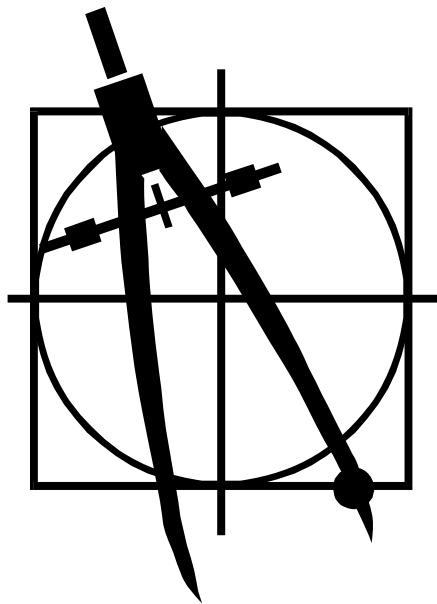


Staff Sexual Misconduct with Inmates

Policy Development Guide for Sheriffs and Jail Administrators



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Introduction

Staff sexual misconduct with inmates is a challenging issue in corrections. Sexual misconduct is illegal in 47 out of 50 states, it compromises facility security and creates work environments that are negative for both staff and inmates. Allegations are disquieting and divisive for employees and the public. Staff sexual misconduct may be a random incident involving a "bad apple" employee, or it may be indicative of a breakdown of the jail's management and operational systems. Yet, how does an administrator know? What are the strategies to prevent misconduct as well as effectively investigate allegations?

The National Institute of Corrections has worked since 1994 to address staff sexual misconduct through development of resources to improve policies and procedures, staff training and investigations. The strategies that have emerged through this initiative as critical to addressing sexual misconduct are:

- Policies that establish the agency's zero tolerance for sexual misconduct;
- Definitions of prohibited behavior that are specific for both employees and inmates;
- Multiple ways for employees and inmates to report allegations;
- Operational procedures that support zero tolerance;
- Strong investigative policies and protocols;
- Training of employees, volunteers, and contractors; and
- Orientation of inmates to the agency's policies.

All but three states have criminal statutes addressing staff sexual misconduct with inmates. The presence, absence, or scope of a criminal statute does not relieve the Sheriff or jail administrator of the responsibility to clearly establish the agency's expectations and penalties for violators, along with protections and assistance for inmate victims.

This "Policy Development Guide" is an outgrowth of NIC's work with jails. While NIC cannot endorse a specific set of policies and procedures, this document provides tools for Sheriffs and jail administrators to use to assess their own organization and implement strategies to prevent staff sexual misconduct.

Few agencies will escape allegations of sexual misconduct. An agency that has taken steps to evaluate operations and implement effective strategies before an allegation occurs will be in a better position to successfully investigate the allegation than an agency that reacts only after an allegation surfaces. By using this Guide agencies can be proactive by identifying and correcting deficiencies, preventing sexual misconduct and preserving facility security.

For more information on the history of this issue, along with a brief exploration of agency culture, legal issues, operational practices and investigations - see the attachments to this Guide.

You may also access NIC's Information Center at www.nicic.org.

Using this Guide

This Guide is designed to help you analyze your current policies and procedures relating to staff sexual misconduct with inmates. By reviewing and answering the questions included in this Guide about your current operations, Sheriffs and jail administrators can identify both potential revisions to current procedures, as well as identifying topics for further review. Each question points the reader to the page number(s) where additional information can be found.

Effectively addressing staff sexual misconduct with inmates is more than establishing just one policy that prohibits unprofessional behavior. While this is an essential first-step, the Sheriff and jail administrator need to carefully review operations and identify areas of the agency's strengths and weaknesses to prevent, address, and investigate misconduct. Operational practices must support the agency's zero tolerance policy on staff sexual misconduct.

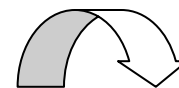
The range of administrative and operational issues that potentially impact sexual misconduct is large. For example:

- Cross gender supervision;
- Monitoring of staff overtime;
- Inmate privacy considerations;
- Maintaining a professional work environment;
- Management support of line staff;
- Leadership and consistent role modeling of required behaviors; and
- Guidelines for on and off duty staff behaviors.

Consideration by agency leaders of the wide-range of issues associated with sexual misconduct will better prepare the organization to evaluate operations with an eye toward prevention. Finally, and importantly, the agency's practices must be consistent with written policies and procedures.

For example:

<u>Policy Question:</u>	Yes	No	Page #(s)
Are applicants advised of the zero tolerance policy prior to hire?	Yes	No	19



Go to page 19 to find pertinent information

Employee Recruiting, Screening and Hiring

The agency's background investigation procedures identify past behaviors of applicants including violence, sexual abuse, domestic battery, and other indicators of inappropriate behaviors. If the agency uses pre-employment psychological testing, it has been validated.

Applicants are informed of the agency's policies regarding sexual misconduct.

How Do I Know If My Agency Needs a Policy?

Sheriffs and jail administrators have an obligation to provide staff with specific direction regarding all aspects of operations – including defining professional boundaries with inmates. While it seems chilling to acknowledge that some staff might not know these professional boundaries, there is sufficient evidence to support the view that staff need more direction. Defining prohibited behaviors and holding inmates accountable is also a part of the prevention strategy.

