

Staff Sexual Misconduct with
Offenders:
Policy Development Guide
For Community Corrections
Administrators

by
Elizabeth P. Layman, Susan W. McCampbell
and Larry S. Fischer

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Center for Innovative Public Policies, Inc.



U. S. Department of Justice
National Institute of Corrections
320 First Street, NW
Washington, D. C. 20534

Morris L. Thigpen
Director

Larry Solomon
Deputy Director

Dee Halley
Correctional Program Specialist

Maureen Buell
Correctional Program Specialist

National Institute of Corrections
World Wide Web Site
<http://www.nicic.org>

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Introduction

Staff sexual misconduct with offenders is a challenging issue in corrections. Custodial sexual misconduct is illegal in 47 states. Currently, 25 states have some statute that criminalizes sexual misconduct in this setting. Although not as many states have specific statutes regarding misconduct in the community corrections setting, misconduct is no less a problem.

Staff sexual misconduct in community corrections:

- Jeopardizes the integrity and credibility of the agency and its employees;
- Increases stress and trauma for all involved;
- Undermines the public's support;
- Exposes the agency and employees to liability;
- Creates a hostile work environment;
- Compromises professionals;
- Victimizes the already vulnerable;
- Violates the law in many states,
- Diminishes legislative support for funding and reforms; and
- Creates mistrust among employees.

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.

Staff sexual misconduct may be a random incident involving a "bad apple" employee, or it may be indicative of a breakdown of the agency's culture, 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 those offenders under supervision;

- Multiple ways for employees and offenders to report allegations;
- Operational procedures that support zero tolerance;
- Strong investigative policies and protocols;
- Training of employees, volunteers, and contractors; and
- Orientation of offenders and other stakeholders to the agency's policies.

This Policy Development Guide is an outgrowth of NIC's work with community corrections professionals, jails and prisons. While NIC does not endorse a specific set of policies and procedures, this document provides tools for administrators 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 arises 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 a safe working environment.

Using this Guide

This Guide is designed to help you analyze your current policies and procedures relating to staff sexual misconduct with offenders. By reviewing and answering the questions included in this Guide about your current operations, 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 is more than establishing one policy that prohibits illegal and unprofessional behavior. While this is an essential first-step, administrators 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.

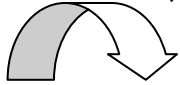
The range of administrative and operational issues that potentially impact sexual misconduct is large. For example:

- Defining professional boundaries;
- Discretion and autonomy of employees;
- Appreciating the conflict inherent in effective intervention models;
- Clarifying the expectations of on-duty and off-duty behavior of employees and offenders;
- Defining the limits of personal association;
- Guiding collateral contacts;
- Understanding the imbalance of power; and Clarifying the issue of consent.

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?

Administrators of community corrections organizations have an obligation to provide staff with specific direction regarding all aspects of operations – including defining professional boundaries with those supervised by the agency, as well as with collateral contacts such as victims and families. While it seems chilling to acknowledge that some staff might not know their professional boundaries, there is sufficient evidence to support the view that staff needs more direction. Defining prohibited behaviors and holding everyone responsible is also a part of the prevention strategy.

For the purposes of this Guide, community corrections is defined as including, but is not limited to public entities who provide the following services:

- Probation and/or parole services
- Pre-trial supervision
- Day reporting
- Residential treatment
- Half-way and/or quarter-way houses
- Electronic monitoring
- Education, work or other furlough
- Conditional release
- Mandatory supervised release
- Restitution centers

This Guide will also be helpful to public agencies who contract with private organizations to provide services to offenders.

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

1. Does your agency's code of conduct specifically prohibit sexual misconduct or does your code of conduct for employees include only general prohibitions about being "over-familiar with offenders" or "conduct unbecoming"?
2. Do your agency's policies and procedures specifically define prohibited behaviors?
3. Do employees have, through training or experience, the skills they need to safely and effectively manage offenders, deal with the multiple roles when supervising offenders, and handle particularly manipulative offenders?
4. Have investigations into allegations of sexual misconduct been sidetracked because they end in "he said/she said"?
5. Are you concerned about a "sexualized work environment" or employee/employee romantic or inappropriate relationships impacting the operations of the office, employees and agency?

6. Has your agency received allegations of misconduct?
7. Are offenders and their family members oriented to the agency's policies and procedures regarding sexual misconduct, and how to report allegations of misconduct?

These are broad questions that might indicate that your agency needs to review current practices, and that employees and/or offenders need more direction.

What is Staff Sexual Misconduct?

Sexual misconduct is about more than employees having sex with offenders. Sexual misconduct is a wide range of inappropriate behaviors, perhaps associated more with the exercise of power than to sex. In corrections settings, offenders under the supervision are not capable of consenting to have sex with staff, just as those individuals with diminished mental capacity and juveniles are deemed unable to consent. The imbalance of power between those who supervise offenders, or those in a position to affect outcome of supervision, and the imbalance of power means the offenders cannot consent. Setting the tone in the organization that sexual misconduct seriously compromises safety and security, and that it is not tolerated, helps establish an environment that prevents misconduct.

