



STATE OF VERMONT AGENCY  
OF HUMAN SERVICES  
DEPARTMENT OF  
CORRECTIONS

Policy 126

**Subject:** Staff Sexual Misconduct Involving Offenders

**Effective Date:** 2/22/15 **Review and Re-Issue Date:**

**Supersedes:** Policy 126, dated 10/15/02 **APA Rule Number:**

<b>Recommended for approval by:</b> Wendy Yoder Director, PREA	<b>Authorized By:</b> Andrew A. Pallito Commissioner
 Signature	 Signature
02/19/2015 Date	2/18/15 Date

**1. Authority:**

42 U.S.C. § 147, 28 VSA, Chapter 1, §1c; 28 VSA, Chapter 3, §101 (1) (3), 22 102c (1); 28 VSA, Chapter 9, § 601 (1); DOC Work Rules dated 04/07/1997.

**2. Purpose:**

The purpose of this policy is to provide an understanding of what sexual misconduct is in order to ensure offenders are safe from any sexual misconduct caused by department employees, contractors and volunteers.

**3. Applicability/Accessibility**

This policy applies to all department employees, contractors and volunteers. Anyone may have access to this policy.

**4. Policy:**

A Department of Correction's mandate is to "...foster their [offenders] human dignity and preserve the human resources of the community." It is our belief that all relationships between employees, contractors, volunteers and offenders shall remain respectful and professional and shall not compromise the integrity of any individual and/or the department. When professionalism is not maintained, the safety and security of individual sites may be jeopardized and an individual's judgment may be impaired.

The department will establish uniform procedures for preventing, reporting, investigating and prescribing sanctions for substantiated employee misconduct involving offenders to discourage and prevent sexual misconduct against any persons committed to the

department.

It is the policy of the Department of Corrections (DOC) that any sexual activity between correctional employees and offenders under DOC supervision is always considered coercive and never consensual. This is because of the imbalance of power between the parties. Any exceptions to this policy are addressed in Directive 126.01, Personal Relationships with Offenders/Conflict of Interest. Employee sexual misconduct will not be tolerated. DOC will make serious efforts to prevent employee sexual misconduct with offenders. DOC will investigate, or refer for investigation, all reports to ensure accountability for all those who are involved in sexual misconduct, including those who fail to report sexual misconduct and those who provide false testimony in the investigation of any employee/personnel misconduct allegation.

Given the coercive nature of the staff-offender relationship, all allegations of sexual misconduct between staff and an offender will be investigated by a department investigator, agency investigator, and/or referred to the proper law enforcement authority. If there is evidence, of any amount, of a criminal component, then the investigation will be conducted by law enforcement. DOC will administratively investigate the allegation of sexual misconduct to the fullest extent possible.

Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies. Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse. Disciplinary sanctions for violations of agency policies relating to sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories. All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.<sup>1</sup>

DOC shall provide information on substantiated allegations of sexual abuse or harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied for work.<sup>2</sup>

The department will develop directives that establish processes for the following:

1. Prevention of sexual misconduct to include training and staff support.
2. Reporting of sexual misconduct for staff, offenders, contractors and volunteers.
3. Investigating sexual misconduct allegations which include evidence, interviewing, choosing investigators, medical/mental health assistance, retaliation, maintaining information, false allegations, confidential information, tracking, and interim procedures during pending investigation.
4. Quality assurance review regarding incidents of sexual misconduct- post incident management reviews, substantiated incidents, avoiding incidents, how to use information to enhance training, security, investigation.

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<sup>1</sup> 28 C.F.R. § 115.76 (2012).

<sup>2</sup> 28 C.F.R. § 115.17 (2012).

5. Personal relationships with offenders/conflict of interest.

**5. Training Method**

The training method will be established in an associated directive.

**6. Quality Assurance Processes**

The quality assurance process will be established in an associated directive.

**7. Financial Impact:**

No immediate financial impact. There may be long term cost reductions based on decreased need for investigation and reduction of inmate lawsuits.

**8. References**

National Institute of Corrections.

Prison Rape Elimination Act (PREA) 28 C.F.R Part 115.