Some questions to ask yourself in determining if your agency needs to revisit or update policies and procedures regarding professional boundaries and staff sexual misconduct:

1. Does my agency's code of conduct specifically identify sexual misconduct?
2. Does the code of conduct for employees include general prohibitions about being "over-familiarly with inmates" or "conduct unbecoming"?
3. Do your agency's policies and procedures specifically define prohibited behaviors?
4. Does staff have, through training or experience, the skills they need to safely and effectively manage inmates, particularly manipulative inmates?
5. Have investigations into allegations of sexual misconduct been sidetracked because they end in "he said/she said"?
6. Are you concerned about a "sexualized work environment" or staff/staff romantic or inappropriate relationships impacting the security of the facility?
7. Has your agency received allegations of misconduct?

These are broad indicators that might indicate that staff need more direction, supervisors require support to effectively do their job, and you need to assure that appropriate leadership is provided.

What is Staff Sexual Misconduct?

Sexual misconduct is about more than sex. Sexual misconduct is a wide range of inappropriate behaviors, associated more with the exercise of “power” than to the sex act. In custodial settings, inmates are not capable of “consenting” to sex with staff, just as those individuals with diminished mental capacity and juveniles are deemed unable to “consent.” Consent is addressed in many state statutes and in several court decisions. Setting the tone in the organization that sexual misconduct seriously compromises facility security, and that inmates are incapable of “consenting” establishes an environment that prevents misconduct, as well as resulting in effective investigations.

Staff sexual misconduct is not just about violations of law or policy by male staff and female inmates. Many agencies are finding that allegations of female staff involvement with male inmates are as prevalent. Agencies also report concerns of inappropriate same sex relationships. Agencies who triage their policies with an eye toward prevention no matter the sex of the staff or the inmate, will improve their opportunities for prevention.

Definitions

These definitions are intended as **examples only**.¹ As agencies develop definitions to include in their policies and procedures they should review their state statute, as well as consult with legal representatives and human resources professionals. Sheriffs and jail administrators are urged to develop definitions that are relevant for their facilities, taking into account their security level and architecture.

Contractors - any person or corporation, other than an employee, providing any service to the agency (i.e., food services, medical, mental health, programs) for an agreed upon form of compensation. Contractors may include other local government agencies that contract with the jail for inmate labor, or who supervise inmate work crews in community improvement projects.

Employee - any person compensated by the agency for working full-time, part-time, or by paid internship.

Hostile Work Environment - harassment, speech or conduct that is based on the judgment of a reasonable person, severe or pervasive enough to create a hostile or abusive work environment, based on race, religion, sex, national origin, age, disability, veteran status, or, in some jurisdictions, sexual orientation, political affiliation, citizenship status, marital status, or personal appearance.

Inmate - any person committed to the care and custody of the correctional organization by any court or through judicial sanction. This definition includes inmates assigned to programs such as pre-trial release, alternatives to incarceration, work or educational release, electronic monitoring, probation, parole, or in any capacity where employees are supervising the individual.

¹ “Training Curriculum for Investigating Allegations of Staff Sexual Misconduct with Inmates”, Center for Innovative Public Policies, Inc. October 2000. Definitions used with the permission of the authors.

Professional Visitors - any person having access to any of the agency's facilities, who provides a professional service to inmates or staff, including but not limited to, attorneys, para-legals, para-professionals, bail bondsmen, private medical professionals, investigators, polygraph examiners, clergy, unpaid interns, or researchers.

Sexual Abuse – includes, but is not limited to, subjecting another person to any sexual act or contact between an employee, volunteer, contractor, or agency representative, and an inmate by force, persuasion, inducement, or enticement; any sexual act or contact in which an employee, volunteer or agency representative participates or forces any inmate to engage; subjecting another person who is incapable of giving consent by reason of their custodial status, physical or mental state; or rape, sexual molestation, prostitution or other form of sexual exploitation.

Sexual Assault – any sexual touching or contact, including but not limited to rape, sodomy or unlawful touching (please refer to your state's relevant statutes).

Sexual Contact – behavior that includes, but is not limited to, all forms of sexual contact, intentional sexual touching or physical contact in a sexual manner, either directly or through clothing, of the genitalia, anus, groin, breasts, inner thighs, buttocks, with or without the consent of the person; or any touching or inappropriate viewing with intent to arouse, humiliate, harass, degrade, or gratify the sexual desire of any person. [Note: agencies should consider developing specific policy guidance to staff regarding: touching, hugging, kissing, fondling, etc. between staff and inmates. Impact on inmate programming, especially therapeutic communities, AA, NA, and CA meetings, religious events, etc. should be reviewed, and specific guidelines provided to volunteers.]

Sexual Harassment – includes, but is not limited to, all of the following, whether by staff, volunteers, contractors, other agency representatives, or inmates: sexual advances; sexually offensive language, comments or gestures; influencing, promising or threatening any inmate's (or staffs') safety, custody status, privacy, housing, privileges, work or program status, in exchange for personal gain or favor of a sexual nature; creating or encouraging an atmosphere of intimidation, hostility or offensiveness as perceived by any individual who observes the sexually offensive behavior or language.

Sexual Misconduct - any behavior or act of a sexual nature directed toward an inmate by an employee, volunteer, visitor, contractor, or agency representative. This includes acts or attempts to commit such acts including, but not limited to, sexual assault, sexual abuse, sexual harassment, sexual contact, sexual gratification, conduct of a sexual nature or implication, obscenity and unreasonable invasion of privacy. Sexual misconduct also includes, but is not limited to, conversations or correspondence that suggests a romantic relationship between an inmate and any party referenced above. Misconduct can also involve inappropriate viewing.

