



WYOMING DEPARTMENT OF CORRECTIONS

Policy and Procedure #3.402

Protection from Sexual Misconduct against Offenders

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Authority: Wyoming Statute(s): 6-2-301, <i>et seq.</i> ; 6-5-112; 6-5-113; 25-1-104; 25-1-105; ACA Standard(s): 4-4281 PREA of 2003: P.L. 108-79, 42 USC §15601, <i>et seq.</i>	Effective Date: January 14, 2008 Revision/Review History: Summary of Revision/Review: Revises previous WDOC regulations and establishes a uniform WDOC policy and procedure.	
Cross Reference of Policy: P&P #1.013, <i>Incident Reporting</i> ; P&P #1.014, <i>Investigations</i> ; P&P #3.305, <i>Temporary Restriction Order</i> ; P&P #3.009, <i>Evidence Collection and Chain of Custody</i> ; P&P #4.303, <i>Written Exposure Control Plan for Blood-borne Pathogens</i>	Supersedes Existing Policy : P&P #1.202, <i>Staff Sexual Misconduct Against Offenders</i> , dated 07/20/00	
Approved: R.O. Lampert Robert O. Lampert, Director		12/26/07 Date

The policy and procedures set forth herein are intended to establish directives for staff members and those entities that are contractually bound to adhere to them. They are not intended to establish State created liberty or property interests for staff members or inmates, or an independent duty owed by the WDOC to staff members, inmates, or third parties. This policy and procedure is not intended to establish or create new constitutional rights or to enlarge or expand upon existing constitutional rights or duties.

REFERENCE

1. ATTACHMENTS
 - A. WDOC Form #149, *Sexual Misconduct Against Offenders Quarterly Report*
2. OTHER – None Noted



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I. PURPOSE

- A. Zero Tolerance of Sexual Misconduct Against Offenders.** The purpose of this policy is to establish a “zero tolerance” policy regarding sexual misconduct directed towards Wyoming Department of Corrections (WDOC) offenders and to establish uniform guidelines and procedures for preventing, reporting, investigating and sanctioning incidents of sexual misconduct against offenders.
- B. Scope.** This policy applies to offender-on-offender and staff-on-offender sexual assault and misconduct.

II. POLICY

- A. General Policy.** It is the policy of the WDOC that offenders, whether in the custody of WDOC or under the supervision of WDOC, have the right to be free from sexual misconduct perpetrated by staff or by other offenders. WDOC strictly prohibits acts of sexual misconduct against offenders and hereby establishes a zero tolerance policy against such acts.
- B. Consent Is Not a Defense.** It is the policy of the WDOC that an offender is not able to give “consent” to sexual relations with a staff member. Wyoming law makes it a criminal act for an employee of WDOC to engage in sexual activity with an offender. (See WYO. STAT. § 6-2-301, *et seq.*, specifically at 6-2-303(a)(vii).) WDOC shall report all suspected criminal activity to the proper authorities. In cases involving staff sexual misconduct against offenders, WDOC reserves the right to take appropriate personnel action regardless of any criminal disposition.
- C. Duty to Report.** It is the policy of WDOC that all staff and offenders have a duty to report any acts of sexual misconduct against offenders.
 - 1. Retaliation against staff or offenders who make good faith reports of sexual misconduct incidents is prohibited.
 - 2. Staff or offenders who intentionally make false reports of sexual assault or misconduct will be subject to non-retaliatory disciplinary sanctions.
- D. Training, Investigation and Corrective Action for Prohibited Misconduct.** It is the policy of WDOC to train staff and offenders in the prohibitions against sexual misconduct, to fully investigate all allegations and discipline persons who violate this policy, and to implement corrective actions as



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indicated by investigation of cases of sexual misconduct, including referral for criminal prosecution.

