



DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS

Program Statement

OPI: DIR
Number: 3310.4H
Date: January 27, 2012
Subject: Sexual Harassment
Against Employees

1. **PURPOSE AND SCOPE:** To implement procedures for reporting, filing, investigating, and adjudicating claims of sexual harassment and/or retaliation against sexual harassment within the District of Columbia Department of Corrections (DOC). This directive applies to employees, contract employees and volunteers under the direction or control of the DC Department of Corrections (DOC).
2. **POLICY.** It is the policy of the DC Department of Corrections to prohibit sexual harassment as well as retaliation for objecting to or reporting incidents of sexual harassment.
3. **NOTICE OF NONDISCRIMINATION.** In accordance with the DC Human Rights Act of 1977, as amended, D.C. Official Code section §2-1401.01 et seq., (hereinafter, "the Act"), the District of Columbia does not discriminate on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
4. **PROGRAM OBJECTIVES.** The expected results of this program are:
 - a. DOC employees will have a clear understanding of what constitutes sexual harassment and retaliation, what the penalties are for engaging in such conduct, and what the proper procedures are for reporting incidents of sexual harassment and related retaliation.
 - b. To explain the Office of the Special Inspector (OSI) which is responsible for investigation of the sexual harassment hotline, conducting investigations and issuing findings as it relates to sexual harassment.
5. **DIRECTIVES AFFECTED**

a. **Directives Rescinded**

PS 3310.4G Sexual Harassment Against Employees (6/14/04)

b. **Directives Referenced.** None

6. **AUTHORITY**

a. Order of the United States District Court in Bessye Neal, et al v. District of Columbia, et al, Civil Action No. 93-2420, dated 6/28/99.

b. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 e-2.

c. 31 DCR 56, "Equal Employment Opportunity Rules Governing Complaints of Discrimination in the District of Columbia Government," dated 1/6/84.

d. Mayor's Order 79-89, "Sexual Harassment", dated 5/24/79.

e. DC Human Rights Act of 1977, as amended, DC Code section 2.1401.01 et seq., (Act).

7. **STANDARDS REFERENCED**

a. American Correctional Association (ACA) 4th Edition Standards for Adult Local Detention Facilities 4-ALDF-7E-01.

8. **DEFINITIONS.** For the purpose of this PS, the following definitions apply:

a. **Adverse Employment Action** — Any negative change in the terms and conditions of an employee's employment. It can include such things as transfers, shift changes, negative performance evaluations, unwarranted discipline, harassment or denial of promotion or shift requests. It also can include the creation of a hostile work environment because the employee engaged in a legally protected activity related to a claim of sexual harassment.

b. **Cease and Desist Order** — An order prohibiting unnecessary contact between the complainant and respondent while an allegation of harassment or retaliation is investigated. However, to ensure the continued efficient operation of the agency, it does not always prohibit interaction between the complainant and the respondent as may be required to carry out the employees' respective duties and responsibilities.

c. **Complainant** – An employee who alleges he or she is the victim of sexual harassment and/or retaliation or who files a sexual harassment and/or

retaliation complaint.

- d. **Disciplinary Action/Discipline** — Action taken against employees who have violated DOC policy, rules or regulations established by the District Personnel Manual (DPM), or any District of Columbia law or regulation.
- e. **Investigators** – Persons, who are assigned by the OSI to conduct inquiries into allegations of sexual harassment and retaliation, determine the facts associated with sexual harassment and/or retaliation complaints filed with the OSI, and make findings of probable cause.
- f. **Respondent** – The employee who is accused of sexual harassment and/or retaliation.
- g. **Retaliation** – For purposes of this Policy Statement, retaliation is defined as taking or threatening to take an adverse employment action against an employee because that employee has engaged in the legally protected activity of reporting sexual harassment.
- h. **Legally Protected Activity** — Resisting, opposing or reporting sexual harassment, making oral or written complaints about sexual harassment, or testifying in, assisting in, or otherwise participating in the investigation of a sexual harassment complaint. Such activities are protected regardless of whether the conduct complained of is ultimately proven to have constituted sexual harassment.
- i. **Sexual Harassment** – Sexual harassment is defined as unwelcome verbal, visual or physical conduct of a sexual nature, such as advances, requests for sexual favors, and other conduct when:
 - 1) Submission to such conduct is made a term or condition of employment, either explicitly or implicitly;
 - 2) Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting such employee;
 - 3) Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance; or
 - 4) Such conduct affects work conditions or creates an intimidating, hostile, or offensive working environment.
- j. **Inappropriate Behavior** – The following list includes examples of sexual harassment. This list is not exhaustive, but is given to illustrate the range of conduct that must not be engaged in at work or during any work-related activities, including those that occur off-site. The list includes acts that are always sexual harassment, acts that may be sexual harassment under certain

