionalism and integrity while instructing and supervising all offenders.
1. Staff members shall recognize offenders of different ethnic backgrounds have specific cultural norms.
 2. Staff members shall recognize offenders of different ethnic backgrounds may have specific social needs; e.g., rituals, dress, expression of emotion, family involvement.
 3. Reasonable accommodations shall be recognized and observed when consistent with the penological interests of the DOC.

8. Reporting Procedures:

- A. A staff member who observes or has knowledge of another staff member acting in a manner inconsistent with the standards of offender supervision, as described in this policy or other departmental policies, procedures, orders, directives or operational memorandums, has an affirmative duty to immediately report the incident/information to their supervisor.
- B. Staff must immediately report any attempt by an offender to form a relationship with a staff member which is beyond or inconsistent with the professional relationship that exists between staff and offenders, to their supervisor.
- C. A staff member, who engages in harassment, discrimination or offensive behavior, or has knowledge of harassment or discrimination in the workplace who does not report the harassment or discrimination immediately to their supervisor, may be subject to disciplinary action, including termination of employment.
 - 1. Self-disclosure of such behavior does not absolve the staff member from disciplinary action or other response to a finding the staff member engaged in prohibited behavior.
 - 2. No staff member may retaliate against another person for making a report, charge or testifying or participating in any investigation, proceeding or litigation involving a staff member who is accused of committing harassment, discrimination or offensive behavior.
- D. Any offender who has a complaint of harassment, discrimination or offensive behavior by a staff member, must notify a staff member or complete a request for Administrative Remedy (See DOC policy 1.3.E.2 [Administrative Remedy for Inmates](#)).

9. Supervision of Inmates in a DOC Facility:

- A. Supervisors will conduct and document unannounced rounds during all shifts to identify and deter sexual abuse of inmates.
 - 1. Supervisors will not alert staff in advance of the supervisory rounds unless such announcement is related to the legitimate operation of the facility.
- B. Cross Gender Supervision.
 - 1. At the beginning of each day shift, each housing unit will announce that a staff member of the opposite gender of the inmate population may be assigned to work the housing unit.
 - 2. When the status quo of the gender supervision of the housing unit changes from same gender to cross gender supervision, staff is required to verbally announce the change. Staff will verbally announce when an opposite gender visitor or contractor enters a housing unit.
 - 3. Cross gender staff supervision is not allowed in areas where inmates shower, perform bodily functions or change clothing, except in situations when such viewing is incidental to routine checks, or when responding to an emergency occurring within such areas.
- C. Cross Gender Video Monitoring.
 - 1. Video monitoring cameras focused on individual housing cells/bunks, living areas, shower areas, bathrooms or designated rooms where strip searches occur, must be monitored by staff of the same gender as the inmates being viewed.

- a. In barracks type housing, cameras focused on common areas that include inmate bunks, is permissible, provided inmates are given the opportunity to change clothing or disrobe in an area not monitored by video observed by cross gender staff.
2. Cross gender staff monitor viewing of an inmate in a specific housing cell on safety/suicide watch is permissible. Cross gender staff may be assigned to provide constant observation of an inmate on watch, provided the inmate is provided with a means to avoid exposing himself or herself to nonmedical cross gender staff while showering, using the toilet or dressing. This may include a privacy curtain or substituting same gender staff at designated and announced times. The inmate will be informed of the substitution. Any privacy accommodations must be implemented in a way that does not pose a safety risk to the inmate placed on the watch. If an immediate safety concern exists, or an inmate's conduct makes it impractical to provide same gender coverage during a period when the inmate is showering, dressing or using the toilet, cross gender staff may visually supervise the inmate. Such isolated instances of cross gender viewing do not constitute a violation of the standards.
3. Cross gender staff viewing of video or recorded images showing individual housing cells/bunks, shower areas and bathrooms accessed by inmates is permissible when the monitoring is by appropriately trained internal/external investigators and/or senior agency/facility administrators and is part of an investigation or incident review.

10. Acknowledgment of Review:

- A. Staff assigned to a DOC facility or unit charged with the detention, custody, supervision and discipline of offenders will review this policy at least annually.

V Related Directives:

SDCL §§ [21-2-9](#), [24-1-26](#), [24-2-10](#) and [24-1-26.1](#).

DOC policy 1.1.C.1 – [Code of Ethics](#)

DOC policy 1.1.D.1 – [Staff Training Requirements](#)

DOC policy 1.3.A.3 -- [Use of Force - Adult Institutions](#)

DOC policy 1.3.A.5 – [Searches – Adults Institutions](#)

DOC policy 1.3.E.2 -- [Administrative Remedy for Inmates](#)

DOC policy 1.3.E.4 – [Prevention of Offender Sexual Assault/Rape](#)

VI Revision Log:

March 2002: **Added** section on Communication. **Added** criminal punishment reference to Sexual Situations A.1. **Added** Acknowledgement of Review section.

December 2003: **Added** references to policies 1.3.A.5 and 1.3. A.6. **Revised** some section titles.

January 2005: **Added** exceptions for correctional officers at a juvenile facility under the section titled Consistency With Touching. **Added** a requirement to be respectful in demeanor, tone and actions under the section “Staff Member Guidelines for Supervising Offenders”.