III. DEFINITIONS

- A. **Abuse:** *(For this policy only.)* The unlawful or unjustified use of force, coercion, or other actions that jeopardize the physical or mental well being of an inmate.
- B. **Abusive Sexual Contacts [Offender-on-Offender]:** *(For this policy only; As defined by the U.S. Department of Justice, Bureau of Justice Statistics.)*
 - 1. Contact of any person without his or her consent, or of a person who is unable to consent or refuse; and
 - 2. Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.
- C. **Accused:** A person accused of acts prohibited by state statute, Wyoming Department of Corrections' policies, or both.
- D. **Adult Community Correctional Facility or Program (ACC):** A community based or community-oriented facility or program which is operated pursuant to the Adult Community Corrections Act W.S. 7-18-101 through 7-18-115.
- E. **Assault:** *(For this policy only.)* The willful, unauthorized touching of one inmate by another inmate or by staff undertaken with the intent to cause injury or harm or to derive sexual gratification.
- F. **Chief Executive Officer (CEO):** A CEO is identified, but not limited to, the following positions: Director, Deputy Director, division administrators, deputy administrators, wardens, district supervisors, adult community corrections coordinator, and adult community corrections directors.
- G. **Facility:** Any building, structure and grounds areas operated by the Wyoming Department of Corrections which physically houses inmates or office space.
- H. **False Reporting:** Preparing, soliciting, or giving false or misleading information to or about a staff member or about an inmate or offender and representing the statement as fact. Providing information, known to be false, to a government official, the media or a court.



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- I. **Inmate:** Any person under the supervision of the Wyoming Department of Corrections who is not on parole or probation status. An inmate is a person who is incarcerated in any Wyoming Department of Corrections' correctional facility, county jail, municipal jail or in-state/out-of-state contract facilities, to include adult community corrections centers, who is committed to the custody and supervision of the Wyoming Department of Corrections.

- J. **Investigations Unit (IU):** The Wyoming Department of Corrections Central Office unit responsible for providing investigative support and oversight to all Wyoming Department of Corrections facilities.

- K. **Nonconsensual Sexual Acts [*Offender-on-Offender*]:** (*For this policy only; As defined by the U.S. Department of Justice, Bureau of Justice Statistics.*) Contact of any person without his or her consent, or of a person who is unable to consent or refuse; and
 - 1. Contact between the penis and the vagina or the penis and the anus including penetration, however slight; or
 - 2. Contact between the mouth and the penis, vagina, or anus; or
 - 3. Penetration of the anal or genital opening of another person by a hand, finger or other object

- L. **Offender:** A person who has entered a plea of guilty or has been convicted of a misdemeanor or a felony and is committed to the custody or supervision of Wyoming Department of Corrections.

- M. **Retaliation:** (*For this policy only.*) An act of vengeance, covert or overt action, or threat of action taken against staff or an offender in response to the staff or offender's allegation or complaint of sexual misconduct or good faith cooperation in the reporting or investigation of sexual misconduct. Examples of acts of retaliation are unjustified discipline, intimidation, unnecessary changes in work or program assignments, unjustified transfers to other institutions, unjustified placement in involuntary protective custody or unjustified denials of privileges or services, if such actions are motivated by retaliation for the filing of good faith and legitimate complaints of misconduct.

- N. **Sexual Assault:** Any act made criminal pursuant to WYO. STAT. §§ 6-2-302 through 6-2-304.



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- O. Sexual Coercion:** The practice of compelling a person to involuntarily behave in a sexual way (whether through action or inaction) by use of threats, intimidation, or some other form of pressure or force. Coercion may typically involve the actual infliction of physical or psychological harm in order to enhance the credibility of a threat. The threat of further harm may then lead to the cooperation or obedience of the person being coerced.
- P. Sexual Contact:** Touching, with the intention of sexual arousal, gratification, or abuse, of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or of the clothing covering the immediate area of the victim's or actor's intimate parts, as defined by WYO. STAT. § 6-2-301 (a)(iv).
- Q. Sexual Intrusion:** Conduct, as defined by WYO. STAT. § 6-2-301 (a)(vii), which includes:
1. Any intrusion, however slight, by any object or any part of a person's body, except the mouth, tongue or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification or abuse; or
 2. Sexual intercourse, cunnilingus, fellatio, anilingus or anal intercourse with or without emission.
- R. Sexual Misconduct:** (*For this policy only.*) Acts prohibited by this policy, including those defined in this policy as abusive sexual contacts, nonconsensual sexual acts, sexual assault, sexual coercion, sexual contact, sexual intrusion, staff sexual harassment, and staff sexual misconduct.
- S. Staff:** (*For this policy only.*) Any person employed full-time, part-time, or under temporary appointment by the Wyoming Department of Corrections; any person under contractual arrangement to provide services to the department; any person employed by private or public sector agencies who is serving under department-sanctioned special assignment to provide services or support to department programs; and any volunteer or intern providing services to WDOC offenders.
- T. Staff Disciplinary Action:** An action administered for cause not limited to those reasons listed in the State of Wyoming Personnel Rules, Chapter 11, Section 1(b). Disciplinary actions include letters of counseling, written reprimands, disciplinary suspensions without pay, and dismissal.