circumstances, blatant demands for sex, or acts that may be inappropriate behavior for DOC employees even when not meeting the legal definition of sexual harassment.

k. Verbal Behavior

- 1) Making suggestive or sexual comments about another person's or one's own anatomy, figure, appearance, or clothing;
- 2) Making suggestive sounds, for example, kissing, sucking, groaning, howling or other simulated sex noises;
- 3) Asking personal questions about a person's sex life, sexual preferences, habits or history;
- 4) Subjecting another employee to information about your own sex life, preferences, habits or sexual history;
- 5) Describing sexually explicit or pornographic acts, films, dreams, or fantasies;
- 6) Requesting or demanding sex from another employee who has made it clear that he or she is not interested;
- 7) Turning work discussions to sexual topics;
- 8) Telling sexual or sexist jokes;
- 9) Referring to employees or other persons in sexist or sexual terms;
- 10) Repeatedly contacting an employee at home or initiating contact outside of the workplace about non-work related matters when the employee has made it clear that she or he has no interest in such contact;
- 11) Requesting or demanding sex from another employee who has made it clear that he/she is not interested.

l. Non-Verbal or Physical Behavior

- 1) Looking a person up and down, fixing eyes on sexual parts of anatomy;
- 2) Giving unwanted gifts, letters, notes;
- 3) Making suggestive facial gestures, such as winking, wagging the tongue, throwing kisses, licking lips;
- 4) Simulating sex acts;

- 5) Displaying sexually explicit or sexually suggestive pictures, images, or objects;
- 6) Transmitting sexually explicit, profane, obscene, intimidating, defamatory or otherwise unlawful or inappropriate material in the office, via e-mail, or downloading such materials from the Internet;
- 7) Touching a person's body, hair or clothing;
- 8) Giving a person a massage around the neck or shoulders, hugging, kissing, patting, or stroking a person;
- 9) Touching or rubbing oneself sexually in view of another person;
- 10) Pulling another person's clothing off or up, or sticking a hand down another person's clothes, or undressing in front of or exposing oneself to another person;
- 11) Forcing another person to engage in activities such as dancing, drinking alcohol or coming to one's hotel room uninvited while on travel status; or
- 12) Putting sexually suggestive objects in a person's desk, locker or workspace.

9. GENERAL PROHIBITION AGAINST SEXUAL HARASSMENT AND RETALIATION

- a. Each DOC employee is prohibited from engaging in sexual harassment or inappropriate sexual conduct and is required to report inappropriate sexual harassment or conduct when experienced or observed consistent with the procedures set forth in this policy. Each employee is protected from retaliation for complaining about or witnessing sexual harassment or conduct, as defined above, against another employee.
- b. Any supervisor who receives a verbal or written report alleging sexual harassment or inappropriate sexual conduct must immediately make written notification to the EEO Officer of the DOC and the SI.
- c. Any employee who is found to have engaged in such behavior will be subject to discipline that, according to the severity of the offense, may include termination.
- d. Consistent with all applicable personnel laws and regulations regarding employee discipline, any corrective or adverse action against an employee for sexual harassment or retaliation will be placed in the employee's official personnel file, and will be considered a significant negative factor in DOC

performance evaluations, promotion decisions and consideration for reemployment as set forth in DPM Chapter 8.

