

First Judicial District Department of Correctional Services  Department Policy and Procedure	MANUAL:	PERSONNEL	12-13-2013	PER 27
	TITLE:	SEXUAL MISCONDUCT WITH OFFENDERS	REFERENCES: PREA Standards	

## POLICY

It is the policy of the First Judicial District Department of Correctional Services to prohibit all employees, volunteers, student interns, vendors, contractors, or agents of the First Judicial District Department of Correctional Services (referred to in this policy as staff) from engaging in sexual misconduct with offenders. The potential abuse of power inherent in staff-offender relationships is at the core of staff sexual misconduct. The inherent difference in power between staff and offenders makes any consensual relationship between staff and offenders impossible. Sexual contact between an offender and staff is considered sexual misconduct and is never consensual. This type of behavior is considered a serious breach of security and these relationships will not be tolerated. Engaging in an unauthorized relationship may result in criminal prosecution and/or employment termination.

Iowa Code Section 709.16(1) states, “an officer, employee, contractor, vendor, volunteer, or agent of the department of corrections, or an officer, employee, or agent of a judicial district department of correctional services, who engages in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of correctional services commits an aggravated misdemeanor”.

## DEFINITIONS

- A. **Allegation** – Any event that is said to have happened of a sexual nature but which has not yet been verified.
- B. **Intimacy** - Other sexually inappropriate behavior not defined as sexual contact or sexual abuse of an offender including kissing, intimate or flirtatious conversation or touching parts of the body not defined under sexual contact. This includes behavior unrelated to the performance of job duties.
- C. **Invasion of Privacy** - Intentionally observing and attempting to observe an offender’s activities involving hygiene or personal care, without a sound job-related reason. Any act by any staff that is considered to be reasonable and a necessary part of official duties and responsibilities, will not be regarded as an invasion of privacy; this includes observing the collection of UAs.
- D. **Retaliation** – An act of vengeance, covert or overt action or threat of action, taken against an offender in response to the offender’s complaint of sexual misconduct or cooperation in the reporting or investigation of sexual misconduct, regardless of the merits or the disposition of the complaint. Examples of acts of retaliation, include but are not limited to: unnecessary discipline, intimidation, unnecessary changes in work or program assignments, unjustified transfers or placements, or unjustified denials of privileges or services.
- E. **Sexual Abuse** – Sexual abuse includes, but is not limited to, subjecting an offender to sexual contact by persuasion, inducement, enticement, or forcible compulsion.
- F. **Sexual Contact** – Intentional contact of an inappropriate nature either directly or through clothing such as touching of the genitalia, anus, groin, breasts, inner thighs, or buttocks of any person. This includes all touching unrelated to the necessary performance of job duties. (See Iowa Code Section 702.17)

G. **Sexual Misconduct** – Conduct of a sexual nature by staff that is directed toward offenders under the care, custody and supervision of the department. Sexual misconduct with offenders includes acts or attempt to commit acts of sexual contact, sexual abuse, invasion of privacy, intimacy, or behavior for personal sexual gratification. This includes, but is not limited to acts or attempts to commit such acts as:

1. Having sexual contact and/or sexual intercourse with an offender that is in violation of Department policy and the Code of Iowa.
2. Any action designed for sexual gratification of and by an offender or staff person.
3. Making obscene or sexual advances, gestures, comments or exposing one's self, to an offender or being receptive to any such advances, gestures, or comments made by an offender toward a staff member.
4. Initiating any form or type of communication of a sexual nature with an offender, unless specifically associated with treatment for a sex-related offense, health or case management.
5. Receiving any form or type of communication of a sexual nature from an offender and failing to report the communication immediately to a direct supervisor, unless specifically associated with treatment for a sex-related offense, health or case management.
6. Influencing or making promises regarding, but not limited to, an offender's safety, custody, legal status, privacy, housing, privileges, work assignment, or program status in exchange for sexual favors or because an offender refused to submit to a sexual advance. This includes an exchange of anything of value between staff and an offender.

H. **Staff** – As used in this policy refers to an employee, contractor, vendor, volunteer, student intern, or agent of the First Judicial District Department of Correctional Services.

I. **Victim Counselor** – A person who is engaged in a crime victim center, is certified as a counselor by the crime victim center, and is under the control of direct services supervisor of a crime victim center, whose primary purpose is the rendering of advice, counseling, and assistance.

J. In accordance with the National PREA Standards, **Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer:** includes any of the following acts, with or without consent of the inmate, detainee, or resident:

1. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
2. Contact between the mouth and the penis, vulva, or anus;
3. Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
4. Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
5. Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
6. Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs 1-5 of this section;
7. Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
8. Voyeurism by a staff member, contractor, or volunteer, which means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as

requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

## PROCEDURES

Acts of sexual misconduct with offenders or retaliation against offenders who refuse to submit to sexual advances are prohibited. All allegations and incidents of intimacy, sexual contact or sexual abuse by staff with offenders must be reported, fully investigated and treated in a confidential and serious manner. All offenders will be advised of their right to be free of sexual misconduct from staff. All staff will receive training and orientation on this policy.

