



**STATE OF MONTANA  
DEPARTMENT OF CORRECTIONS  
POLICY DIRECTIVE**

Policy No. DOC 1.3.12	Subject: <b>STAFF ASSOCIATION AND CONDUCT WITH OFFENDERS</b>
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 7 and Attachment
Section 3: Human Resource Bureau	Effective Date: June 1, 1998
Signature: /s/ Mike Ferriter, Director	Revised: 10/18/05; 04/26/07; 12/15/08

**I. POLICY**

The Department of Corrections requires employees to limit their association with offenders and close associates of offenders to a professional relationship and maintains zero tolerance for misconduct by its employees toward or with any individual in the custody or under the supervision of the Department.

**II. APPLICABILITY**

All Department divisions, contracted facilities and programs.

**III. DEFINITIONS**

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility, or program operation and management.

Close Associate – Persons, other than immediate family members, approved to visit the offender and other persons who may be considered friends or business partners through known associations.

Employee or Staff – The terms include paid employees or contracted persons, volunteers and interns who are paid or donate time or services to the Department, and individual service providers, e.g., delivery, maintenance, vendors, or other service providers who may not be contracted to the Department.

Facility – Refers to any prison, correctional facility, correctional or training program under Department jurisdiction or contract.

Immediate Family Member – An offender’s legal spouse, natural or adoptive parents and children, siblings, grandchildren, grandparents, corresponding in-law, person verified as being primarily responsible for raising the offender in the absence of a parent and any other member of the offender’s household.

Inappropriate Relationship – Prohibited or unlawful behavior toward an offender, which includes any one or more of the acts listed under sections B.4, Prohibited Conduct; C., Offender Mistreatment; and D., Staff Sexual Misconduct, as evidenced by conversation, correspondence, or other observable behavior.

Mistreatment – Actions that violate the human rights of offenders including unwarranted physical acts and acts that adversely affect offender mental or emotional well-being including abusive

treatment such as threats, harassment, cursing, and shouting.

Offender – Any individual in the custody or under the supervision of the Department of Corrections or its contracted service providers. The term includes former offenders for whom less than one year has elapsed since discharge from Department custody or supervision.

Professional Relationship – For the purpose of this policy, a staff relationship with offenders maintained through well-defined professional boundaries and the highest ethical standards of honesty, integrity, and impartiality pursuant to *DOC Policy 1.3.2, Attachment: Code of Ethics*.

Sexual Misconduct – Behavior or misconduct as defined in *DOC Policy 1.3.14, Prison Rape Elimination Act (PREA)*.

Undue Familiarity – Conversation, contact, personal or business dealing between an employee and offender under the supervision of the Department which is unnecessary, not a part of the employee's duties, and related to a personal relationship or purpose rather than a legitimate correctional purpose.

#### **IV. DEPARTMENT DIRECTIVES**

##### **A. General Requirements**

1. Each administrator will ensure that all division and facility staff review and comply with the provisions of this policy.
2. Each administrator will ensure that offenders in their custody or under their supervision review and understand the provisions of this policy.
3. Administrators of facilities and programs will establish and maintain operational procedures for the confidential reporting of alleged staff misconduct toward offenders by visitors, family, or offenders.
4. The Department will investigate and respond to every misconduct allegation and discipline or prosecute as provided in policy and law. The following statutes and associated penalties, which are not all inclusive, address prohibited conduct that is otherwise detailed in this policy. Penalties vary by statute and include misdemeanor ranges that entail fines and up to one year incarceration, to felonies that may range up to the death penalty.
  - a. 45-5-204, MCA (2007) *Mistreating Prisoners*
  - b. 45-5-502, MCA (2007) *Sexual Assault*
  - c. 45-5-503, MCA (2007) *Sexual Intercourse Without Consent*
  - d. 45-7-307, MCA (2007) *Transferring Illegal Articles -- Unauthorized Communication*

##### **B. Staff Association with Offenders**

1. Staff Disclosure Requirements
  - a. staff must notify their supervisors within 48 hours of learning that an immediate family member or a close associate has been committed to the custody or supervision of the Department;
  - b. staff will immediately notify their supervisors and the appropriate administrator upon their learning that individuals referenced in section a. above are assigned to the facility,