Sexualized Work Environment - a work environment in which the behaviors, dress, and speech of either staff and/or inmates create a sexually charged workplace. Sexually explicit talk, inappropriate emails, posted cartoons, jokes, or unprofessional dress characterizes a sexualized work environment. In a sexualized work environment, often staffs' off-duty behaviors, dating, and other activities intrude into the everyday work environment. In a sexualized work environment talk or actions have sexual overtones. A sexualized work environment severely erodes the professional boundaries between staff, and consequently between staff and inmates.

Violation of Privacy Rights of Inmates – this includes, but is not limited to, the act or the attempted act of observing or interfering with an inmate's personal affairs without a reasonable need to do so for the immediate safety and security of the inmate, employees, or others within the institution. Violations may include unreasonable intrusive viewing of an inmate's use of the shower, toilet, or in areas where inmate dress, outside legitimate security needs. Acts that may also be included consist of: failing to announce his/her presence when entering a housing unit in

a non-emergency situation; reading personal mail or written materials of an inmate when not required for safety and security of the institution or persons therein.

Visitors - any person having access to any of the agency's facilities for personal and/or official reasons.

Volunteer - any person who, by mutual agreement with the agency, provides service without compensation, or who voluntarily assists inmates or the agency in the course of the volunteer's duties.

These definitions of the various elements of sexual misconduct are intended to help agencies begin the process of developing policies and procedures. This Guide provides further information about what agency administrators can consider as they develop or update the policies and procedures.

Red Flags B Are We Paying Attention?

The National Institute of Corrections has conducted training for several years on the topic of staff sexual misconduct. During the training, participants are asked to list those behaviors that they see as **RED FLAGS** -- events, actions or activities that should have tipped them off sooner to the possibility of staff sexual misconduct. Here are samples of participants' comments.

\$ Over-identifying with the inmate (Amy inmate") or their issues (i.e. blind to inmate's actions)	\$ Isolated posts/positions/work assignments
\$ Horse-play, interaction with sexual overtones between staff and inmates	\$ Staff can't account for time
\$ Inmates knowing personal information about staff	\$ Staff's family being involved with inmate's family
\$ Staff isolation from other staff	\$ Increase in contraband in an area
\$ Inmate has letters or photos of staff	\$ Staff working in a secluded area with inmate(s)
\$ Staff granting special requests or showing favoritism	\$ Staff taking inmates out of cell at unusual times
\$ Inmates in an unauthorized area, or repeatedly out of their assigned place	\$ Staff in personal crisis (divorce, ill health, bankruptcy, death in family)
\$ Staff spending an unexplainable amount of time with an inmate	\$ Staff who consistently work more overtime than peers and who volunteer to work overtime only in specific posts
\$ Telephone calls to and from staff/inmates	\$ Unusual balance, or activity, in an inmate's commissary account
\$ Inmate grape-vine, inmate snitches, inmate/staff rumors	\$ Staff having excessive knowledge about an inmate and his/her family
\$ Staff in the facility during "off hours"	\$ Staff intervening, or helping with the inmate's personal life, legal affairs
\$ Pregnancy or diagnosis of a sexually transmitted disease (STD)	\$ Staff sharing food or snacks with inmates
\$ Staff overly concerned about an inmate	\$ Staff testifying for an inmate, or requesting special treatment for an inmate
\$ Drastic change in behavior or appearance of an inmate or staff - dress, make-up, hair	\$ Staff delegating their duties to inmates (supervisory or cleaning, assignments)
\$ Staff having sole involvement with a particular inmate	\$ Staff bringing in large amounts of food, soda, snacks
\$ Indispensable inmate: "Only inmate who can do this job"	\$ Overheard conversations between staff and inmates which are sexualized in nature, or refers to the physical attributes of staff or inmates
\$ High/low number of inmate grievances	\$ Inmate sexual activity
\$ Inmate wanting to go to work early or volunteering to stay late	\$ Sexual or personal banter between staff and staff, or staff and inmates
\$ Staff confronting staff over an inmate	\$ Inmates using staff's first name; staff using inmates' first name
\$ Staff intercepting inmate disciplinary infractions or editing infractions	
\$ Staff tracking outside inmate calls (number and content of call)	

Writing Policies and Procedures

The information in this Guide is intended to help Sheriffs and jail administrators consider the scope of issues associated with prevention and investigation of allegations of staff sexual misconduct. NIC has developed a document to help agencies with the process of writing or updating policies and procedures. This document is:

Martin, Mark D., “Developing/Revising Detention Facility Policies and Procedures,” National Institute of Corrections, Jails Division, June 1996
www.nicic.org/pubs/1996/013551.pdf

This publication is available on the NIC website, or you may contact the NIC Information Center at (800) 877-1461, or email asknicic@nicic.org.

Triage Your Agency's Operations

Review each question as it relates to your agency's policies, procedures and operational practices on staff sexual misconduct. If your response is "no", you can refer to the page number(s) immediately following for further direction and information.

