

POLICY AND PROCEDURES

NUMBER: 142

SUBJECT: Sexual Misconduct with Inmates

ACA STANDARDS: 4-ALDF-2A-29; 4D-22-2, 22-5, 22-7, 22-8

DIRECTOR: Herbert Bernsen

EFFECTIVE DATE: 4/25/02 REVISION DATE: 12/02, 7/04, 5/05,
11/13, 12/14



I. POLICY

The St. Louis County Department of Justice Services shall establish the following procedures in order to discourage and prevent staff/inmate sexual misconduct by providing clear definitions of prohibited conduct, establish uniform methods for prompt reporting and investigation of allegations of misconduct and prescribing sanctions for both substantiated misconduct and false allegations. The Department has "Zero Tolerance" for any type of sexual misconduct with inmates.

II. RESPONSIBILITIES

All St. Louis County Department of Justice Services' staff, civilians and other law enforcement personnel are responsible for the following procedures.

III. DEFINITION

Civilians: Persons who enter the secure perimeter of the Justice Center, but are not employed with the Department of Justice Services which include, but are not limited to: Department of Health staff, Department of Public Works staff, attorneys, paralegals, contractors, interns, volunteers and chaplains.

Missouri Revised Statute 566.145 (Sexual Offenses): A person commits the crime of sexual contact with an inmate if such person is an employee of, or assigned to work in, any jail, prison or correctional facility and such person has sexual intercourse or deviate sexual intercourse with an inmate or resident of the facility

Sexual contact with an inmate is a class D felony.

The victim's consent is not an affirmative defense.

Retaliation: Any act of vengeance, covert or overt action, or threat of action, taken against an inmate in response to the inmate'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, unjustified denials of privileges or services.

Sexual Misconduct: Behaviors which include, but not limited to, acts or attempts to commit acts such as sexual assault, sexual abuse (e.g., sexual intercourse, oral or anal sodomy, sex with instruments, etc.) sexual harassment, sexual contact (e.g., intentional touching either directly or through clothing of the genitalia, anus, groin, breast, inner thighs or buttocks of an inmate), obscenity, unreasonable and unnecessary invasion of privacy, behavior of sexual nature of implication and conversation or correspondence suggesting a romantic or sexual relationship. Other behaviors include, sexualized name calling between staff and inmates, staff who "observe" inmates of the same or opposite sex during a period of partial or total nudity for period of times longer than necessary for facility security interests, staff having physical contact with inmates outside the need for searches and related security functions and staff who make explicit comments about the physical appearance of an inmate.

IV. PROCEDURES

A. Sexual Misconduct Concerning Inmates

1. Employees, civilians or other law enforcement personnel will refrain from behaviors that could be considered sexual misconduct (See Definition) with all inmates.
2. Employees, civilians or other law enforcement personnel may not in any way use their official duty assignment to establish personal relationships with inmates.
3. No prohibited act of sexual misconduct can have as an affirmative defense, a claim of consent.
4. Employees, civilians, other law enforcement personnel or inmates

who have made complaints of sexual misconduct or have provided information related to such complaints will not be subject to retaliation. Any staff found to have attempted to retaliate against an employee, civilian, other law enforcement personnel or inmate may receive disciplinary action, which may include dismissal.

5. An inmate(s) may be moved to another housing unit during or after an investigation of sexual misconduct.
6. After an investigation, disciplinary action, which may include dismissal, may be taken against an employee found to have had sexual misconduct with an inmate. Termination of a volunteer's assignment may be taken against a volunteer found to have had sexual misconduct with an inmate. Notification to the law enforcement personnel's immediate supervisor may be taken against a law enforcement personnel found to have had sexual misconduct with an inmate.
7. Depending on the nature of the sexual misconduct and violation, it may also result in a criminal investigation, and possible conviction under Missouri Revised Statute 566.145 Sexual Offenses.

B. Reporting Sexual Misconduct or Behaviors

- [1. If an employee, civilian or other law enforcement personnel observes or is made aware of misconduct between an employee, civilian or law enforcement personnel and inmate, it is the employee's, civilian's or law enforcement personnel's responsibility to immediately notify his/her immediate supervisor, any other supervisor, the Volunteer Coordinator, *the on-duty Watch Commander, his/her Unit Manager, the Internal Affairs Officer, the appropriate Superintendent, or the Director* verbally, in an e-mail or in writing. This notification may be made anonymously. Failure to report may result in disciplinary action for employees, up to and including dismissal, termination of a volunteer's assignment or notification to the immediate supervisor of law enforcement personnel.]

