

## 1.1.C.2 Staff Supervision of Offenders

### I Policy Index:



**Date Signed:** 05/14/2019  
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**Revision Number:** 19  
**Office of Primary Responsibility:** DOC Administration

### 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.

#### Gender:

A socially constructed concept of classifying behavior as either “masculine” or “feminine” unrelated to one’s sex, including external genitalia, internal reproductive organs, chromosome patterns, and/or endocrine system.

#### 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.

#### Sex:

Assigned to persons at birth by a physician based on external genitalia, internal reproductive organs, chromosome patterns, and/or endocrine systems or person who has undergone sex change or gender reassignment surgery, which is a surgical procedure that changes a person’s genital organs from one sex to the other. Opposite sex is someone who is not the same sex, i.e. a male and a female. Same sex is someone who is the same sex, i.e. a male and a male.

#### 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, directives, 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. Personal or confidential information includes information not available within a public forum; such as family status, relationships, finances, medical or health information, disabilities, 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 and has approved this.
  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 a legitimate, approved reason, such as a clothed hand-pat search, 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 by the intervening staff member to be unsafe, the staff member must immediately take action to request assistance.
    - a. Within a DOC institution, staff shall initiate the Incident Command System, in accordance with DOC policy 1.3.B.1 *Emergency Response*.
    - b. In the community, responding staff shall dial 911 and request assistance.
    - c. 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, 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 with offenders, the public, co-workers and other agency staff 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 inappropriate descriptions or references regarding others will not be tolerated.
- 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, gender, 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 or 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, non-verbal 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.
  - 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, or the following:
  - 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 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 to their supervisor, any attempt by an offender to form a relationship with a staff member beyond or inconsistent with the professional relationship that exists between staff and offenders.
- 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 an allegation or report, 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 of the incident 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. Supervision of Housing Areas.

1. At designated times each day, each housing unit will announce if a staff member of the opposite gender (cross-gender) of the inmate population at the facility may be present.
2. When the status quo of the gender supervision of the housing unit changes from same-gender to cross-gender, staff is required to verbally announce the change. Staff will verbally announce when a cross-gender visitor or contractor enters a housing unit. The intent of this announcement is to permit inmates the opportunity to cover up during those periods opposite gender staff are supervising the area if they do not wish to be viewed.
3. Opposite sex staff supervision is not allowed in areas where inmates shower, or are likely to be undressing or toileting, except in situations when such viewing is incidental to routine checks, or when responding to an emergency.

#### C. Opposite Sex Camera Monitoring.

1. Video monitoring cameras focused on individual housing cells/bunks or living areas where inmates are likely to be undressing or toileting, such as shower areas, bathrooms or designated rooms where strip searches occur, must be monitored by staff of the same sex as the inmates being viewed.
  - a. In barracks type housing, opposite sex staff or cross-gender monitoring of 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 cameras or if inmates are instructed not to undress in common areas (designated areas only).
2. Cross gender or opposite sex staff camera monitor viewing of an inmate in a specific housing cell on safety/suicide watch is permissible provided the inmate has an approved means to avoid exposing himself or herself to nonmedical opposite sex staff while showering, using the toilet or dressing. This may include a privacy curtain or substituting same sex staff at designated and announced times. The inmate will be informed of the staff substitution. Any privacy accommodations must be implemented in a way that does not pose a safety risk to the inmate.
  - a. If an immediate safety or security concern exists (i.e. same sex staff are not available), or an inmate's conduct makes it impractical to provide same sex staff coverage during a period when the inmate is showering, dressing/undressing or using the toilet, opposite sex staff may visually supervise the inmate through camera monitoring, as assigned and approved by the shift supervisor.
3. Opposite sex staff viewing of video or recorded images showing individual housing cells/bunks, shower areas and bathrooms or footage depicting inmates showering, performing bodily functions, changing clothing or in a state of undress or partial undress, is permissible when the monitoring or viewing is by internal/external investigators or senior facility and/or department administrators as part of an effective investigation, incident review or official business.

### 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.

**April 2019:** **Added** definition of "Gender" and "Sex" **Added** "gender" to Section 6 A. **Added** "The intent of this announcement is to permit inmates the opportunity to cover up during those periods opposite gender staff are supervising the area if they do not wish to be viewed" in Section 9 B. 2. **Deleted** "cross gender" and **Replaced** with "opposite sex" in Section 9 B. 3. and C. **Added** "opposite sex" in Section 9 C. 1.a and C. 2. and 3. **Added** "At designated times each day" and **Deleted** "At the beginning of each day shift" in Section 9 B. 1.

*Mike Leidholt (original signature on file)*

Mike Leidholt, Secretary of Corrections

05/14/2019

Date