Administrative and Management Practices - Policy Issues

Policy Question	Yes	No	Page#(s)
Does the agency have a specific zero tolerance policy?	Yes	No	16, 19
Is there a specific policy regarding staff sexual misconduct that covers violations in all four quadrants ² ?	Yes	No	9, 16
Does the policy include specific prohibited behaviors?	Yes	No	9,16
Does the policy address sexual harassment, hostile work environment, and sexual misconduct?	Yes	No	9, 10, 16
Does the policy require mandatory reporting of allegations of sexual misconduct by employees and inmates?	Yes	No	16, 26
Is training required about this policy for staff, volunteers, civilians and contractors?	Yes	No	16, 22
Does the policy authorize investigations?	Yes	No	17, 28
Are stakeholders involved in policy development?	Yes	No	17, 21
Is zero tolerance mandated for contractors?	Yes	No	17
Does policy define rules of conduct for contractors?	Yes	No	17
Does policy exist for crisis management plans and crisis debriefings when allegations are made?	Yes	No	21
Is the employee assistance program aware of the agency's sexual misconduct policy?	Yes	No	21
Are mental health protocols in place to assist staff who are involved as target, witness or complainant?	Yes	No	21

² Male staff/female inmate, female staff/male inmates, and same sex relationships.

<u>Policy Question</u>	Yes	No	Page#(s)
Does policy provide a consistent, written employee disciplinary system?	Yes	No	18
Does policy require a background investigation of a prospective employee including past behavior of violence or abuse?	Yes	No	19
Are applicants advised of the zero tolerance policy prior to hiring?	Yes	No	19
Does the agency review and assess the operational impact of data from shakedowns, internal investigations, inmate grievances and staff grievances?	Yes	No	18, 25
Are there written rules for on and off duty conduct for employees, and reporting requirements of current personal information?	Yes	No	19
Are gender specific posts and supervision of staff addressed in policy?	Yes	No	20
Does policy address employees' work place privacy?	Yes	No	20
Are phones, radios, email and Internet use covered in privacy policies?	Yes	No	20
Does the agency have a comprehensive media policy?	Yes	No	21
Does the agency have a policy about releasing information about current and former employees, volunteers or contractors?	Yes	No	21
Does the facility provide public tours?	Yes	No	22
Are volunteers screened, supervised and evaluated?	Yes	No	22
Is there a policy on contraband and searches of volunteers?	Yes	No	22
Does the agency specify a report writing format and train employees how to write and submit reports?	Yes	No	21

<u>Policy Question</u>	Yes	No	Page#(s)
Does the agency formally recognize and reward employees?	Yes	No	18
Is there an effective employee grievance system?	Yes	No	19
Is analysis of staff grievances required by policy?	Yes	No	18
Are employee performance appraisals done at regular intervals?	Yes	No	19
Are exit interviews conducted with employees?	Yes	No	20
Is the work environment assessed to identify and address security issues, a sexualized work environment and whether procedures match written policies?	Yes	No	23

Policy Issues - Administrative

Agency Policy:

- The agency's position on staff sexual misconduct is a matter of policy.
- The policy establishes a zero tolerance for staff sexual misconduct with offenders. This policy includes potential misconduct on all four quadrants (male staff/female inmates, female staff/male inmates, and same sex relationships).
- The policy includes specific prohibited behaviors, not just "over-familiarity" or "conduct unbecoming".
- The policy addresses and defines prohibited behavior between staff and staff, staff and inmates, contractors and inmates, inmates and volunteers, includes, but is not limited to:
 - Touching, hugging, kissing, sexual assault, penetration, fondling, inappropriate viewing, sexual conduct, sexual harassment, sexual abuse, sexual gratification, romantic relationships, post-release relationships between staff/inmates.

The policy addresses:

- Mandatory reporting by inmates and staff;
- The reporting process, including multiple paths for reporting allegations by staff and inmates;
- Safeguards for those who report, including prohibitions against retaliation;
- Consequences for failing to report;

- Consequences of making deliberately malicious or false reports by staff, inmates;
- Training for all persons who have contact with, communication with or who supervise inmates, including:
 - Certified and civilian staff;
 - Vendors/contractors;
 - Volunteers; and
 - Other agency personnel (parks, recreation, transportation) who supervise inmates.
- Orientation of inmates to the agency's policies and procedures regarding zero tolerance, reporting procedures, safeguards, and consequences of deliberately false or malicious reports.
- The policy establishes the agency's authority to conduct investigations (criminal, administrative, both) into allegations. (See also investigative policies and procedures)
- The agency addresses involvement of stakeholders in the development of policies.

Assignment of Staff/Cross Gender Supervision:

- Procedures establish guidelines for cross gender assignments, along with oversight by a supervisor. Cross gender supervision policies address EEO requirements and labor/management contract issues.
- The agency consciously makes staffing assignments and includes an assessment of the impact on inmate security and cross gender issues to prevent the casual assignment of staff. Care is taken to insure that staff in cross gender assignments are provided the support and skills necessary to perform their function.

Contract Management:

The agency's process for advertising and awarding contracts for services includes:

- Identifies its zero tolerance for sexual misconduct;
 - Defines prohibited behavior by contractors;
 - Specifies training for contractors;
 - Establishes reporting requirements and timetables for contractors to report allegations or suspicions of sexual misconduct; and
 - Defines procedures for barring contractors from the facility during investigations of allegations.
- The contract award document(s) incorporate the agency's policies and procedures on professional behavior and sexual misconduct.

- If the contract involves medical or mental health services, the issues of how incidents of potential sexual misconduct involving medical/mental health staff are addressed. Reporting by mental health and medical staff to the facility's administration of suspected inmate sexual activity or staff sexual misconduct is specified.