Staff sexual misconduct is not just about violations of law or policy by male staff and female offenders. Many agencies find inappropriate relationships between male employees/female offenders, female employees/male offenders, and same sex relationships. Agencies who triage their policies with an eye toward prevention no matter the gender of the staff or the offender, 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, and consult with legal representatives and human resources professionals. Administrators are urged to develop definitions that are relevant for their agency responsibilities, taking into account the organizational structure and various forms of services provided.

Sexual Misconduct: *Any behavior or act of a sexual nature directed toward*

- a person under the care, custody, or supervision of the department
- any collateral contact of the above, including but not limited to: family members, employers, friends, and other close associates who have official contact with the department/agency on behalf of the person under the care, custody or supervision of the department/agency;

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

- victim
- or other person with whom the following has official contact as a result of their duties and responsibilities on the job,
by a department/agency
- employee;
- volunteer;
- visitor;
- contractor or service provider;
- intern;
- treatment provider;
- or other agency representative working in an official capacity.

Sexual misconduct includes but is not limited to acts or attempts to commit acts of

- sexual assault;
- sexual abuse;
- sexual harassment;
- sexual contact of the genitals, breasts or other intimate part of the body;
- conduct of a sexual nature by implication;
- obscenity or unreasonable invasion of privacy;
- conversations or correspondence which suggests a romantic or sexual relationship between parties in the groups referenced above.

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 offender or client, by force, persuasion, inducement, or enticement; any sexual act or contact in which an employee, volunteer or agency representative participates or forces any offender or client to engage; subjecting another person who is incapable of giving consent by reason of their supervision or 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 regarding: touching, hugging, kissing, fondling, etc. between employees and offenders, employees and clients, treatment providers and offenders, contractors and offenders, volunteers and offenders, and interns and offenders.]

Sexual Harassment – Includes, but is not limited to, all of the following, whether by employees, volunteers, contractors, other agency representatives, or offenders: sexual advances; sexually offensive language, comments or gestures; influencing, promising or threatening any offender's or employee's safety, supervision status, conditions of supervision, custody status, or privacy, 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.

Sexualized Work Environment - A work environment in which the behaviors, dress, and speech of either employees and/or offenders create a sexually charged workplace. Sexually explicit talk, inappropriate e-mails, posted cartoons, jokes, or unprofessional dress characterizes a sexualized work environment. In a sexualized work environment, often employee 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 professionalism and professional boundaries.

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

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

Clients – Persons with whom employees have official contact as required for the supervision of offenders, such as offenders' family members, close personal friends and employers; victims and victims' families; and other persons

Collateral Contact - Any person with whom an employee of the agency may come in contact (other than offenders) for official reasons concerning an offender under the care, custody or supervision of the agency. Collateral contacts may include, but are not limited to: offenders' families, friends and associates; offenders' employers; treatment providers, medical providers; offenders' teachers, instructors, trainers, and supervisors; volunteer coordinators; attorneys; and judicial personnel.

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

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

Contractors - Any person or corporation, other than an employee, providing a service to the agency (i.e., supervision; treatment; custody responsibilities at facilities such as treatment centers, restitution centers, and others; drug and mental health treatment providers; vocational and educational programs; etc.) for an agreed upon form of compensation. Contractors may include other local government agencies that contract with the agency, or who have contact with those under supervision, care or custody of the agency in the community setting.

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, gender, national origin, age, disability, veteran status, or, in some jurisdictions, sexual orientation, political affiliation, citizenship status, marital status, or personal appearance.

Violation of Privacy Rights of Offenders – This includes, but is not limited to, the act or the attempted act of observing or interfering with an offender’s personal affairs without a reasonable need to do so for the immediate safety and security of the offender, employees, or others within the agency. Acts that may also be included consist of: reading personal mail or written materials of an offender when not required for supervision, safety and agency security, office or persons therein; searches of the offender not required to ensure compliance with the conditions of supervision and the safety of employees and other clients and offenders.

Zero Tolerance - An agency’s policy that commits it to making it unacceptable for any employee, volunteer, intern, contractor or vendor to engage in any action that the organization defines as sexual misconduct.