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U. Staff Sexual Harassment [Staff-on-Offender]: *(For this policy only; As defined by the U.S. Department of Justice, Bureau of Justice Statistics.)*

1. Repeated verbal statements or comments of a sexual nature to an inmate by an employee, volunteer, contractor, official visitor, or other agency representative (excluding inmate family, friends or other visitors);
2. Demeaning references to gender or derogatory comments about body or clothing; or
3. Repeated profane or obscene language or gestures.

V. Staff Sexual Misconduct [Staff-on-Offender]: *(For this policy only; As defined by the U.S. Department of Justice, Bureau of Justice Statistics.)*

1. Any behavior or act of a sexual nature directed toward an inmate by an employee, volunteer, contractor, official visitor, or other agency representative (excluding inmate family, friends or other visitors). Sexual relationships of a romantic nature between staff and inmates are included.
2. Consensual or nonconsensual sexual acts including the following:
 - i. Intentional touching of the genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or gratify sexual desire; or
 - ii. Completed, attempted threatened, or requested sexual acts; or
 - iii. Occurrences of indecent exposure, invasion of privacy, or staff voyeurism for sexual gratification.

IV. PROCEDURE

A. General Guidelines

1. Prevention and Training

- i. All WDOC staff shall be provided mandatory Prison Rape Elimination Act (PREA) training which will focus on the prevention and detection of sexual assault or misconduct against offenders. This training will include:



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- a. Background on the Federal PREA program;
 - b. Instruction on this policy and procedure;
 - c. Identifying how sexual assault and misconduct affects the community, WDOC offenders, and staff;
 - d. Methods for the prevention of sexual misconduct;
 - e. Identifying actual and at-risk victims and predators;
 - f. Reporting and response procedures;
 - g. Identifying means of medical treatment; and
 - h. Instruction on record keeping and confidentiality.
- ii. PREA training for staff at Adult Community Corrections facilities or Programs (ACCs) and staff in the Division of Field Services will be mandatory and shall include the same material as that provided for WDOC correctional facility staff, only aligned for their specific needs.
- iii. It is mandatory that during initial intake processing at a WDOC correctional facility or field service office, offenders will be provided with clear and understandable information pertaining to PREA, both orally and in writing. This shall include information about sexual misconduct, including background information on PREA, prevention, intervention, self-protection, reporting, treatment, and confidentiality.
- iv. Staff must remain alert to sexual aggression or other activity among the offender population. In addition, suspected misconduct of staff or inmates should be reported utilizing, WDOC Form #102, *Staff Report*, to ensure intervention at the earliest level.
2. **Obligation to Report.** WDOC staff and offenders have a duty to report any acts of sexual misconduct against offenders.
- i. WDOC will aggressively respond to, investigate, and support the prosecution of sexual misconduct in Wyoming prisons, contract facilities and ACCs in partnership with law enforcement and county prosecutors.



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- ii. Any WDOC staff that knowingly and intentionally allows or fails to report any acts of sexual misconduct, shall be considered negligent in their job duties.
- iii. WDOC prohibits retaliation against offenders who make good faith and legitimate reports of sexual misconduct incidents. However, offenders who intentionally make false reports of sexual misconduct will be subject to non-retaliatory disciplinary or legal actions.

3. Intake Assessment, Education and Case Management.

- i. WDOC staff will utilize the WDOC Institutional Classification Handbook and the WSP Internal Classification Handbook to ensure each inmate is provided a safe and proper housing assignment.
 - a. As part of the intake process each inmate will undergo a review of any history of sexual abuse/victimization and/or predatory behavior. This review may include a self-report questionnaire for the offender to provide information regarding his/her sexual violence history. It may also include a review by case management staff of all available reports in the offender's base file.
 - b. Offenders will be screened for potential vulnerabilities or tendencies to act out with predatory behavior and housing assignments will be made accordingly.
 - c. If an offender is identified as vulnerable to sexual victimization or as having predatory tendencies, this information will be relayed to mental health staff for evaluation and appropriate treatment.
- ii. All inmates will receive PREA education during the intake process. The PREA Coordinator will provide PREA training to inmates who have completed intake and did not receive PREA training. This will only happen until all inmates are educated. After education to all inmates is complete, all inmates must receive education during intake. The education will include a basic understanding of what PREA is, health and safety risks, identifying sexual assault and misconduct, avoiding sexual assault,



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consequences of committing sexual assault, reporting sexual assault and misconduct, victim services, and resources available to them regarding PREA.