Data Analysis:

The agency considers:

- Plotting, on a floor plan, reports of contraband, sexual misconduct complaints, inmate grievances, complaints of favoritism, misconduct, etc. Data is reviewed by housing unit, time and date or event(s).
- The analysis correlates complaints and staff assignments.
- Investigative reports recommend improvements in policy, operations, training and related administrative areas based on investigative findings (e.g., hiring, screening, and training of employees).

Employee Commendation and Awards:

- The agency regularly and publicly recognizes and rewards employees for outstanding work. The program has value to employees and provides meaningful acknowledgments.

Employee Discipline Process:

- As employee confidence in the discipline and internal investigation systems is essential to their willingness to report allegations of misconduct, the agency provides information and training to staff about the internal investigative process, as well as employee's rights and responsibilities.
- The policy conforms to current labor/management agreements.
- Data generated from analyses of sustained employee discipline is used in modifying agency management and operational practices.

Employee Grievances:

- The agency has an effective employee grievance process that allows issues to be expressed and appropriately addressed.

Employee Performance Appraisal:

- The agency's staff performance appraisal system contributes to a positive work environment, provides the opportunity to comment on the outstanding performance of subordinates, and correct or improve the areas that need attention.

Employee, Payroll:

- The agency reviews overtime worked by staff, tracks shift assignments, and related information. The agency's overtime policy addresses assignment of employees to insure that misconduct isn't facilitated when staff volunteer to work only in specific posts.

Employee Recruiting, Screening, Hiring:

- The agency's background investigation procedures identify past behaviors of applicants of violence, sexual abuse, domestic battery, and other indicators of inappropriate behavior. If the agency uses pre-employment psychological testing, it is validated for use in the agency.
- Applicants are informed of the agency's policies regarding sexual misconduct.

Employee Rules of Conduct:

- The agency's employee code of conduct includes zero tolerance for staff sexual misconduct.
- The agency specifies acceptable, as well as prohibited behavior, on and off duty requirements, including dating and romantic relationships among staff and, especially between staff and supervisors.
- The agency defines appropriate and inappropriate staff relationships in the workplace, with consequences for inappropriate behaviors.
- The agency policy addresses relationships between employees and individuals who were previously under the supervision of the facility or a criminal justice agency.
- The agency specifies the on-duty dress code for employees, volunteers and contractors and includes enforcement responsibilities.

- The agency requires that employees notify the agency of changes in personal address and phone numbers in a timely manner.
- The agency periodically audits employee telephone numbers, comparing records of inmate telephone calls to employee telephone numbers.

Employee Work Assignments:

- The policy addresses the amount of overtime employees may work.
- Procedures require review of the overtime hours and locations worked by employees.
- Procedures identify any gender specific posts, and provides written justification.
- The agency has a policy requiring staff of both sexes on all work shifts, if the facility holds inmates of both sexes.
- The agency has a policy addressing cross gender supervision.

Employees Work Site Privacy:

- The agency establishes, in writing, expectations for privacy for employees, inmates, contractors, visitors, volunteers, and others inside the security perimeter.
- The policy addresses searches of persons and property, parking lots, lockers, vehicles, workspace, as well as telephone, radio, Internet, and email use.
- The agency posts signs regarding the policy.
- Employees sign the policy acknowledging the agency's privacy and surveillance policies.
- The agency specifies what items (and the quantity of allowable items) employees, volunteers, contractors, and visitors may bring into the facility.

Exit Interviews:

- The agency considers a process by which staff, volunteers, or contractors who are leaving employment are given exit interviews. The process is established to provide for feedback, and identify any possible misconduct.

Medical and Mental Health Support to Staff/Employee Assistance Programs

- The agency considers medical, mental health, and employee assistance referrals for staff who become involved as subjects or witnesses in allegations of sexual misconduct.
- The agency considers the impact of allegations of sexual misconduct on the facility's entire workforce, as well as the shift from which the allegation arises. Peer debriefing and/or other professional intervention are means to address these matters.
- The agency's provider of employee assistance program is involved with planning for referrals of employees who are alleged to be involved with staff sexual misconduct, who have reported allegations, or who are witnesses in investigations. This coordination includes periodic review of outcomes and effectiveness by both the agency administrator and the employee assistance program.

Public and Media Relations:

- Agency policy defines:
 - When the public will be informed of allegations;
 - Responses to public and media inquiries concerning allegations and investigations; and
 - When information is released about victims, complainants, witnesses and perpetrators, including release of photos, identifying information.
- The agency considers involving the public and stakeholders in development of policies.

Release of Information about Current or Former Employees, Volunteers, Contractors:

- Agency personnel procedures specify what information is released, and by whom, about current and former employees, volunteers and contractors.

Report Writing:

- Procedures specify a report writing format that accurately identifies events, and supports investigations.
- Staff receive on-going training in report writing; reports are constantly reviewed by supervisors for compliance.
- Procedures insure that reports of staff sexual misconduct from either staff or inmates who do not wish, for whatever reason, to put complaints in writing are not

rejected solely for that reason.

Tours:

- Procedures specify how tours are conducted, and guarantee inmate privacy
- If the agency provides public tours of inmate areas, announcing the tours in advance to provide inmates privacy options is addressed.