10. **OFFICE OF THE SPECIAL INSPECTOR.** The Office of the Special Inspector (OSI) was established on April 30, 2002. Alan Balaran is the Special Inspector. The OSI is located at 1111 19TH Street, N.W., 12th Floor, Washington D.C., 20036; contact number (202) 466-5019, fax (202) 986-8477.
 - a. **Authority of the OSI.** Subject to applicable laws and regulations, the OSI shall investigate all complaints of sexual harassment and/or retaliation related to such complaints. The SI shall investigate and issue findings to the Director or his/her designee.
 - b. **Investigations and Findings.** The OSI will investigate all complaints of sexual harassment and related retaliation and propose findings as to whether sexual harassment or retaliation has occurred. The SI will forward his/her Investigative findings and recommendations to the Director of DOC who will either adopt or reject the investigator's findings and recommendations. If the Director rejects the findings and recommendations, he or she will return the findings to the SI for further proceedings with an explanation regarding the areas of concern and the basis for the reward.
 - c. **Findings of No Probable Cause of Sexual Harassment and/or Retaliation**
 - 1) When the SI recommends a finding of no probable cause, the investigator's Report and Recommendation ("Investigative Report") will be given to the SI. The SI may either remand the Investigative Report to the investigator for further investigation or revisions, or send a copy of the Investigative Report directly to the Director, Complainant and Respondent at the addresses listed on their locator sheets. Receipt will be deemed effective within 3 days of mailing.
 - 2) If the SI determines that there is no probable cause to find that sexual harassment and/or retaliation occurred, the complaint will be dismissed. Complainants may file a complaint with either the EEOC or the D.C. Human Rights Commission.
 - 3) If the SI determines that there is probable cause to find that sexual harassment and/or retaliation occurred, the SI will submit the Investigative Report to the DOC Director for proposed disciplinary action consistent with the DPM Chapter 16.
 - d. **Relief Awarded**
 - 1) The findings of the SI will aid in the final decision of the Director of DOC

on the matter in question. The relief awarded to Complainant by the DOC may include remedial personnel actions (including modifications of performance ratings) and back pay, but will not include compensatory damages, punitive damages, or attorneys' fees.

e. **Responsibility for Policies and Training**

- 1) The DOC ACA/Program Statement Unit implements policies and procedures, consistent with federal and District of Columbia law, as necessary to carry out his/ her responsibilities relating to claims of sexual harassment and/or retaliation.
- 2) The DOC Training Administrator designs and makes available training programs that new employees must attend promptly upon hire, and that current employees must attend at least annually.
- 3) The DOC Training Administrator working with the SI will maintain records of employees who receive sexual harassment/retaliation training.

f. **Hotline**

Employees may contact the Sexual Harassment of Employees hotline to report allegations of sexual harassment/retaliation or to receive information on procedures for pursuing a complaint. The hotline telephone number is (202) 671-2054.

11. **EMPLOYEE COUNSELING.** The SI will coordinate with the Employee Assistance Program (EAP), as well as outside providers when the SI deems necessary, to provide counseling support and referrals to individuals alleging sexual harassment and/or retaliation who request such assistance. Confidentiality regarding services provided will be maintained.

12. **FILING A COMPLAINT WITH THE D.C. OFFICE OF HUMAN RIGHTS (OHR)**

- a. DOC employees alleging sexual harassment should first notify and consult with the DOC EEO Counselor.
- b. The EEO Counselor has twenty-one (21) days in which to seek a solution on an informal basis.
- c. Staff may file formal charges with the Office of Human Rights (OHR) within fifteen (15) calendar days of your final interview with the EEO Counselor.