- iii. All information regarding an offender's risk for sexual victimization or predatory behaviors shall be forwarded to the offender's case worker to be included in the offender's case plan. This case plan will travel with the offender throughout his/her term of supervision and serve as a method for information sharing between facilities and field services staff.

4. Sanctions

- i. Sexual misconduct, either inmate/offender-on-inmate/offender or staff-on-inmate/offender, is prohibited regardless of whether either or both of the participants believed the act was consensual. Violators are subject to administrative discipline, criminal sanctions, or both.
 - a. Staff who have been found to have engaged in sexual misconduct may be disciplined under the Wyoming State Personnel Rules up to and including termination. Additionally, staff may be subject to criminal sanctions.
 - b. Offenders are subject to sanctions under the Code of Inmate Discipline, Adult Community Corrections Code of Discipline, or other applicable administrative discipline. Additionally, offenders may be subject to criminal sanctions.
- ii. All allegations of staff sexual misconduct with offenders will be investigated and all substantiated cases shall be turned over to the local County Attorney's Office for possible criminal prosecution.

B. Reporting of Allegations and Incidents of Sexual Misconduct

- 1. **Inmate Reporting.** Initial reporting by inmates, offenders, or their families of alleged instances of sexual misconduct may be made by any of the following means:
 - i. Verbal reports to any staff member, including but not limited to medical, mental health, treatment or religious staff;



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- ii. Reports in writing to any staff member, including but not limited to medical, mental health, treatment or religious staff;
 - iii. Inmates may correspond directly with the WDOC Investigations Unit; or
 - iv. Inmates may call the designated toll free number and leave a voice message.
 - a. The WDOC Duty Officer or designee shall be responsible for checking all messages on the toll free number no less than twice each day and shall initiate actions as noted below:
 - (1) The WDOC Duty Officer or designee shall also contact the appropriate Chief Executive Officer (CEO) and provide him/her with notice of the alleged sexual misconduct.
 - (2) The CEO or designee will initiate an investigation by contacting the WDOC Investigations Unit (IU) with information following placement of the inmates in a secure/safe housing location.
- 2. Staff Reporting.** Any information regarding sexual misconduct that is received by any WDOC staff member, medical, mental health or treatment provider, or any chaplain, shall be immediately reported to the appropriate CEO to initiate the appropriate follow-up actions.
- i. Reports by staff shall be made in writing utilizing the chain-of-command or by sending information directly to the appropriate CEO or other administrative staff person.
 - ii. Staff may report directly to IU whenever they feel that following the chain of command would jeopardize the investigation. However, staff may be asked to justify why the chain of command was superseded for the particular incident.
 - iii. Regardless of any confidentiality obligation (*e.g.*, HIPPA; privileged communication such as therapist-client, doctor-patient, clergyman-penitent; etc.), all staff have an affirmative obligation to report any offender who has reported to them a sexual assault allegation. The staff member must report the relevant information,



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including who, what, when and where, of the allegation. The staff member must report it to their chain of command and a staff report must be completed.

3. Responding to Incidents of Sexual Misconduct

- i.** Alleged actions of sexual misconduct will be considered a Priority I (*i.e.*, serious) incident in accordance with WDOC Policy and Procedure #1.013, *Incident Reporting*, and shall initiate at least the following:
 - a.** The appropriate CEO shall contact local law enforcement immediately when appropriate. All verified incidents of sexual misconduct shall be referred to the local law enforcement agency of jurisdiction for consideration of criminal prosecution.
 - b.** The appropriate CEO shall contact the WDOC IU in all cases where allegations are made for investigation in accordance with WDOC Policy and Procedure #1.014, *Investigations*.
 - c.** Incarcerated offenders claiming sexual assault shall be referred immediately, under appropriate security provisions, to a community medical facility for initial treatment and gathering of evidence in cases that are believed to have occurred within seventy-two (72) hours. Facility medical staff may provide emergency medical care prior to transport. If the incident is reported after the first seventy-two (72) hours, medical staff should determine if the victim needs treatment, but no evidence should be collected by facility medical staff.
 - (1)** With the offender's consent, the examination at the community medical facility shall include the collection of evidence from the victim, using a rape kit approved for this purpose.
 - d.** Appropriate housing decisions shall be made in order to ensure that offenders are not subjected to further victimization. A TRO shall be initiated, pursuant to WDOC Policy and Procedure #3.305, *Temporary Restrictions Order*.