Training:

- The agency has a plan for training employees, volunteers, contractors, including during recruit and in-service training, regarding the agency's policy on sexual misconduct, prohibited behaviors and reporting requirements.
- Training includes agency policy, state statutes, penalties, reporting requirements, "red flags", issues of "consent", and an overview of the investigation process. In-service training covers the basics with information on lessons learned from closed investigations, and any changes in procedures.
- Staff are trained in the skills they need for managing inmates, including manipulative inmates.

Volunteers, Selection, Screening, Training, Supervision, Evaluation, Rules of Conduct:

- The agency's volunteer program provides that:
 - Volunteers are screened, trained and monitored while providing services in the facility;
 - Training specifically addresses sexual misconduct;
 - Volunteers are given direction as to the agency's policy regarding touching, hugging, etc.;
 - Volunteers are informed of mandatory reporting requirements, how to report, and time limits;
 - Volunteers are advised of the consequences of involvement in prohibited behaviors;
 - Volunteers are advised of what are acceptable and unacceptable items to be brought into the facility; and
 - Volunteers' knowledge of policy and procedures is recorded.
- Searches and security controls for volunteers in place, including movement restrictions, access to keys, tools, weapons and other security devices.

Work Environment:

- The agency periodically assesses the work environment to insure it is professional. This includes review of staff/staff and staff/inmate relationships and communications, whether procedures match written policies, and elimination of any elements of a hostile work environment. The agency reviews the work place to insure that it has not become “sexualized”, eroding professional boundaries between staff and inmates.
- The agency policy makes distinctions between sexual misconduct, sexual harassment and hostile work environment.

Policy Issues - Security and Supervision

Policy Question	Yes	No	Page#(s)
Are there protections for staff working in direct supervision housing units against isolation and over-identification with inmates?	Yes	No	25
Is there a written policy for assigning staff to cross gender posts?	Yes	No	17
Are supervisors required by policy to frequently check cross gender posts?	Yes	No	20, 25
Does agency analyze complaints by shift and/or by time?	Yes	No	18
Is there a policy on inmate record security?	Yes	No	26
Are professional visitors covered in the staff sexual misconduct policy?	Yes	No	27, 33
Does policy address selection, assignment, supervision and movement of inmate workers?	Yes	No	26
Does a policy exist on maintenance of the facility?	Yes	No	34
Are inmate visits supervised and regulated by written rules?	Yes	No	27
Is there a policy on inmate reporting of allegations of sexual misconduct, including multiple ways to report?	Yes	No	26
Does agency policy address outside agencies that supervise inmates?	Yes	No	27
Is training provided to other agency personnel who supervise inmates?	Yes	No	22, 27
Does policy address cross gender visual surveillance of inmates?	Yes	No	27

<u>Policy Question</u>	Yes	No	Page#(s)
Is contraband introduced by staff, volunteers, contractors, inmates and visitors recorded and analyzed?	Yes	No	18, 25
Is there a policy for inmate transports and court security operations?	Yes	No	25
Is there a policy for key control, counts and cross gender searches?	Yes	No	27
Is there a policy for facility and cell searches?	Yes	No	27
Is there a policy for internal inmate movement?	Yes	No	26, 27
Is there a policy for inmate property control?	Yes	No	34

Policy Issues - Security and Supervision

Contraband:

- Procedures provide that reports of shakedowns and contraband are analyzed to establish patterns, including contraband that indicates possible inappropriate relationships among inmates, staff, volunteers, and contractors. [Examples: clothing, make-up, perfume, books, magazines, drugs, toiletries]

Courthouse Operations/Transportation:

- Procedures provide safeguards for any cross-gender transportation outside the facility, including searches. If no same sex staff are present, mileage and time logs, including radio reporting are considered.
- Vehicles are searched before and after each use and remain locked.

Direct Supervision:

- Management practices and procedures provide alternative means for inmate grievances and allegations of misconduct to reach administrators.
- The agency works to help prevent staff isolation.

Evidence:

- Procedures and training provide:
 - Staff recognition of evidence;
 - Guidance on preserving the security of the crime scene;
 - Collection and preservation of evidence; and
 - Chain of custody.
- The agency has a memorandum of understanding (MOU) with the agency or organization that is responsible for collecting, preserving and analyzing evidence. The MOU delineates responsibilities of all parties.
- The agency uses the local sexual assault treatment center [rape crisis center] for collection of evidence in rape allegations. The agency has a MOU with the center.

Inmate Records:

- Documentation is preserved for the investigative process
- Storage areas are secured with limited access.

Inmate Reporting Procedures:

Agency procedures address:

- The process by which staff send inmate grievances or reports about misconduct are forwarded to administrators;
- Time limits for forwarding reports;
- Penalties for not forwarding reports;
- Prohibitions on retaliation; and
- Orientation of inmates to reporting procedures.

Inmate Workers:

- Procedures provide that inmate workers be continuously supervised in work areas. Movement restrictions are in place.
- Inmate workers in areas outside the security perimeter are continuously supervised with suggested mandatory radio/phone check-in by the staff at regular intervals.
- The agency considers the sex of staff assigned to cross gender details.

Outside Agencies That Supervise Inmates:

The agency notifies agencies that supervise inmates of:

- The agency's zero tolerance policy;
 - Prohibited behaviors by those supervising inmates; and
 - Reporting requirements.
- A Memorandum of Understanding (MOU) is developed with each agency who supervises inmates, clearly establishing the inter-agency roles if sexual misconduct is reported or alleged.
 - The agency provides training to personnel from other agencies who supervise inmates about the inmates zero tolerance policy, prohibited behaviors, and reporting requirements.