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- program, or region in which the staff member works;
- c. staff members who engage in inappropriate relationships described in section 4. below, or receive any telephone calls or written communications from offenders or the close associates of offenders, will immediately report these matters to their supervisor;
  - d. the supervisor will instruct the employee on the appropriate course of action after consultation with the administrator and Human Resource Bureau; and
  - e. supervisors and administrators will forward all notifications to the Human Resource Bureau where they will be maintained in a file designated “staff association” should any questions arise regarding the reported contact.
2. Exceptions
- a. after consultation with the Human Resource Bureau and the Department director, an administrator may make limited exceptions to this policy such as for pre-existing marriages and with regard to offender hobby items that staff may have purchased in accordance with *DOC Policy 5.5.4, Hobby Programs*;
  - b. exceptions may also be granted to allow limited contacts between employees and the close associates of offenders, but in no case may the exception apply to the offenders themselves; and
  - c. the Department recognizes that employees may come into unintentional random contact with offenders in public places (e.g., school, church, sporting events, restaurants, etc.). Employees will not be expected to report isolated incidents of unintentional random contact; however, employees must report any intentional, repeated attempts (meaning more than one) on the part of an offender or the close associate of an offender to communicate either personally, or by written, telephonic, or electronic means with the employee.
3. Required Conduct
- The following principles will govern staff interactions with offenders. Staff will:
- a. maintain a professional relationship with offenders at all times to provide security, **and** protect staff and offenders including protecting offenders from civil rights violations;
  - b. provide offender services without regard to race, color, gender, disability, national origin, religious preference, or sexual orientation, and will not display favoritism toward, or discrimination against, any offender or group of offenders;
  - c. limit relationships with offenders and offenders’ close associates to officially authorized activities;
  - d. maintain a professional relationship when encountering offenders in the community, e.g., in stores or restaurants, without engaging in undue familiarity; and
    - e. avoid conflicts of interest or situations, such as engaging in personal or business relationships, that may compromise professional integrity, compromise security, or cause embarrassment to the Department of Corrections and the State of Montana.
4. Prohibited Conduct

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Staff will not engage in inappropriate relationships with offenders. The following are examples of behaviors that are prohibited between staff and offenders and offenders' close associates:

- a. profane, indecent, ethnic, or other discriminatory language or references;
- b. giving or receiving gifts, favors, or services beyond those required by the Department;
- c. trading, selling, or buying anything from an offender or an offender's associates;
- d. entering into any type of business or fiduciary relationship;
- e. undue familiarity to the extent that the employee's judgment or performance of duties may be compromised to include, but not limited to:
  - acts of horseplay
  - socializing
  - sharing personal information, e.g., family member names, ages, schools, etc.
  - offender family contact unrelated to the employee's official duties
  - exchanging written correspondence
  - developing a relationship with an offender that is anything other than a professional relationship

**C. Offender Mistreatment**

1. Employees who assault or injure, intimidate, threaten, endanger, or withhold reasonable necessities from an offender, or violate any civil right of an offender are subject to felony and misdemeanor criminal penalty as well as disciplinary action, up to and including termination from employment pursuant to *45-5-204, MCA*.

**D. Staff Sexual Misconduct**

1. *45-5-501(1)(a), MCA* defines "without consent" as an element of the crimes of sexual assault and sexual intercourse without consent. It provides that offenders supervised by the Department are unable to provide "consent" to prohibited activities. Employees who commit sexual misconduct as defined in *DOC Policy 1.3.14, Prison Rape Elimination Act (PREA)*, are subject to felony and misdemeanor criminal penalties as well as disciplinary action, up to and including termination from employment.
2. The Department of Corrections considers any form of sexual misconduct by staff toward offenders an abuse of power. Sexual misconduct is not gender-specific, and may occur: male to male, male to female, female to female, or female to male. The acts, or attempted acts, listed below, regardless of whether they are considered to be consensual by the offender, are strictly prohibited.
  - a. sexual contact, including touching of the sexual or other intimate part of another person, directly or through clothing, e.g., sexual intercourse, oral sex, masturbation;
  - b. sexual advances, persuasions, propositions, or flirtations;
  - c. requests or pressure of any kind for sexual favors, activities, or contact;
  - d. sexually explicit, graphic, abusive, degrading, intimidating, or offensive language or jokes;
  - e. display, circulation, or communication of any sexually suggestive, explicit, graphic, or offensive objects, pictures, or materials of any kind;

- f. intentional observing, attempting to observe, or interfering in an offender's activities, which are of a personal nature, and not related to a sound correctional purpose or necessary to official staff duties and responsibilities; and
- g. conversations or correspondence that suggests a romantic or sexual relationship, undue familiarity or intimacy, including touching, hugging, kissing, massaging, and not required for authorized medical treatment or penologically-related safety and security measures.

## **E. Misconduct Reporting Requirements**

### 1. Mandatory Reporting for Employees

- a. division and facility staff are obligated to report staff misconduct toward offenders when they:
  - 1) receive information or have personal knowledge of mistreatment or any prohibited conduct toward an offender; or
  - 2) receive information or have personal knowledge of sexual misconduct toward an offender;
- b. staff will complete the [Misconduct Mandatory Reporting Form](#) and immediately forward copies to the division administrator, facility Human Resource office, or to the Department's Human Resource Bureau;
- c. failure of any staff member to report unauthorized contact, mistreatment, or sexual misconduct toward an offender in accordance with this policy may result in corrective or disciplinary action up to and including termination, termination of services, or cancellation of contract.