13. **PROCEDURES**

- a. **Where to File a Complaint**

- 1) Under the procedures established in this Program Statement, the SI has the authority and responsibility to receive and investigate internal complaints of sexual harassment and/or retaliation arising from complaints of sexual harassment.
- 2) All employees considering bringing an action outside the Department of Corrections are urged to consult legal counsel or the relevant agencies regarding his or her rights and any filing obligations. The OSI cannot and will not provide this information.

b. Time Limits

- 1) An employee must initiate the complaint process with the OSI within one year of the incident or behavior being complained of, or in the case of ongoing or continuing behavior, within one year of the most recent incident.
- 2) Employees may also have the right to file complaints outside the DOC with the DC Office of Human Rights (see 31 DCR 56) or the U.S. Equal Employment Opportunity Commission.

c. Combined Complaints of Sexual Harassment and other forms of discrimination or harassment. The SI only has authority to investigate claims of sexual harassment and retaliation arising out of complaints of sexual harassment. If an employee has a complaint that includes other forms of discrimination or harassment, the employee must bring those complaints to other DOC offices. The SI is not required to provide guidance for complaints that does not fall within the scope of this Program Statement or within the jurisdiction of the SI.

d. Procedures For Complaints Submitted to the Office of Special Inspector

- 1) **Complaints:** The OSI will accept and investigate sexual harassment complaints that are submitted by current or former employees, provided they comply with the applicable time limits (see above). Complaints may be submitted in writing or verbally, but employees are encouraged to make their complaints in writing to:
 - a) Any DOC Supervisor/Office Chief/Administrator;
 - b) The DOC EEO Officer or EEO Counselor;
 - c) The DOC Deputy Director; or
 - d) The Special Inspector, either by calling the OSI Hotline at (202) 466-5019, or in writing to Alan Balaran, 1111 19th Street, N.W., 12th

- e) Complaints not submitted directly to the SI and DOC EEO Officer will be immediately forwarded directly to the OSI and the DOC EEO Officer without going through any chain of command. Failure to do so may result in disciplinary action against the recipient of the complaint.
 - f) Any DOC supervisor who receives an oral complaint of sexual harassment and/or retaliation must put the complaint in writing immediately and submit the complaint to the DOC EEO Officer and the OSI. Failure to do so will result in disciplinary action against the supervisor.
- 2) Complaints may be submitted either by employees who believe they have experienced harassment and/or related retaliation, or by witnesses of such conduct.
 - 3) All current and former District of Columbia employees, and particularly DOC employees, are required to cooperate fully and promptly with requests by Investigators to provide interviews and other information.
 - 4) Failure of employees to attend interviews as scheduled by Investigators, and to cooperate in OSI investigations, or failure of DOC supervisors to arrange for employee attendance, will subject the employee or supervisor to discipline. In addition, the SI may dismiss the complaint of any Complainant who does not cooperate with the investigation or who cannot be reached because they have not notified the DOC of their address or telephone number changes.
 - 5) Upon reasonable notice, administrative leave must be submitted to the immediate supervisor time spent at interviews will be credited. If the interview is not scheduled for a time on the employee's regular shift.
 - 6) Complainants and union representatives will be permitted reasonable use of official time for preparation and presentation of the complaint or to attend meetings with the SI or the OSI Investigator and to attend hearings in this matter.
 - 7) Each employee against whom an adverse action has been proposed will be entitled to a reasonable amount of official time to prepare his or her response, not to exceed ten (10) hours of administrative leave. Such preparation will not take place at the employee's duty station or any non-public area of a government office, unless authorized by the agency head.
 - 8) **Temporary/Permanent Personnel Actions.** A DOC supervisor, Office Chief/ Administrator, Deputy Director or Director may make appropriate

adjustments in working conditions of a Complainant (for example, shift, post or schedule changes) while an allegation of sexual harassment and/or retaliation is being investigated or on a permanent basis as remedial relief where the SI determines that there is probable cause that sexual harassment or retaliation has occurred.

- 9) **Mediation.** In appropriate situations as agreed to by the Complainant, Respondent and other interested parties, the OSI may recommend the use of an impartial mediator to assist the parties in fashioning a mutually-agreeable resolution that will result in voluntary withdrawal of the complaint. Where a resolution is not possible through mediation, the Complainant may pursue a formal complaint.
- 10) **Confidentiality.** The SI, hotline employees, and Investigators will keep all pre-complaint inquiries confidential, unless the employee making the inquiry expressly authorizes the OSI to disclose all or part of the matters discussed. Formal complaints, as well as all information gathered or generated in the investigation, will be kept confidential, except that individuals with a “need to know” (such as the Complainant, Respondent, witnesses, and management officials involved in the matter) may receive access to complaints and information gathered in the investigation.