Security Procedures and Key Control:

The agency reviews their procedures to limit the opportunities for misconduct including:

- Inmate count procedures;
- Facility and cell searches;
- Shakedowns;
- Staff observation and visual surveillance in inmate toilet, shower, dressing areas;
- Inmate privacy;
- Inmate hygiene;
- Sign-in, sign-out by all those entering the facility;
- Key control – including missing, broken or non-operational keys;
- Inmate privacy [The agency notifies inmates of their policies regarding privacy and surveillance, through the inmate handbook and during orientation.];
- Same gender strip searches;
- Emergency and routine pat / strip searches; and
- Supervision of shower and toilet areas.

Visiting, Monitoring:

- Staff monitor inmate visits (family, professional). The visitation areas are well lit and provide for easy viewing. Cameras, for continual recording or monitoring, are used if available.

Investigative Issues

Policy Question	Yes	No	Page#(s)
Are staff trained in evidence identification, collection and preservation?	Yes	No	26, 28
Is there a policy on use of informants and intelligence collection?	Yes	No	28
Is there a comprehensive policy on criminal / internal investigations?	Yes	No	28
Is there a policy for oversight of investigations, along with a identified chain of command?	Yes	No	28
Is there a policy for confidentiality of investigations?	Yes	No	28
Is there a policy for coordination with the prosecutor?	Yes	No	28
Are supervisors and staff informed of lessons learned and behaviors that may be “red flags” to help in prevention?	Yes	No	28

Policy Issues – Investigations

<p>Intelligence:</p> <ul style="list-style-type: none"> • The agency has a policy regarding the collection of intelligence and use of inmate informants. The policy addresses reliability and identification of informants along with procedures for documentation.
<p>Internal Investigations:</p> <p>Policies, procedures and protocols governing internal investigations address:</p> <ul style="list-style-type: none"> • Complaints received either orally or in writing; how received and processed; • The internal path and external paths of investigation to insure reports reach administrators or investigations, and are not “lost” or “diverted”; • Confidentiality of information, those who report, witnesses, etc.; • Management of the incident scene and scene access; • Crime scene management, evidence collection, processing, storage, and lab testing and reporting; • Designation of persons or positions authorized to initiate investigations; • Supervision of the investigation, including investigatory chain of command; • Use of surveillance technology and undercover personnel; • Protocols for covert operations;

- Re-assignment of staff who are involved as complainant, witness or subject;
- At what point, if any, the investigation is made public;
- How staff are informed when an investigation is initiated and during the course of the investigation;
- Qualifications, selection and training process for investigators;
- Job description of investigators;
- Differentiation between criminal and administrative investigations, including use of Miranda and Garrity warnings;
- Location of interviews;
- Protocols for involvement of mental health professionals in interviews of vulnerable inmates;
- Recording of interviews, (i.e. tape or video);
- Collection of DNA evidence from employees and inmates;
- Coordination with the prosecutor and/or other law enforcement agencies;
- Procedures for interviewing released inmates or inmates held in other facilities;
- Memorandum of understanding (MOU) with cooperating agencies -- law enforcement, crime lab, sexual assault treatment center, prosecutor, etc.;
- Decision-making regarding inmate's request for considerations (i.e., change in housing, change in classification, addition of "good time", program enrollment) in exchange for information (quid pro quo);
- Housing or re-housing of inmates during investigations (subject, victim, witness);
- Protection against retaliation, and the appearance of retaliation (for staff witnesses or those who report and inmates);
- Content and formats for investigative reports, including findings and recommendations;
- Designation of investigation outcomes (founded, unfounded, etc.) including differentiation between allegations that are unfounded, those that are false and deliberately malicious;
- Review of investigatory conclusions to improve agency operations;
- Protocols for taking witness and victim statements;
- Procedures for referral of staff employee assistance programs;
- Communicating with the witnesses, victims during an investigation;
- Reporting to the state's central criminal records exchange;
- Reporting to the state's sexual offender registry; and
- Reporting to state licensing agencies for physicians, nurses, psychologists, and clergy.

Inmate Programming Issues

Policy Question	Yes	No	Page#(s)
Are inmates provided access to medical/mental health services?	Yes	No	32
Are mental health and/or medical assistance available to inmates after reporting allegations or critical incidents?	Yes	No	32
Are medical and mental health providers required to report suspicions of sexual misconduct?	Yes	No	20, 32
Are inmates informed of sexual misconduct policies and definitions?	Yes	No	31, 32
Are inmates informed of reporting procedures?	Yes	No	31, 32
Is there an effective inmate classification process?	Yes	No	31
Is there an inmate discipline policy regarding making false or malicious reports?	Yes	No	31, 32
Is there an effective inmate grievance procedure?	Yes	No	32
Is data analysis of inmate grievances required?	Yes	No	18
Are inmates issued an inmate handbook that includes proper reporting procedures, contraband definitions, and assistance and privacy expectations?	Yes	No	32
Are all program areas well lit and easily observed by staff?	Yes	No	33
Are female inmates provided programming which is gender responsive?	Yes	No	31
Is there a policy for inmate privacy?	Yes	No	33
Is there a policy for inmate dress code, appropriate for each sex, and each function (recreation, work, etc.)?	Yes	No	31
Is there a policy on inmate sexual behavior with other inmates?	Yes	No	34

