

DEPARTMENT OF CORRECTION 	POLICY MANUAL	POLICY NUMBER: 219 v2.0	PAGE NUMBER: 1 of 6
		SUBJECT: Sexual Misconduct with Offenders	Adopted: 2-20-01 Revised: 7-22-09

01.00.00. POLICY OF THE DEPARTMENT

The Board of Correction has zero tolerance for sexual misconduct toward or with any individual under the care, custody, or supervision of the Department by any employee, volunteer, contractor, or agent of the Department.

Pursuant to Idaho Code, Section 18-6110, it is a felony for any Department employee (or employee or agent of a state, local, or private correctional facility) to have sexual contact with a prisoner to include the following: sexual intercourse, genital-genital contact, manual-anal contact, manual-genital contact, oral-genital contact, anal-genital contact, or oral-anal contact between persons of the same or opposite sex. Other forms of sexual misconduct directed toward any individual under the care, custody or supervision of the Department, while not a felony, are strictly prohibited by this policy. Further, some of the defined acts of sexual misconduct may also be a misdemeanor (i.e., a battery or assault, under state law).

02.00.00. TABLE OF CONTENTS

01.00.00.	POLICY OF THE DEPARTMENT
02.00.00.	TABLE OF CONTENTS
03.00.00.	REFERENCES
04.00.00.	DEFINITIONS
05.00.00.	PROCEDURE
05.01.00.	Reporting and Notification
05.02.00.	Investigation
05.03.00.	Employee Discipline
05.04.00.	Confidentiality
05.05.00.	Records
05.06.00.	Retaliation
05.07.00.	Division Directives

03.00.00. REFERENCES

Department Policy 205, *Corrective and Disciplinary Action*
Department Policy 217, *Ethics and Standards of Conduct*
Department Policy 218, *Non-fraternization with Offenders*

POLICY NUMBER: 219 v2.0	SUBJECT: Sexual Misconduct with Offenders	PAGE NUMBER: 2 of 6
-----------------------------------	---	-------------------------------

Department Policy 227, *Administrative Investigations*

Idaho Code, Section 18-6110, *Sexual Contact with a Prisoner*

IDAPA 15.04.01, *Rules of the Division of Human Resources & Idaho Personnel Commission*, section 024, Conflict of Interest and Personal Conduct

IDAPA 15.04.01, *Rules of the Division of Human Resources & Idaho Personnel Commission*, section 190.01, Cause for Disciplinary Actions or Separation from State Service

Standards for Adult Community Residential Services, Third Edition, 3-ACRS-3D-05, Protection from Harm

Standards for Adult Probation and Parole Field Services, Third Edition, 3-3068, Code of Ethics

04.00.00. DEFINITIONS

Agent: An individual who acts on behalf of or represents the Department of Correction.

Assault: A willful attempt or threat, coupled with apparent ability, to inflict injury upon another person.

Battery: Intentional touching or striking of another person against that person's will.

Contractor: A person who has entered into a contract with the Board or Department, or a contract with the state of Idaho administered by the Board or Department to provide any service.

Facility: A building or residence, including the property and land where the building or residence is located, owned, or leased and operated or managed by the Board or Department.

Facility Head: The person with primary responsibility to oversee, manage or operate a Department facility.

Inappropriate relationship: A non-professional, personal relationship with an offender which includes an intimate, romantic or sexual involvement as evidenced by any conversation, correspondence, or other behavior.

Offender: A person under the legal care, custody, supervision or authority of the Board including a person within or without the state pursuant to agreement with another state or a contractor.

Retaliation: An act of revenge, either overt or covert, or threat of action taken against

POLICY NUMBER: 219 v2.0	SUBJECT: Sexual Misconduct with Offenders	PAGE NUMBER: 3 of 6
-----------------------------------	---	-------------------------------

an offender or any other individual in response to that offender's or individual's complaint of sexual misconduct or cooperation in the reporting and investigation of alleged sexual misconduct. Forms of retaliation towards an offender may include, but are not limited to, unnecessary or excessive discipline, intimidation, unnecessary changes in work or program assignments, unjustified transfers to other institutions, unwarranted placement in protective custody and unjustified denials of privileges or service.

Sexual abuse: Any act of a sexual nature that takes advantage of or exploits an offender or sexual contact obtained by persuasion, inducement, enticement, compulsion, influence, encouragement, intimidation, seduction, use of authority, threat of harm or loss of privileges, promises, favoritism, coercion, force, etc.

Sexual assault: An assault that is sexual in nature.

Sexual contact: Any behavior that includes, but is not limited to, hugging, fondling, kissing, intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thighs, or buttocks of another individual or any other physical contact except for handshakes or that allowed by policy for purposes of life saving and maintaining security (examples of prohibited contact: neck rubs, back rubs, hair touching, massages and caresses).

Sexual harassment: Sexually offensive comments and gestures, sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.