January 2006: **Deleted** specific references on touching of offenders by officers at a juvenile facility. **Added** the reference to DOC policy 1.1. C.10. **Revised** the definition of staff member.

Clarified the change in penalties for a Class 6 felony effective 7/1/06.

December 2006: **Updated** the policy name on policies 1.3.A.5 and 1.3. A.6. **Added** a reference to policy 1.3. E.4. **Updated** penalty information on a Class 6 felony. **Noted** that disciplinary action may be applied to offenders who attempt to form a relationship with a staff member.

Clarified the policy must be reviewed annually by staff members. **Revised** the definition of offender. **Clarified** that written reports referenced in the section on Staff Member Communication also include case notes and narratives. **Clarified** the statement on “safety in numbers” in the section on Sexual Situations.

December 2007: No changes made.

November 2008: **Revised** formatting of policy in accordance with DOC policy 1.1. A.2. **Replaced** counselors with therapists and added volunteers to ss (B of Personalization Between Staff Members and Offenders). **Added** DOC policy 1.1.C.1 to ss (A of Sexual Situations). **Replaced** different with other when referencing ethnic groups in Ethnic Situations section. **Revised** other minor rewording throughout policy.

November 2009: **Revised** wording in ss (D of Staff Member Guidelines for Supervising Offenders).

Added reference to SDCL 22-6-1 in ss (A-2 of Sexual Situations and in Section V). **Added** reference to DOC policy 1.1.C.1 to section V. **Added** hyperlinks.

November 2010: Revised formatting of Section I.

January 2012: **Deleted** "Non-Public" and **Replaced** with "Public". **Added** definition of "sexual misconduct" "sexual harassment" and "sexual abuse" **Added** "and/or while in the presence of offenders" in Section 2 A. **Added** "involving personal or confidential information pertaining to" in Section 2 B. C. "The following activities or relationships between staff members and offenders are prohibited" and added items 1-9 to Section 3. **Deleted** "(See Section on Reporting Procedures)" and **Replaced** with "or a senior staff member if the situation involves a supervisor" in Section 3 C. 8 b. **Deleted** "Consistency with Physical Touching" and **Replaced** with "Physical Contact" in title of Section 4. **Deleted** "body" and **Replaced** with "hand pat" in Section 4 B. **Added** C. "Corporal punishment, brutality, cruelty, abuse or neglect of offenders; including intentionally demeaning or humiliating any offender is prohibited" to Section 4 C. **Added** new Section 6 "Sexual Misconduct" **Deleted** "persons from" and **Replaced** with "all offenders, regardless of their" in Section 7 A. **Deleted** "Ethnic harassment and/or discrimination" and **Replaced** with "Discrimination or harassment against any offender on the basis of race, color, religion, national origin, creed, gender disability, or legally protected status or characteristic." in Section 7 B. **Deleted** "hold the offender accountable immediately" and **Replaced** with "(unsolicited contact)" and **Deleted** "Disciplinary action may also be warranted against the offender" in Section 8 B. **Added** C. to Section 8. **Added** new Section 9 "Staff Supervision of Offenders" **Renumbered** section that followed.

November 2013: **Updated** statute reference in Section 6 A. 3. **Deleted** "due to the fact the staff member has authority over the offender" and **Replaced** with "as offenders are in the detention and under the custodial, supervisory and/or disciplinary authority of the DOC/staff member" in Section 6 D. 2. **Deleted** "Each staff member "and **Replaced** with "Staff assigned to a DOC facility/Unit charged with the detention, custody, supervision and/or discipline of offenders will" in Section 10 A.

November 2014: **Added** definition of "Excessive Use of Force". **Deleted** C. (1-9) in Section 3, (See Code of Ethics policy). **Added** D. to Section 4.

April 2015: **Added** 2 to Section 9 B. **Added** C. 1-3 to Section 9.

November 2015: **Deleted** "Repeated" from definition of Sexual Harassment. **Added** C. and C.1. to Section 2.

March 2016: **Deleted** "Any staff member assigned to a DOC juvenile corrections facility who knowingly engages in an act of sexual contact or sexual penetration with a juvenile offender whose actions (sexual contact or sexual penetration) does not otherwise constitute a felony is guilty of a Class 6 felony if the juvenile offender is an adult and a Class 4 felony if the juvenile offender is a minor (See SDCL § 22-22-7.6)" in Section 6 B. 3. **Deleted** term "offender" and **Replaced** with "inmate" in Section 9.

November 2016: **Added** E. to Section 4.

November 2017: **Added** "It is also unlawful to retaliate against a person for making such report, charge, testifying, or participating in any way in an investigation, proceeding or litigation of such harassment or discrimination" in Section 6 B. **Added** C. to Section 6. **Added** D. to Section 8. **Added** "Self-disclosure of such behavior does not absolve the staff member from disciplinary action or other responses to a finding the staff member engaged in prohibited behavior" in Section 8 C. **Added** 2 to Section 9 C.

November 2018: Minor revisions and changes.

Denny Kaemingk (original signature on file)

Denny Kaemingk, Secretary of Corrections

01/02/2019

Date