### 1. Duties of the District Director:

- A. The Department will develop a process for reporting and investigating incidents of sexual misconduct by staff. The process will include multiple points of reporting for offenders and staff, trained investigators and a consistent investigative process.
- B. Local or state law enforcement will be contacted for any allegations, which could, if substantiated, result in criminal prosecution.
- C. The District Director will assign an investigator to investigate serious allegations/violations after receiving clearance from the local or state law enforcement agency.
- D. Pending the outcome of an investigation, the District Director will ensure that affected staff and offenders are separated through appropriate placement, segregation, transfer or leave (including suspension) options.
- E. The District Director will notify the regional Deputy Director in a timely manner of serious incidents of alleged sexual misconduct and follow up with a written critical incident report.
- F. The District Director shall document all actions taken.
- G. The District Director is responsible for ensuring that policies, training, and culture address the issue of sexual misconduct.
- H. The District Director will ensure offenders are provided with information about behaviors that constitute sexual misconduct and retaliations, ensure that the offender understands the process by which such incidents are reported and investigated and ensure offenders understand consequences for making false allegations.
- I. Being falsely accused of sexual misconduct can be a traumatic event for staff. If an investigation is conducted and the accusations are not substantiated, the District Director will ensure support services are offered to that staff member in accordance with the [Staff Victimization & Support Services policy](#) (PER 28).

### 2. Duties of Staff

- A. Staff will adhere to all the procedures and guidelines of this policy and will ensure their conduct does not constitute or promote sexual misconduct, sexual harassment, or sexual abuse nor in any other way violates the provisions of this policy.

- B. All staff are required to immediately report to a supervisor, any type of sexual harassment, sexual misconduct, or sexual abuse involving staff, offenders, or any other persons. This includes any third party or anonymous reports. Staff who fail to do so may be subject to disciplinary action. (PREA 115.261).
- C. Staff will provide complete cooperation and will not interfere with the official process of investigating sexual harassment, sexual misconduct, or sexual abuse. This includes failure to report or attempts to cover up an incident of sexual harassment, misconduct, or sexual abuse, allegation or statement that a party or a witness knew could not have been true, or any form of failure to cooperate with an investigation or inquiry. Failure to cooperate or failure to report shall result in corrective action being taken, including discipline.
- D. Staff will not retaliate upon knowledge of sexual harassment, sexual abuse, or sexual misconduct allegations.

3. Duties of Supervisory Staff

- A. Upon receiving notification of an activity prohibited by this policy, supervisors at all levels within the Department will report the alleged activity in a timely manner to the District Director or designee. All reported conduct prohibited by this policy will be treated seriously.
- B. Ensure all offenders who report they have been sexually abused or assaulted are appropriately referred to an appropriate health provider. The responsible supervisor will also ensure that offenders receive appropriate psychological evaluation, and recommended follow-up and ongoing support.
- C. Ensure adequate measures have been taken to provide separation between the affected offender and staff during the investigation without punishing the offender.
- D. Take appropriate action for substantiated staff misconduct.
- E. Document all actions taken.

4. Duties of the Department Investigator:

- A. The offender will be asked if a victim counselor is desired prior to the interview beginning. The request will be honored but, if necessary, the investigation can proceed if there is an unavoidable delay in obtaining a victim counselor.
- B. Interviews will be conducted in a thorough, professional, non-abusive, and non-threatening manner consistent with acceptable practices for potentially traumatized victims of sex crimes.
- C. Allegations, which include intercourse, sodomy, or physical force, will require consultation with medical staff.

- (1) In the event an offender makes an allegation of penetration against a staff member and the most recent act has occurred within the past 48 hours, the offender will be immediately examined by a physician, not employed by the Department, skilled and experienced in using a rape kit for collection of forensic evidence.

(2) Psychological evaluation and counseling will be available to offenders who are victims of staff sexual misconduct until either or both the psychologist and the victim are satisfied that sessions should be terminated.

D. The investigative report will indicate whether the evidence supports a finding that misconduct has occurred, the allegations are false, or the evidence is inconclusive.

E. Document all actions taken.

5. Duties of Offenders:

A. During admission to custody or supervision, offenders will be informed about their right to be free from sexual misconduct.

B. Reporting guidelines and procedures will be explained during orientation and will include multiple reporting paths.

C. Offenders will provide complete cooperation and will not interfere with the official process of investigating sexual misconduct. This includes failure to report or attempts to cover up an incident of sexual misconduct, allegation or statement that a party or a witness knew could not have been true, or any form of failure to cooperate with an investigation or inquiry. Failure to cooperate, failure to report, or purposeful, malicious false statements may result in corrective action being taken including discipline, up to and including revocation of supervision.

## TRAINING

1. All new staff will receive training regarding the provisions of this policy.

2. All staff will sign a receipt acknowledging the policy has been read and is understood. (Form PER 42F—Personnel Policy Acknowledgement Form).

3. All staff will annually review this policy and sign an in-house training form. (Form PER 29F—In-House Training Form).