Sexual misconduct: Any form of consensual or non-consensual physical contact or communication of a sexual nature directed towards an offender that establishes an inappropriate relationship including, but not limited to, sexual abuse, sexual assault, sexual contact, sexual harassment or sexual obscenity.

Sexual obscenity: A communication, act, gesture, etc. of a sexual nature that is offensive, disgusting or repulsive to the senses.

Volunteer: A person who has volunteered or donated time or services to the Board or a Department operation or facility.

05.00.00. PROCEDURE

05.01.00. Reporting and Notification

Any employee, volunteer, contractor or agent of the Department who observes sexual misconduct or receives information from any source concerning sexual misconduct

POLICY NUMBER: 219 v2.0	SUBJECT: Sexual Misconduct with Offenders	PAGE NUMBER: 4 of 6
-----------------------------------	---	-------------------------------

towards an offender must immediately report it.

Preferably, this information should be reported to the facility head or manager of the individual's work unit. However, to ensure reporting, such information may be reported to any of the following individuals outside of the individual's work unit:

Director of Human Resource Services,
Division Chief,
Deputy Division Chief,
Warden,
Probation and Parole District Manager,
Community Work Center Manager, or
Designee of any of the above listed individuals.

Any offender or other individual (including the general public or offender's family members) who has knowledge of alleged sexual misconduct by a staff member towards an offender should immediately report it to the facility head, manager, director of Human Resource Services, or designee.

Management individuals named above who receive information or allegations about sexual misconduct shall notify the appropriate division chief or designee, in accordance with Department Policy 105, *Reporting of Major Incidents*, as soon as possible, but no later than twenty-four (24) hours, excluding weekends and holidays, after receipt of the information.

The division chief will notify the director (or designee) and the director of Human Resource Services (or designee) of such information or allegation within twenty-four (24) hours, excluding weekends or holidays, of receipt of information of sexual misconduct.

Failure of any employee to report sexual misconduct towards an offender as outlined above may result in disciplinary action up to, and including, dismissal.

Failure of a volunteer, contractor, or agent to report sexual misconduct may result in corrective action up to, and including, termination of services or cancellation of contract.

05.02.00. Investigation

The warden, community work center manager, or probation and parole district manager, who receives the information or allegation of sexual misconduct in accordance with above section 05.01.00. shall, within forty-eight (48) hours, excluding holidays and weekends, initiate a fact finding process in accordance with Department Policy 227,

POLICY NUMBER: 219 v2.0	SUBJECT: Sexual Misconduct with Offenders	PAGE NUMBER: 5 of 6
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Administrative Investigations.

Fact finding and any formal investigation shall be conducted in accordance with Department Policy 227.

Alleged violations of state statutes will be referred to the appropriate local law enforcement agency prior to conducting any formal internal investigation.

A subsequent internal investigation to determine if employment misconduct has occurred may be conducted if the law enforcement agency declines to accept the referral or determines that insufficient evidence exists for criminal prosecution.

05.03.00. Employee Discipline

Appropriate corrective or disciplinary action up to, and including, dismissal will be taken whenever this policy is violated. The severity and extent of discipline will be determined on a case-by-case basis by the totality of factors and circumstances of the individual situation.

Corrective or disciplinary action will be taken in accordance with Department Policy 205, *Corrective and Disciplinary Action*, and IDAPA 15.04.01, section 190.01, *Cause for Disciplinary Actions or Separation from State Service*.

05.04.00. Confidentiality

The sexual misconduct complaint, including all information and documents pertinent to the complaint, shall be handled with sensitivity and a reasonable level of confidentiality.

Information shall only be revealed on a “need to know” basis or in defense of disciplinary or legal action.

Breaches of confidentiality may result in corrective or disciplinary action up to, and including, dismissal.

05.05.00. Records

The investigative file and any other information and documents pertaining to the sexual misconduct complaint will be retained in Human Resource Services as outlined in Department Policy 227.

05.06.00. Retaliation

POLICY NUMBER: 219 v2.0	SUBJECT: Sexual Misconduct with Offenders	PAGE NUMBER: 6 of 6
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Department employees, volunteers, contractors, and agents shall not retaliate against the complainant, the victim, the accused, witnesses or informants involved in the filing and investigation of sexual misconduct allegations.

Retaliation of any form may result in corrective or disciplinary action up to, and including, dismissal.

05.07.00. Division Directives

Each division with responsibility for the care, custody, or supervision of offenders shall develop division directives pertaining to sexual misconduct towards offenders.

At a minimum, such directives must include:

Procedures for notifying offenders of their protection and responsibilities under this policy.

Reporting procedures for offenders that allow them the opportunity to make a complaint verbally to any employee, volunteer, contractor, or agent or directly to the facility/office head either verbally or in writing utilizing a letter, standard form, or formal grievance procedure for offenders.

Procedures for the care and treatment of individuals who are alleged or substantiated victims of sexual misconduct by staff.

Director, Department of Correction

Date