These definitions of the various elements of sexual misconduct are intended to help agencies begin the process of developing or revising 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 – 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 offender (“my offender”) or their issues (i.e. blind to offender’s actions)
- Reluctance to closely supervise particular offender(s)
- Early termination of supervision outside of normal practices
- Horse-play, interaction with sexual overtones between employees and offenders
- Offenders knowing personal information about employees
- Employee isolation from others
- Offender has letters or photos of employees
- Employee granting special requests or showing favoritism
- Offenders appearing in the office when not scheduled or required
- Employee spending an unexplainable amount of time with an offender
- Excessive telephone calls to and from employee/offender with no appropriate official purpose
- Employee in the office during “off hours”
- Employee overly concerned about an offender
- Drastic change in behavior or appearance of an offender or employee – dress, make-up, hair
- employee allowing offender to perform a service such as car repair, housecleaning, etc.
- High/low number of offender grievances
- Employee intercepting offender violation reports, or attempting to persuade another employee from violating the offender
- Employee can’t account for time
- Employee’s family being involved with offender’s family
- Employee transporting offenders in their car to appointments, etc.
- Employee in personal crisis (divorce, ill health, bankruptcy, death in family)
- Employee consistently works more overtime than peers
- Employee has excessive knowledge about an offender and his/her family
- Employee intervening, or helping with the offender’s personal life, legal affairs, etc. when it is not necessary to the supervision of that offender
- Employee accepting or giving gifts to or from an offender
- Employee testifying for an offender, or requesting special treatment for an offender
- Overheard conversations between employees and offenders which are sexualized in nature, or refers to the physical attributes of staff or offenders
- Sexual or personal banter between employees, or employees and offenders
- Offenders using employee’s first name when it is not the standard procedure in the agency or office.

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 Question	Yes	No	Page#(s)
Does the agency have a zero tolerance policy?	Yes	No	17
Does the policy include offenders/clients, as well as the family members of clients and collateral contacts?	Yes	No	17
Is there a specific policy regarding staff sexual misconduct that covers violations in all four gender quadrants ² ?	Yes	No	17
Does the policy define specific prohibited behaviors?	Yes	No	17
Does the policy address sexual harassment, hostile work environment, and sexual misconduct?	Yes	No	17,18,24
Does the policy require mandatory reporting of allegations of sexual misconduct by employees?	Yes	No	18
Does agency policy address/prevent retaliation against offenders/clients/ and employees who report allegations of misconduct?	Yes	No	18
Is training regarding this policy given to employees, volunteers, civilians and contractors?	Yes	No	23, 24
Does the policy authorize investigations?	Yes	No	18
Are stakeholders involved in policy development?	Yes	No	18
Is zero tolerance mandated for contractors?	Yes	No	19
Does policy define rules of conduct for contractors?	Yes	No	19
Does policy exist for crisis management plans and crisis de-briefings when allegations arise?	Yes	No	22

² Male staff/female offender, female staff/male offenders, and same-gender relationships.

Policy Questions	Yes	No	Page#(s)
Is the employee assistance program aware of the agency's sexual misconduct policy?	Yes	No	22
Are mental health protocols in place to assist employees involved as subject of allegation, witness or complainant?	Yes	No	22
Does policy provide a consistent, written employee disciplinary system?	Yes	No	19
Does policy require a background investigation of a prospective employees <u>and</u> contractors including past behavior of violence or abuse?	Yes	No	20
Are applicants advised of the zero tolerance policy prior to hiring?	Yes	No	20
Does the agency review and assess the operational impact of data from internal investigations, offender/client grievances and employee grievances?	Yes	No	19
Are there written rules for on and off duty conduct for employees, and reporting requirements of current personal information?	Yes	No	20
Are gender-specific supervision caseloads considered and if so, are they addressed in policy?	Yes	No	21
Does policy address work place privacy of employees?	Yes	No	21
Is the use of phones, radios, e-mail and Internet covered in privacy policies?	Yes	No	21
Does the agency have a comprehensive media policy?	Yes	No	22
Does the agency have a policy about releasing information about current and former employees, volunteers and contractors?	Yes	No	22, 23
Does the agency specify record keeping and report formats, such as case notes, violation reports, warrant requests, treatment referral reports, etc. and train employees on these formats?	Yes	No	23

<u>Policy Questions</u>	<u>Yes</u>	<u>No</u>	<u>Page#(s)</u>
Does the agency formally recognize and reward employees?	Yes	No	19
Is there an effective employee grievance system?	Yes	No	20
Is analysis of employee grievances required by policy?	Yes	No	20
Are employee performance appraisals done at regular intervals?	Yes	No	20
Are exit interviews conducted with employees?	Yes	No	22
Is the work environment regularly assessed to identify and address office safety issues, a sexualized work environment and whether procedures match written policies?	Yes	No	24