### 2. Reporting by Offenders or the Public

- a. offenders or members of the public who have knowledge of alleged mistreatment or sexual misconduct by a staff member toward an offender should immediately report it to the administrator, the Department's Human Resource Bureau or director's office;
- b. offenders may also utilize the "locked box" formal grievance procedure to report such allegations. Offenders will not be required to go through the informal resolution step for sexual misconduct grievances. Designated staff will process such grievances as a high priority in accordance with established facility emergency grievance procedures and immediately forward copies to the Department's Human Resource and Investigation Bureaus;
- c. offenders are not required to file written reports; however, staff who receive verbal reports from offenders are required to file a written incident report as set forth in this policy.

### 3. False Reporting

Offenders or other parties who submit false reports of violations of this policy will be subject to disciplinary action or criminal charges under *MCA 45-7-203, Unsworn Falsification to Authorities*; or *45-7-205, False Reports to Law Enforcement Authorities*.

## **F. Retaliation**

1. Staff will not retaliate against the complainant, the victim, the accused, the witnesses, or the informants involved in the filing and investigation of misconduct allegations.
2. Staff retaliation in any form may result in corrective or disciplinary action up to and including termination.

#### **G. Confidentiality and Records**

1. Staff entrusted with confidential records will:
  - a. ensure that all information and documents pertinent to a conduct complaint are handled with sensitivity and the appropriate level of confidentiality;
  - b. only reveal information on a “need to know” basis or in defense of disciplinary or legal action; and
  - c. act on breaches of confidentiality that may result in corrective or disciplinary action up to and including termination.
2. The Human Resource Bureau will:
  - a. retain statistics with regard to the number and nature of reported misconduct incidents and submit an annual report to the Department director. The report will contain recommendations that may include policy changes, staff training or other accountability methods to reduce incidents and enhance facility and program safety and security;
  - b. retain documentation of and the rationale for granting exceptions under section B.2 of this policy.

#### **H. Facility Procedures**

1. All administrators or staff responsible for the care, custody, or supervision of offenders will:
  - a. expedite investigation and resolution of complaints referenced in this policy, to include reprioritization of other ongoing investigations and provide an initial report of findings to the administrator within five workdays of complaint receipt;
  - b. notify offenders of their protection and responsibilities by ensuring them access and review of this policy in accordance with *DOC Policy 4.1.2, Offender Reception and Orientation*;
  - c. establishing operational procedures that provide effective policy communication and access to established offenders both in secured and community programs, considering offender reading ability and educational levels;
  - d. ensure that offenders have the opportunity to promptly file a complaint verbally, or in writing using the facility’s formal grievance process;
  - e. ensure offender access to a secured “lock box” for offender to staff communication;
  - f. ensure visitors or family are informed of procedures to “confidentially” report offender sexual abuse;
  - g. provide for the care and treatment of individuals who are alleged or substantiated victims of physical or sexual misconduct; and

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- h. collect statistics on the number of reported incidents, and the number of substantiated incidents which the administrator will forward annually, in writing, to the Department's Human Resource Bureau.

**I. Disciplinary Action**

Staff who violate this policy are subject to disciplinary action, including and up to termination of their employment.

**V. CLOSING**

Provisions of this policy not required by statute will be followed unless they conflict with negotiated labor contracts which will take precedence to the extent applicable.

Questions concerning this policy should be directed to the Department's Human Resource Bureau.

**VI. REFERENCES**

- A. 45-5-204, MCA (2007) *Mistreating Prisoners*; 45-5-501, MCA (2007) *Sexual Crimes Definitions*; 45-5-502, MCA (2007) *Sexual Assault*; 45-5-503, MCA (2007) *Sexual Intercourse Without Consent*; 45-7-203, MCA (2007) *Unsworn Falsification to Authorities*; 45-7-307, MCA (2007) *Transferring Illegal Articles -- Unauthorized Communication*
- B. 4-4069, 4-4281; ACA *Standards for Adult Correctional Institutions, 4<sup>th</sup> Edition*
- C. 3-JTS-1C-23, 3-JTS-3D-06; ACA *Standards for Juvenile Correctional Facilities, 2003*
- D. 4-4084, 4-4084-1, 4-4281-6,7; 2008 ACA *Standards Supplement*
- E. DOC Policies 1.1.6, *Incident Reporting and Acting Director System*; 1.3.2, *Employee Performance & Conduct Guidelines*; 3.1.14, *Prison Rape Elimination Act (PREA)*; 3.1.19, *Investigations*; 3.3.3, *Offender Grievance Program*; 3.4.1, *Adult Institutional Discipline*; 3.4.2, *Prohibited Acts*; 4.1.2, *Offender Reception and Orientation*
- F. PHYCF Policy 3.4.1A, *Rules and Regulations*; RSYCF Policy 3.4.100, *Offender Rules*; YCC Procedure 100-2, *Interventions – Graduated Sanctions*

**VII. ATTACHMENT****Related Form:**

[Misconduct Mandatory Reporting Form](#)