Policy Question	Yes	No	Page#(s)
Are rules regarding inmate sexual behavior with other inmates enforced?	Yes	No	34
Are inmate rules of conduct established and enforced?	Yes	No	31

Policy Issues – Inmate Programming

<p>Female Inmates:</p> <ul style="list-style-type: none"> The agency provides programs and services for women offenders that are gender responsive and meets their unique needs.
<p>Inmate Admission and Orientation:</p> <ul style="list-style-type: none"> Inmates are informed about their right to be free from sexual misconduct from all facility employees, other inmates, contractors and volunteers. Reporting guidelines and procedures are clearly explained to inmates at orientation. Inmate orientation includes specific, language-appropriate rules about required behaviors, prohibitions against sexual activity with staff, other inmates, contractors, volunteers, etc.; provides for multiple reporting paths, discusses discipline for false reporting, and answers questions in a meaningful way. A process is in place to refer allegations of sexual misconduct that arrestees report having occurred in other agencies to the appropriate organization.
<p>Inmate Classification:</p> <ul style="list-style-type: none"> The facility's inmate classification system promotes a safe environment for staff and inmates, and has been validated. Procedures to prevent retaliation, or the appearance of retaliation, and how to report retaliatory conduct if and when it occurs is provided to inmates, victims and/or witnesses.
<p>Inmate Disciplinary Procedures:</p> <ul style="list-style-type: none"> Procedures address the steps taken to discipline an inmate for malicious reporting of an incident.

- False reporting is included in the inmate handbook as a violation.
- False reporting is differentiated from findings of “insufficient evidence” or “unfounded”

Inmate Dress Code:

- The agency has a specific inmate dress code, which is enforced.
- The agency reviews the types of clothing/uniforms issued to inmates in terms of gender appropriateness. A review of uniforms issued to female inmates includes undergarments and sleeping clothing. Clothing issued for work or recreation is adequate for the function and gender appropriate.

Inmate Grievance Procedures:

- The inmate grievance process complies with professional standards and case law. Grievances are monitored for evidence of misconduct.
- Grievance procedures include prohibits retaliation for filing grievances.

Inmate Handbook:

The inmate rules of conduct/handbook:

- Specify prohibited behaviors among inmates and between staff and inmates;
 - Outline privacy expectations;
 - Defines contraband;
 - Specify reporting requirements for sexual misconduct; and
 - Describes how inmates can access medical or mental health services.
- Written rules for inmates are specific, and in a grade level appropriate language. Languages other than English are available as needed.

Inmate Health and Mental Health Services:

- Policy provides inmate access to health and mental health services.
- Policy includes the conditions under which medical and mental health staff notify administrators of suspicions of sexual misconduct. Time lines and reporting channels are established.
- Investigative protocols define when mental health professionals are involved in investigations, either to assist or as witnesses.

Inmate Housing Assignments:

- Housing assignments are based on an objective classification system. Staff cannot change housing assignments in the unit they supervise without accessing the appropriate process and approvals.

Inmate Movement:

- Procedures provide that inmates move in approved areas only, and at times when allowed.
- Reports of inmates found in restricted areas are referred for review.
- Random searches are conducted of inmates during movement.
- Procedures address who is authorized to remove inmates from housing units for interviews, appointments, etc.

Inmate Privacy

- Policies and procedures address inmate privacy, balancing security needs of the facility.
- Procedures address cross gender visual surveillance during routine operations of areas such as toilets, showers and dressing areas.

Inmate Professional Visiting:

- Professionals visiting the facility, i.e. law enforcement, attorneys, para-legals, clergy, are required to sign in. The visit is monitored at constant or frequent intervals.
- Good visibility is established in any area designated for these visits.
- Professional visitors are informed of the agency's zero tolerance policy.

Inmate Programs and Services:

- All program providers are trained regarding the agency's zero tolerance policies for sexual misconduct.
- Security staff monitor inmates during programs. Program areas are well lit and easily observed.

Inmate Property:

- Careful inventories are maintained and property secured.
- Inmates do not have access to their stored property.
- Deposits to inmate accounts are monitored. Staff prohibited from depositing funds for inmates (with rules addressing family relationships).

Inmate Sexual Behavior/Activity with Other Inmates:

- Policy, procedures and the inmate handbook delineate prohibited sex-related behaviors among inmates.
- Training provides staff with the skills needed to manage inmate sex-related behaviors, language and activities.

Physical Plant:

- The agency assures that maintenance is conducted in areas impacting security and surveillance. Blind spots are identified and addressed.
- The agency identifies areas of the facility in which allegations of misconduct are occurring and makes necessary changes to provide security.

Searches:

- The agency procedures address cross gender searches during both routine and emergency operations.
- The agency procedures address cross gender visual surveillance during routine and emergency operations.

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Technical Assistance

The National Institute of Corrections provides technical assistance to agencies to address, prevent and investigate allegations of staff sexual misconduct with inmates. This assistance may include:

- Short term technical assistance providing subject matter experts to visit an agency, assess issues as defined by the agency head, and providing specific recommendations; and
- Training for agency decision-makers and trainers.

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Mr. Fischer has completed numerous courses of study at the National Institute of Corrections including the Executive Excellence Program of which there are currently a limited number of graduates nationally.

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