Policy Issues - Administrative

<p>Agency Policy:</p> <ul style="list-style-type: none"> • 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 gender quadrants (male staff/female offenders, female staff/male offenders, and same gender relationships). • The policy includes specific prohibited behaviors, not just “over-familiarity” or “conduct unbecoming”. • The policy addresses and defines prohibited behaviors between employees, employees and offenders, employees and collateral contacts (family, friends of offenders, etc.) contractors and offenders, offenders and volunteers, and includes discussion addressing the following, but is not limited to: <ul style="list-style-type: none"> - Touching, hugging, kissing, sexual assault, penetration, fondling, inappropriate viewing, sexual conduct, sexual harassment, sexual abuse, sexual gratification, romantic relationships, relationships between staff/offenders. • The policy addresses: <ul style="list-style-type: none"> ○ Mandatory reporting by employees allegations of sexual misconduct; ○ The reporting process, including multiple paths for reporting allegations
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- by employees and offenders;
 - Safeguards for those who report, including prohibitions against retaliation;
 - Consequences for failing to report;
 - Consequences of making deliberately malicious or false reports by employees, offenders, and other parties;
 - Training for all persons who have contact with, communication with or who supervise offenders, including:
 - Certified and civilian employees (including clerical, etc);
 - Vendors/contractors;
 - Treatment providers;
 - Volunteers; and
 - Other agency personnel who have access to offenders and information on offenders.
 - Orientation of offenders to the agency's policies and procedures regarding zero tolerance, reporting procedures, safeguards, and consequences of deliberately making false or malicious allegations.
- The policy establishes the agency's authority (or the authority of a specific outside entity, if applicable) to conduct investigations (criminal, administrative, both) into allegations. (See also investigative policies and procedures)
 - Policy includes zero tolerance for retaliation against those who report allegations, and consequences of those who commit retaliatory acts.
 - The agency addresses involvement of stakeholders in the development of policies.

Assignment of Employees/Cross Gender Supervision:

- Procedures establish guidelines for cross gender assignments, if any, along with oversight by a supervisor. Cross gender supervision policies address EEO requirements and labor/management contract issues.

Contract/Provider Management:

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

- Clearly states the agency's zero tolerance for sexual misconduct;
 - Defines prohibited behavior by contractors;
 - Specifies training for contractors and other service providers;
 - Establishes reporting requirements and timetables for contractors and service providers to report allegations or suspicions of sexual misconduct; and
 - Defines procedures for suspending services from contractors during investigations.
- The contract award document(s) incorporates the agency's policies and procedures on professional behavior and sexual misconduct.
 - Includes procedures for contractors and service providers to report suspected staff sexual misconduct.
 - The agency monitors all contracts to assure compliance with professional, legal and contractual obligations.

Data Analysis:

The agency considers:

- An analysis of sexual misconduct complaints, offender grievances, complaints of favoritism, misconduct, etc. Data is reviewed by administration and/or the investigative designee, to determine patterns or areas of concern involving specific employees, contractors, providers, offenders, volunteers, office locations, employee assignments, caseloads etc.
- Investigative reports recommend improvements in policy, operations, training and related administrative areas based on findings.

Employee Commendation and Awards:

- The agency regularly and publicly recognizes and rewards employees for outstanding work. Employees value this practice and receive meaningful acknowledgments.

Employee Discipline Process:

- Employee confidence in the discipline and internal investigation systems is essential to their willingness to report allegations of misconduct. Therefore, the agency provides information and training to employees 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 employee grievance process that allows issues to be expressed and appropriately addressed. Employees trust the grievance process and are educated concerning policy, practice, and expectations. The grievance process is fair, consistent, and applies appropriate sanctions.

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 employee overtime, reviews caseload assignments, and related information. The agency's overtime policy addresses how, under what circumstances, by whom, and when employees are assigned tasks that will require overtime.

Employee Recruiting, Screening, Hiring:

- The agency's employment background investigation identifies past behaviors 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 employees and, especially between employees and supervisors.
- The agency defines appropriate and inappropriate employee relationships and behavior in the workplace, with consequences for inappropriate behaviors.

- The agency policy addresses relationships between employees and individuals who were previously under the supervision by the agency or other criminal justice entity; or previously or currently in custody of the department, state prison system, or jails.
- The agency specifies the on-duty dress code for employees, volunteers and contractors and includes sanctions for failure to comply.
- 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 and personal contact information.

Employee Work Assignments:

- Policy addresses the amount of overtime employees may work within a given period.
- Procedures require periodic review of use overtime hours by individual employees.

Employee Work Site Privacy:

- The agency establishes, in writing, expectations for privacy of employees, offenders, contractors, visitors, volunteers, and others while in agency workplaces.
- Policy addresses searches of persons and property, parking lots, lockers, vehicles, workspace, as well as telephone, radio, Internet, and e-mail use. The policy complies with all laws and court decisions regarding workplace privacy and search.
- Employees sign the policy acknowledging the agency's privacy and surveillance policies.
- Policy addresses the issue of gratuities and gifts from offenders, offenders' families, victims and other clients. Included in the policy are specifics on how employees officially note and/or report any offer of gratuities or gifts from those mentioned above.

Exit Interviews:

- The agency conducts exit interviews with employees, volunteers, or contractors. The process is established to provide feedback, and identify any possible misconduct. The policy specifies what information provided is to remain confidential and how information will be used by the agency.

