

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 an individual, or enlist the services of any volunteer or contractor to work within a DOC facility, before completing a pre-employment screening to identify if the individual has engaged in institutional or community sexual abuse or sexual harassment, or whose criminal history reveals a history of sexual misconduct. The DOC will screen all individuals identified for possible assignment to a DOC facility and current staff members considered for promotion.

III Definitions:

Contractor:

Any non-staff person who provides a service within a DOC institution on a reoccurring basis, and who may have contact with inmates when not under the constant, direct supervision of a DOC staff member. Includes those providing vocational training, programming, medical or dental treatment, behavioral health services, information and technology support, building maintenance, etc.

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 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 potential new hires and existing staff, volunteers and contractors with unsupervised contact with inmates who is assigned to a DOC facility or considered for providing services within a DOC facility. The background will be completed for each person every five (5) years, beginning in the year 2012 and continuing every five (5) years thereafter.
- B. Supervisors or BHR representatives assigned to review the results of a criminal records check/background check, shall identify any convictions that exist within an individual's record for engaging or attempting to engage in sexual offenses facilitated by force, overt or implied threats of force, 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, interpret and review such criminal records. All charges, arrests, or convictions involving any sexual misconduct shall be noted and reported to the Warden or designee.
 1. Sexual offenses shall include all offenses contained within SDCL § [22-24B-1](#) and chapter 22-22 Sex Offenses.
- C. The facility may hire or contract with an individual who would otherwise be prevented from such employment due to a history of sexual misconduct without violating the PREA standard, 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 staff supervision.

2. Staff Member New Hires:

- A. During the interview process, applicants may be asked about involvement in any sexual misconduct.

- B. Prior to an offer of employment, employers and supervisors listed by the applicant will be contacted by the DOC supervisor and/or Bureau of Human Resources (BHR) representative for information, whenever there is evidence to support substantiated allegations of sexual misconduct have occurred, or the individual resigned during a pending investigation of sexual misconduct or in lieu of termination.
- C. A criminal records background check must be conducted prior to any offer of employment.
- D. The supervisor and BHR representative will review all related information pertaining to the individual being considered for hire and may make inquiry regarding any allegations of sexual misconduct and shall completely investigate any reports or investigations of sexual misconduct involving the individual.
- E. The supervisor must take into consideration the results of sections A., B., C. and D. above when making an offer of employment to an individual and shall not make an offer of employment to an applicant with a demonstrated history of sexual misconduct, unless so approved by the Secretary of Corrections or designee.

3. Promotions of Staff:

- A. During the promotion process, a staff member being considered for a promotion may be asked if they have had any personal involvement in institutional sexual abuse, sexual abuse in the community or sexual misconduct. The supervisor and BHR representative will review the personnel file of the staff member being considered for promotion for any reports or information supporting sexual misconduct and may make inquiry regarding any allegations of sexual misconduct and shall completely investigate any reports or investigations of sexual misconduct involving the individual.
- B. Employers or institutional supervisors will be contacted if there is new information supporting an incident of sexual misconduct has occurred since the individual was initially hired and the pre-employment screening was completed.
- C. A criminal records background check will be conducted for those individuals with a background check that exceeds five (5) years since the report was last reviewed.
- D. The supervisor must take into consideration the results of sections A, B and C above in making a promotional offer to any staff member with a demonstrated history of sexual misconduct. No promotional offer may be extended to any staff member with a history of sexual misconduct since initially hired, unless so approved by the Secretary of Corrections or designee.

4. Volunteers and Contractors:

- A. Criminal record background checks will be conducted on all Level 1 and 2 volunteers and contractors.
- 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, unless approved by the Secretary of Corrections or designee.

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

- A. Staff, volunteers, and contractors assigned to or providing a service to a DOC facility are required to notify their supervisor or the facility BHR representative 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 or providing materially false information shall be grounds for disciplinary action, including and up to termination.

6. Responding to Requests for Information About Staff Misconduct:

- A. Requests for information about a staff member, contractor or volunteer's involvement in possible misconduct, pursuant to an application for employment/contract completed by the individual with an outside employer, including any possible involvement in sexual misconduct or allegations of sexual misconduct while employed or contracted by the DOC, shall be forwarded to the Bureau of Human Resources.
- B. Requests for such information/records must be in writing and should be accompanied by a signed authorization, release/waiver from the applicant 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.

November 2019: Language updates.

Mike Leidholt (original signature on file)

Mike Leidholt, Secretary of Corrections

10/29/2019

Date