[NOTE: Staff are not to use the Integrated Jail Management System (IJMS) system to *report incidents involving staff sexual Misconduct.*]

- [2. An employee will immediately notify his/her immediate supervisor, another supervisor, the Volunteer Coordinator, the

on-duty Watch Commander, hi/her Unit Manager, the Internal Affairs Officer, the appropriate Superintendent, or the Director when they become aware of other employees, civilians or other law enforcement personnel who exhibit behaviors that may signal sexual misconduct. The behaviors include, but are not limited to:]

- a. Withdrawal from other institutional staff
- b. Overt aggressiveness toward inmates
- c. Spending an inordinate amount of time with one particular inmate
- d. Being overly protective or supportive of an inmate
- e. Sharing food or snacks with inmates
- f. Conversations with inmates which are sexual in nature.

[NOTE: This notification may be made verbally, as an e-mail or in writing and may be made anonymously. *Staff should not use the Integrated Jail Management System (IJMS) to write incident reports or document incidents involving staff sexual misconduct with inmates.*]

3. *An inmate can report staff sexual misconduct by informing any employee or by calling the inmate hotline (314-615-5055). An employee may receive the information from the inmate in writing (e.g., grievance form, letter, Inmate Request form, etc.) or verbally. The employee will immediately notify his/her immediate supervisor, the on-duty Watch Commander, his/her Unit Manager the Volunteer Coordinator, the Internal Affairs Officer, the appropriate Superintendent, or the Director of the information concerning sexual misconduct.*]

[NOTE: *Staff should not use the Integrated Jail Management System (IJMS) to write incident reports or document incidents involving staff sexual misconduct with inmates.*]

4. An inmate who is a witness to sexual misconduct may request to be anonymous and that request will be honored, unless it is found that the inmate made a false/malicious allegation or until legal action is initiated.

C. Supervisor's Responsibility

1. Supervisors must know the policy for sexual misconduct and enforce the policy uniformly
2. Prevent sexual misconduct whenever possible. Watch for signs that a hostile environment may be developing.
3. Supervisors must be a role model for their subordinates, civilians and other law enforcement personnel
4. Supervisors must take all complaints of sexual misconduct seriously and respond to complaints quickly, decisively and fairly.
- [5. Immediately report all allegations of sexual misconduct to the *Watch Commander on duty, the Unit Manager of the floor, the Internal Affairs Officer, the appropriate Superintendent, or the Director.*]
6. Ensure all complaints are investigated and kept confidential.
7. Protect staff and inmates who have made complaints of sexual misconduct or have provided information related to such complaints from retaliation.

NOTE: Any staff found to have attempted to retaliate against an inmate or staff member may receive disciplinary action, which may include dismissal.

8. If any medical or mental health intervention is found to be required, the Supervisor will inform the necessary Corrections Medicine staff and/or the psychologist/psychiatrist.

D. Training on Sexual Misconduct

1. The Department will provide pre-service and annual in-service training on Sexual Misconduct which will include, but is not limited to:
 - a. Define sexual misconduct (See Definition)
 - b. Impact of sexual misconduct to the Department and staff
 - (1) Jeopardizes facility security

- (2) Violates the guaranteed rights of the inmate
- (3) Exposes the entire staff and agency to civil and criminal liability
- (4) Creates a hostile work environment
- (5) Destroys trust among staff and the inmate population
- (6) Corrupts professionalism by inviting compromise and dishonesty
- (7) Victimizes those already vulnerable (by nature of their susceptibility to inappropriate behavior, their past history of abuse, and their subordinate position to staff)
- (8) Undermines public support for jails and jail personnel.