Medical and Mental Health Support to Staff/Employee Assistance Programs

- The agency considers medical, mental health, and employee assistance referrals for employees who are subjects or witnesses in sexual misconduct investigations.
- The agency considers the impact of allegations of sexual misconduct on the agency's entire workforce. Peer debriefing and/or other professional interventions occur to address these matters.
- The agency's provider of employee assistance 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;
 - What information is to be released to the public;
 - Who is authorized to speak to the media and the public;
 - How media inquiries concerning allegations and investigations will be handled and by whom; and
 - What specific information is considered confidential, aligning with legal requirements (such as victim information, etc)?
- 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, interns, volunteers and contractors.
- Agency policy specifies what investigative information becomes public record (if any), and policy aligns with current laws of confidentiality.

File Maintenance and Record Keeping:

- Procedures specify how, where and when case notes are maintained, what is to be contained in case notes, and who has access.
- Employees receive training on record keeping and the requirements for use and submission of standard forms (such as violation reports, affidavits, treatment records, offender monthly reports, and all other documentation required as part of case supervision.
- Procedures insure that reports of staff sexual misconduct from either employees or offenders who do not wish to put complaints in writing are not rejected solely for that reason.
- Policy specifies who has keys, passwords, and access to all types of database information, including but not limited to: NCIC and state criminal records databases; offender databases, files and information; employee personnel files and personal information; and any other official information maintained officially by the agency.

Office Access and Security:

- Procedures specify who has access to agency workplaces, hours that offices and workplaces are to remain open, and supervision of all official workplaces and offices during opening hours.
- Procedures specify the procedures and notifications required when employees enter workplaces and offices during times other than opening hours.

Training:

- The agency has curriculum for training *all* employees (this includes professional staff, support staff, clerical, etc. – all of whom have direct contact with offenders), volunteers, contractors, interns, treatment providers, and others providing official service to the agency. This includes pre-service and in-service training regarding the agency’s policy on sexual misconduct, prohibited behaviors and reporting requirements.
- Training includes *at least* agency policies and procedures, specific definitions, state statutes, penalties, reporting requirements, “red flags”, issues of “consent”, and an overview of the investigative process. In-service training covers the basics with information on lessons learned from closed investigations, and any changes in procedures.
- Employees, contractors, treatment providers, interns, and volunteers are trained in the skills they need to identify and maintain professional boundaries, expectations

of the agency concerning ethical behavior, and managing offenders and clients, including manipulative offenders and clients.

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;
 - 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 frame requirements;
 - Volunteers are advised of the consequences of involvement in prohibited behaviors;
 - Volunteers are advised of what are acceptable and unacceptable behaviors while in an official capacity, and;
 - Volunteers are required to acknowledge in writing, that they have received and understand agency policy and procedures.

Work Environment:

- The agency periodically assesses the work environment to ensure professionalism and ethical behaviors. This includes review of employee/employee and employee/offender relationships and communications; an assessment to determine if procedures match written policies; elimination of any elements of a hostile work environment.
- The agency assesses the work environment to ensure that it has not become “sexualized”, eroding professional boundaries between staff and offenders.
- The agency policy makes distinctions between sexual misconduct, sexual harassment, a sexualized workplace, and hostile work environment.

Case Management and Supervision

Policy Question	Yes	No	Page#(s)
Do supervisors conduct regular case reviews to assure that cases are properly managed?	Yes	No	26
Do review procedures ensure that each case is reviewed within a specific time period?	Yes	No	26
Are supervisors required to regularly observe each employee they supervise as they perform their duties?	Yes	No	27
Is there written policy on the contents of offender files, which documents are included and in what order within the files?	Yes	No	26
Is there written policy concerning confidentiality of case files, who has access to files? Does policy address how files are to be physically handled and maintained, both in the office and outside of the office?	Yes	No	26, 27
Does policy specify under what circumstances information may be released from case files, to whom, and by whom?	Yes	No	26
Does policy address specific procedures and reasons for transferring cases from one caseload to another?	Yes	No	26, 27
Does agency policy address outside agencies that supervise offenders, or that provide services to the offender as part of their supervision?	Yes	No	27
Does policy address cross gender visual surveillance of offenders, including procedures for obtaining urine samples for drug/alcohol analysis, and other situations that require visual observance of similar activities?	Yes	No	27
Is there a policy concerning the transporting of offenders, offenders' family members, victims, and other such collateral contacts by agency staff in either personal vehicles or agency-owned/operated vehicles?	Yes	No	27
Is there a policy concerning cross gender searches?	Yes	No	27
Is there a policy for searching offender homes, vehicles and other such locations?	Yes	No	27

Does policy address procedures and requirements for when employees may or are required to work in teams, in pairs, individually, etc.?	Yes	No	26
Are there procedures and instructions in place for employees who will be the first responders to incidents of sexual misconduct, or who may encounter such incidents that require immediate action?	Yes	No	28

Policy Issues – Case Management and Supervision

Case Reviews and Caseload Assignments:

- Policy includes specific procedures for completing regularly scheduled case reviews by supervisors. Scheduling of case reviews is carefully maintained, and assures that cases are reviewed at least every six months to one year. Results of case reviews are discussed with the employee, and recommendations for action are followed-up by supervisor.
- Case assignments are specified by policy, including special caseloads (i.e. drug offender, sex offender, etc.), and any case assignments that are assigned by gender (including the justification of such assignments according to law and practice).
- Policy specifies the reasons and procedures for transferring cases from one caseload to another. Transferring of cases is conducted with the approval and knowledge of administration or a supervisor.
- Policy delineates those circumstances when staff will work in pairs, team or alone, in the field, in the office and in other official capacities.