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- e. All offenders not incarcerated, shall be referred to appropriate services within the community.
 - f. Any necessary procedures for evidence collection or security of crime scene shall be followed in accordance with WDOC Policy and Procedure #3.009, *Evidence Collection and Chain of Custody*.
 - (1) In order to prevent cross contamination of evidence, no staff member should have physical contact with both the alleged offender and alleged perpetrator in any potential case of sexual misconduct, prior to completion of a medical examination conducted on the alleged victim and/or the alleged perpetrator for purposes of gathering evidence.
 - (2) First responders should make every attempt to ensure that the crime scene is protected from cross-contamination while ensuring that all emergent needs of staff and offenders are met first.
 - g. The CEO should treat the matter as an allegation of either offender or staff misconduct and proceed accordingly.
4. **Allegations against Staff.** If allegations are made against WDOC staff, the accused staff member may be placed on administrative leave with or without pay, in accordance with the State of Wyoming Personnel Rules, while allegations are being investigated. At a minimum, the staff member shall not have contact with the reporting offender.

C. Confidentiality

- 1. All information and reports will be handled in a manner that protects the privacy and confidentiality of the offender victim and his/her medical and mental health records.
- 2. Institution and field service personnel will interact with the offender victim in an empathetic and professional manner and shall leave solicitation about the details of the incident to WDOC investigators and/or the appropriate local law enforcement authority until completion of the investigation.



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3. Any information pertaining to an allegation will only be shared with WDOC staff or outside affiliations on a “need to know” basis.
4. As stated in this policy, medical staff have the affirmative obligation to report sexual assault allegations.

D. Maintenance of Records

1. The WDOC IU shall maintain logs and records of all allegations and investigations of sexual misconduct to include information on the outcome of any criminal or disciplinary charges. All initial reports of sexual misconduct shall contain information pursuant to WDOC Policy and Procedure #1.013, *Incident Reporting*.
2. Each WDOC institution, ACC and Parole and Probation District Office shall complete WDOC Form #149, *Sexual Misconduct Against Offenders Quarterly Report* and submit to the WDOC PREA Coordinator on a quarterly basis.
 - i. It will be the duty of the WDOC PREA Coordinator to collect all necessary reports and information from completed investigations on sexual assaults and misconduct required by the U.S. Department of Justice, Bureau of Justice Statistics (BJS).
 - ii. The WDOC PREA Coordinator will report to the BJS on a yearly basis. The report shall include the specifications of the Survey on Sexual Violence required under PREA for BJS.

E. Treatment and Follow-Up

1. Subsequent medical treatment for incarcerated offenders shall include testing the offender for sexually transmitted diseases and pregnancy as specified by the WDOC Policy and Procedure #4.303, *Written Exposure Control Plan for Blood-borne Pathogens*, and as specified by the protocols of the facility medical provider.
2. Subsequent mental health treatment for incarcerated offenders shall provide for a screening of the offender to determine if there is a need for immediate crisis intervention and shall include scheduling follow-up sessions with the offender as needed.
3. Upon the time the department is prepared, offenders on probation/parole or in ACCs will be provided a list of area resources that are available at



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the expense of the offender. This material will be provided to all offenders, whether requested or not.

4. Mental health staff shall develop a treatment plan for each sexual assault victim that outlines the scope of services to be offered.
 5. Inmates who refuse treatment shall be contacted every quarter for a calendar year following an incident and again offered counseling services at each contact.
 6. Classification and housing shall be updated to include information from the assault upon completion of the investigation.
 7. Specialty teams such as Sexual Assault Response Team (SART) may be developed to involve specially trained staff in all sexual assault incidents.
- F. Annual Review.** This policy and procedure shall be reviewed annually by the PREA Program Coordinator to make the necessary changes based on its effectiveness from the previous year.

V. TRAINING POINTS

- A. According to the Bureau of Justice, how are nonconsensual sexual acts, abusive sexual contacts, staff sexual misconduct and staff sexual harassment defined?
- B. Who should be trained on this policy and PREA?
- C. Who must staff notify when they receive information regarding sexual misconduct against an offender?
- D. Do WDOC staff and offenders have a duty to report any acts of sexual misconduct against offenders?
- E. What ways can inmates and offenders report sexual assault or misconduct?