- c. How reporting sexual misconduct may occur by staff
- d. How reporting sexual misconduct may occur by inmates
- e. Describe the internal investigative process

2. The inmates will receive information on staff sexual misconduct during orientation and in their Inmate Handbook, which will include but is not limited to:

- a. What constitutes inappropriate behavior on the part of staff
- b. How to report allegations
- c. How to seek medical and mental health services
- d. Assurance of no retaliation against those who report allegations (e.g., inmate moved to other housing unit to protect the inmate, etc.)
- e. Consequences for making malicious/false allegations

E. Investigation of Sexual Misconduct

1. All allegations of conduct prohibited by this policy will be investigated in a timely, complete, thorough and uniform manner, consistent with generally accepted principles pertaining to corrections investigations. All investigations will be documented.
2. The investigation will include, but is not limited to a personal interview with the alleged victim, the alleged perpetrator and sufficient witnesses to establish the facts. The investigation will include determining if there were any prior allegation of conduct prohibited by this policy by the accused and ,if so, the results of the investigation and what, if any disciplinary action was taken. The investigation will also include reviewing prior allegations of such conduct made by the inmate.
3. The accused shall receive a confidential written notification of a complaint against him/her, unless the integrity of a covert investigation could be compromised.
4. All employees shall cooperate with requests made by the Internal Affairs Officer and the Department during a departmental investigation of sexual misconduct ([See Policy #110 Internal Affairs Investigation/Employee Cooperation](#)). This will include, but is not limited to:
 - a. Submitting written reports
 - b. Interviews
 - c. Polygraph examinations.
 - d. Computer voice stress analysis.
5. All statements given to the Internal Affairs Officer during an internal investigation shall remain confidential and will be evaluated only by Departmental Administration as it pertains to administrative proceedings. It shall not be used against an employee in subsequent criminal proceedings (Garrity vs. New Jersey)
6. Persons interviewed as part of an investigation will be specifically warned not to discuss the investigation with others, with the exception of legal representatives.

7. If any evidence is found concerning the investigation, the Internal Affairs Officer or Supervisor will preserve the evidence according to [Policy #840 Preservation of Evidence](#).
8. If any illegal activities are found to have occurred, the Internal Affairs Officer will contact the Clayton Police Department. (See Attachment 1 Memorandum of Agreement Staff/Inmate Sexual Misconduct)
9. If any medical or mental health intervention is found to be required during the investigation, the Internal Affairs Officer/designee will inform the necessary Corrections Medicine staff and/or the psychologist/psychiatrist.
10. The Internal Affairs Officer will not negotiate any terms for statements with an inmate, with the exception of re-housing an inmate or reassignment of an officer for the protection of an inmate and staff.
11. The Internal Affairs Officer shall notify the complainant of Departmental policy concerning the complaint and actions taken to resolve the issue.
12. If a staff member fails to cooperate with a Departmental investigation and/or fails to report sexual misconduct between a staff member and an inmate, or if a staff member makes a false allegation, it will result in disciplinary action and/or termination. Civilians may be prohibited from entering the secure perimeter if they fail to report a case of sexual misconduct. A report will be sent to the law enforcement personnel's immediate supervisor.
13. If it is determined by the Internal Affairs Officer that an inmate has made malicious allegations and/or false allegations towards an employee, civilian or other law enforcement personnel regarding sexual misconduct, that inmate will receive disciplinary action. This will include any inmate who has requested to be kept anonymous. Disciplinary action will include, but is not limited to, disciplinary segregation, loss of facility job, moved to different housing unit, etc. It may also result in a criminal investigation. If an inmate makes a false report to the police, it may result in a criminal investigation.

F. Grievance/Appeal Procedure

1. If an employee is not satisfied with the results of an investigation and/or the discipline resulting from that investigation (i.e., suspension), the employee may file a grievance, as stipulated in the Civil Service Commission Rules. ([See Policy #126 Employee Conflict Resolution/Grievances](#))
2. If the employee is terminated as discipline resulting from the investigation, the employee may file an appeal, as stipulated in the Civil Service Commission Rules.
3. If an inmate is not satisfied with the results of an investigation (i.e., change of classification, disciplinary results) that inmate may file an appeal.

G. Aftermath Management

1. The outcome of an investigation will not be mentioned until the "Job Action" is finalized.
2. Once the "Job Action" is finalized, the Internal Affairs Officer will inform staff of the outcome and sanctions at the shift briefings.
3. The information given at the shift briefings will be those deemed permissible and acceptable by the Director/designee. The information relayed to the staff will be considerate of any needed confidentiality as well as for the respect and concern of those involved and the general morale of the staff.

H. Media Plan

1. All official information and press releases referring to the Department of Justice Services' policies or statements regarding programming, conditions or other newsworthy issues shall be issued only by the office of the media Representative for the County Executive or the Department's Director/Designee. ([See Policy # 105 News Media Access](#))

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