Case File Maintenance and Confidentiality:

- Confidentiality of case file materials is mandated and defined by policy.
- The release of any information from case files is directed by policy, which includes under what circumstances information is to be released, the actual information that can and cannot be released, who has authority to release, who has the authority to receive and request such information, and careful maintenance of the names to whom information is released.
- Policy directs how files are to be protected and handled within the office setting and outside the office setting, to assure that file materials are secure, complete, and that confidentiality of materials is protected.
- Storage of files is secure, access to files is limited, and records are kept as to who accesses files.

Supervisors:

- Policy requires that supervisors regularly observe employees under their supervision in the performance of their duties. This may include ride-along days on a regular basis, observance of interviews, and regular meetings and dialogue.
- Supervisors should be trained to identify “red flags” among employees, and how to appropriately address concerns in a timely manner.
- Supervisors regularly monitor caseload movements, changes in case assignments, and other activity on cases.
- Supervisors are available and accessible for questions from employees, concerns from offenders, and concerns from family of offenders, contractors and providers.

Transportation, Surveillance and Searches:

- Procedures delineate the circumstances (if any) for transporting offenders, offenders’ families, victims, and other collateral persons by employees.
- Vehicles are searched before and after each transport.
- Procedures protect the privacy of the offender within Constitutional and other lawful parameters, both during the conduct of surveillance, and other visual events such as drug screens, etc.
- Searches are conducted by same-gender employees whenever possible, and the procedure for conducting searches is specified in the policy.

Contractors, vendors and treatment providers:

- Support staff, contractors, vendors and other providers of services to the agency are covered in policies that prohibit sexual misconduct with offenders.
- The agency’s policy of zero tolerance is provided in writing to all of the above.
- Prohibited behaviors and requirements and procedures for reporting misconduct are delineated.
- Training and orientation is provided to all of the above.

First Responders (staff), and Collecting and Preserving Evidence:

- Procedures and training provide:

- Information on how to identify evidence of misconduct;
 - Guidance on preserving the security of evidence and crime scenes;
 - Who is to collect evidence; and
 - How to preserve the chain of custody of any evidence that is collected.
- The agency has memoranda of understanding (MOU) with agencies or organizations 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.

Investigations

Policy Question	Yes	No	Page#(s)
Are investigators properly trained, and do they have the appropriate experience required to conduct sexual misconduct investigations?	Yes	No	32
Are employees, and/or those who are responsible for collecting and preserving evidence, trained in the proper procedures for identifying, collecting, and preserving evidence?	Yes	No	30, 32
Are there official procedures for notifying staff who are subject of investigations, following the mandates of <u>Miranda</u> and <u>Garrity</u> ? Are notifications made in writing?	Yes	No	30
Is there a policy on use of informants and intelligence gathering?	Yes	No	29
Is there policy and standard operating procedure on initiating criminal and administrative/internal investigations?	Yes	No	30
Is there policy for oversight and supervision of investigations, along with an identified chain of command?	Yes	No	30
Is there a policy for confidentiality of investigations?	Yes	No	30
Is there a policy for coordination with the prosecutor?	Yes	No	31
Does policy address the establishment of memoranda of understanding with outside agencies who will either conduct the internal investigations, assist with the investigations, or in any way have a part in the conduct of investigations?	Yes	No	31

Policy Issues – Investigations

Intelligence:

- The agency has a policy regarding the collection of intelligence and use of informants. The policy addresses reliability and identification of informants along with procedures for documentation.

Notifications to Staff and Protections for Staff:

- Investigative procedures include standard formats for notifying employees and other persons who are subject of investigation.
- Employees are informed of their rights and protections as provided by Miranda and Garrity concerning the conduct of criminal and administrative investigations.
- Investigators are properly educated and trained about the principles and protections of Miranda and Garrity.

Internal Investigations:

Policies, standard operating procedures and protocols governing internal investigations address:

- Guide whether investigations are initiated as criminal or administrative;
- Complaints received either orally or in writing; how received and processed;
- The internal path and external paths of allegations to insure reports reach administrators or investigations, and are not “lost” or “diverted”;
- Confidentiality of information, those who report, witnesses, etc.;
- Management and access to the incident scene;
- 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;
- Protocol for deciding whether to proceed with criminal or administration investigations, or both;
- 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;
- Qualifications, selection and training process for investigators;
- Job description of investigators;
- Location and procedures for conducting interviews;
- Protocols for involvement of mental health professionals in interviews of vulnerable offenders;
- Recording of interviews, (i.e. tape or video);
- Collection of DNA evidence from employees and offenders;
- Coordination with the prosecutor and/or other law enforcement agencies;
- Procedures for interviewing released offenders or offenders as witnesses;
- Transfer of supervision of offenders during investigations (subject, victim, witness);
- Content and formats for investigative reports, including findings and recommendations;
- Designation of investigative outcomes (founded, unfounded, etc.,) including

<p>differentiation between allegations that are unfounded and those that are false and deliberately malicious;</p> <ul style="list-style-type: none">• Review of investigative conclusions to improve agency operations;• Protocols for taking witness and victim statements;• Procedures for referral to 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.
<p>Outside Agencies:</p> <ul style="list-style-type: none">• If outside entities are responsible for conducting investigations within the agency, agency policy should include memoranda of understanding with each outside entity involved. MOU should include, at least:<ul style="list-style-type: none">- The responsibilities of the outside investigating entity;- The responsibilities of the agency;- Point of contact between each outside entity and the agency;- Guidelines for cooperation between each, including notification of status of investigation, and sharing of information.• In most cases, outside entities will be involved in some part of an official investigation within the agency, even if the agency has the primary investigative authority. These may include prosecutors, forensics laboratories, law enforcement, medical and mental health providers etc. Agency policy should include MOU’s with each of these entities to include at least the above-mentioned aspects.
<p>Investigators:</p> <ul style="list-style-type: none">• Those responsible for investigation allegations of staff sexual misconduct possess the appropriate, specific, and thorough training and experience for these unique investigations.

Offender Grievances, Orientation and Programming

Policy Question	Yes	No	Page#(s)
Is there a procedure regarding how offenders report allegations of sexual misconduct, including multiple ways to report?	Yes	No	33
Is mental health and/or medical assistance available to offenders after reporting allegations or critical incidents?	Yes	No	34
Are medical and mental health providers, and other treatment providers who have contact with offenders, required to report suspicions of sexual misconduct?	Yes	No	18, 34
Is there an effective offender grievance procedure?	Yes	No	34
Is data analysis of offender grievances required?	Yes	No	34
Are offenders provided with formal orientation that informs them of proper reporting procedures, definitions, the agency policy on zero tolerance, and the consequences of false and malicious reporting?	Yes	No	32-33
Is there a policy for offender dress code, appropriate for each gender, when reporting to the office?	Yes	No	33

Policy Issues – Offender Grievances, Orientation and Programming

<p>Female Offenders:</p> <ul style="list-style-type: none"> • The agency provides programs and services for women offenders that are gender responsive and meet their unique needs.
<p>Offender Orientation:</p> <ul style="list-style-type: none"> • Offenders are informed about their right to be free from sexual misconduct from all employees, contractors and volunteers. • Reporting guidelines and procedures are clearly explained to offenders at orientation. • Offender orientation includes specific, language-appropriate rules about prohibited behaviors, prohibitions against sexual activity with staff, contractors, volunteers,

etc.; provides for multiple reporting paths, discusses consequences for false reporting, and answers questions in a meaningful way.

Offender Reporting Procedures:

- Agency procedures address:
 - The process by which offender grievances or reports about misconduct are handled by those who receive them, and to whom these allegations are forwarded;
 - Time limits for reporting;
 - Penalties for not reporting;
 - Prohibitions against retaliation for reporting; and
 - Offender orientation concerning the reporting procedures.
- Policy and procedures include multiple avenues for reporting allegations, to assure that those who need to report them are able to do so.

Offender Dress Code:

- The agency has a specific offender dress code.
- Policy specifies how these situations are to be noted in the file.
- Offenders are provided with the dress code in writing, and are informed of consequences of not abiding by the dress code.

Offender Grievance Procedures:

- The offender grievance process complies with professional standards and case law. Grievances are monitored and analyzed for patterns that may indicate evidence of misconduct or other related potential problems.
- Grievance procedures include prohibition against retaliation for filing grievances.

Offender Orientation:

The offender orientation includes:

- Specify prohibited behaviors between staff and offenders;
 - Privacy expectations;
 - Specify reporting procedures for allegations of sexual misconduct; and
 - Describes how offenders can access medical or mental health services.
- Information for offenders is specific, preferably in writing, and in a grade level appropriate language. Languages other than English are available as needed.

Offender Health and Mental Health Services:

- Policy provides offender 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 investigators, or as witnesses.

Offender Privacy and Searches

- Procedures address cross gender visual surveillance during routine operations of areas such taking of urine samples and any type of surveillance required as a condition of supervision, or within facilities.
- Procedures address in detail, how searches are to be conducted, including when cross-gender search is permitted and under what circumstances.

Offender Programs and Services:

- All program providers are trained regarding the agency's zero tolerance policies for sexual misconduct.

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Writing Policies and Procedures

The information in this Guide is intended to help community corrections administrators consider the scope of issues associated with prevention and investigation of allegations of staff sexual misconduct. The policy addressed in this document includes those policies and procedures that involve field supervision of offenders. The Guide was based on a previously developed Policy Development Guide for Sheriffs and Jail Administrators, which addressed policies and procedures for custodial facilities. Some community corrections organizations that have custodial responsibilities (such as juvenile detention, halfway houses, restitution centers and residential treatment facilities), may find that particular Guide a helpful additional resource. That document is:

Staff Sexual Misconduct with Inmates: Policy Development Guide for Sheriffs and Jail Administrators, by Susan W. McCampbell and Larry S. Fisher, August 2002.

NIC has developed an additional document to help agencies with the process of writing or updating policies and procedures for custodial facilities. Some community corrections agencies, particularly those that include custodial situations, may find this a helpful additional resource. 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

Both publications are available on the NIC website, or you may contact the NIC Information Center at (800) 877-1461, or e-mail asknicic@nicic.org.

Technical Assistance

The National Institute of Corrections provides technical assistance to agencies to address, prevent and investigate allegations of staff sexual misconduct with offenders. 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.

For more information or to request technical assistance, contact:

Dee Halley, Correctional Program Specialist
Special Projects Division
National Institute of Corrections
320 First Street, NW
Washington, D. C. 20534
Telephone: (202) 307-0147
Fax: (202) 305-2185
dhalley@bop.gov

About the Authors

Susan W. McCampbell is President of the not-for-profit Center for Innovative Public Policies, Inc., a company specializing in public policy consulting. Ms. McCampbell is the co-author of Training Curriculum for Investigating Allegations of Staff Sexual Misconduct with Offenders, October 2000. She recently co-authored a Resource Guide for Newly Appointed Wardens, also with NIC. CIPP provides the training and technical assistance services for NIC around the issues of staff sexual misconduct with offenders. Ms. McCampbell also instructs in both NIC programs for addressing and investigating staff sexual misconduct.

Prior to founding the Center for Innovative Public Policies, Ms. McCampbell was the Director of the Department of Detention and Community Control for the Broward County, Florida, Sheriff's Office for four (4) years. This system is one of the largest local jail systems in the United States. During this time, Ms. McCampbell served as Acting Sheriff for this full-service Sheriff's Office for six (6) months following the death of the Sheriff.

Prior to coming to Broward County, Ms. McCampbell was Assistant Sheriff for the City of Alexandria, Virginia, Sheriff's Office for eleven (11) years, and a Program Director for Police Executive Research Forum in Washington, D. C.

Ms. McCampbell holds a BA in Political Science from the School of Government and Public Administration, The American University, Washington, D. C., and a Master's Degree in City and Regional Planning from the School of Architecture and Engineering of The Catholic University of America, Washington, D. C.

Elizabeth P. Layman is the President of Price Layman, Inc. consulting on public policy, criminal justice policy and training, and grant funding. Ms. Layman is the co-author of Training Curriculum for Investigating Allegations of Staff Sexual Misconduct with Offenders, October 2000. She recently co-authored a Resource Guide for Newly Appointed Wardens, also with NIC, as well as several magazine articles on the issue of staff sexual misconduct in community corrections and prisons. Ms. Layman provides technical assistance and training on staff sexual misconduct as a consultant for NIC.

Ms. Layman retired from the State of Florida with 17 years service in corrections and parole, where she served as a parole/probation officer, administrative hearing officer, and regional director for the Florida Parole Commission. Prior to service with the state of Florida, Ms. Layman was a police officer and detective with the Arlington County, Virginia Police Department for 9 years.

Ms. Layman holds a Bachelor of Science Degree in Sociology from Virginia Tech in Blacksburg, Virginia. She has also served on the Miami-Dade County Legislative Advisory Committee, a curriculum advisor and classroom speaker at Florida Atlantic University and Florida International University, Miami, Florida.

Larry S. Fischer is currently a correction consultant after serving as the Jail Administrator at the Broome County Sheriff's Office, Binghamton, New York. Mr. Fischer was the State Chairman of the New York State County Correctional Instructors Association, a group that maintains goals of professional training for Corrections Officers and jail staff and civilian personnel statewide. He is also a corrections assessor and assessor trainer for the NYS Sheriff's Association.

Mr. Fischer has 28 years of service with the Office of the Sheriff. Rising through the ranks by promotion, he has seen and experienced all facets of jail operations. His involvement as the Transition Coordinator for the Public Safety Facility allowed the migration from the old jail facilities into the new complex without the negative consequences experienced by other jail operations in the State. Mr. Fischer has served for 5 years as the Corrections Training Coordinator bringing the Corrections Division improved and expanded training.

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.

Mr. Fischer is an upstate New York native, a member of the Southern Tier East Regional Planning and Development Criminal Justice Advisory Board and the NY ACA chapter Training and Education Chairman.

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