e. **What Employees Can Do if They Think They Have Experienced or Witnessed Sexual Harassment or Retaliation Related to Sexual Harassment**

- 1) To receive information about what action can be taken or simply discuss the situation: Call the OSI Hotline at 202-671-2054 or contact the OSI directly to report the sexual harassment and/or retaliation you experience or observe by you.
- 2) Be sure to specify whether you are initiating a complaint or asking for information, and whether any portion of your conversation may be disclosed to others.
- 3) To file a complaint with the DOC Special Inspector, send it to Alan Balaran, 1111 19th Street, N.W., 12th Floor, Washington, DC 20036, (202) 466-5019. You may also give a complaint to one of the following, who will then forward it to the OSI. Be sure to specify that you are submitting a complaint of sexual harassment and/or retaliation and keep a copy of your complaint.
 - a) Your immediate supervisor;
 - b) DOC EEO Officer or EEO Counselor;

- c) DOC Supervisor/Office Chief/Administrator; or
- d) DOC Deputy Director.

Be sure to specify that you are submitting a complaint of sexual harassment and/or retaliation and keep a copy of your complaint.

14. **RESPONSIBILITIES.** The D.C. Department of Corrections will not condone acts of sexual harassment or inappropriate behavior by staff or inmates. All employees will be informed that sexual harassment is prohibited conduct which will not be condoned, and appropriate corrective action will be taken against persons who engage in sexual harassment or retaliation.

Staff must take seriously all reported statements from their fellow staff alleging claims of inappropriate sexual behavior or claims of sexual harassment or retaliation.

- a. **Special Inspector.** The SI will ensure that complaints of sexual harassment and retaliation for complaining about or witnessing sexual harassment are efficiently and accurately received and investigated as expediently as possible. At the conclusion of the investigation, the SI will issue findings as to whether there is probable cause to find that sexual harassment and/or retaliation has occurred.
- b. **Managers and Supervisors.** All managers and supervisors are responsible for the following:
 - 1) Ensuring that the policies regarding sexual harassment and retaliation are implemented and enforced.
 - 2) Promoting a workplace that is free of sexual harassment and retaliation, and ensuring that complaints of such conduct are promptly forwarded to the OSI in accordance with this Program Statement.
 - 3) Monitoring his/her workplace to ensure that incidents of sexual harassment and/or retaliation are detected promptly and that each employee is aware of DOC's sexual harassment/retaliation policy and complaint procedures.
 - 4) Ensuring that employees who file sexual harassment complaints are protected from retaliation.
 - 5) Maintaining, to the greatest extent possible, the confidentiality of those employees who lodge sexual harassment/retaliation complaints or report evidence of sexual harassment or retaliation.

- 6) Complying with procedures for forwarding complaints, cooperating with investigations of allegations of sexual harassment/retaliation, and carrying out remedial and disciplinary orders of the OSI.

c. **Employees.** Each DOC employee is responsible for the following:

- 1) Ensuring that his or her conduct is free from all forms of sexual harassment or retaliation.
- 2) Refraining from using sexually offensive language, and from possessing sexually explicit or offensive materials (including literature, photographs, drawings), in the workplace.
- 3) Refusing to tolerate or condone sexual harassment and/or retaliation by other employees.
- 4) Cooperating with the OSI or DOC Supervisor/Office Administrators.

15. **PENALTIES**

- a. The Director or his/her designee will be responsible for ensuring that disciplinary action is taken against persons found in violation of the agency's sexual harassment policy.
- b. Managers and supervisors who fail to report sexual harassment or fail to take appropriate action to resolve sexual harassment complaints will be subject to disciplinary action.

16. **DISSEMINATION.** The DOC will ensure that the poster explaining employee rights and procedures for filing complaints under this Program Statement is displayed permanently on all employee bulletin boards (Attachment B).

- a. Copies of this PS will be posted permanently on employee bulletin boards.
- b. Directors and Office Chiefs/Administrators, as appropriate, will ensure that each employee under his/her authority is issued a personal copy of this PS. Receipt of this PS will be documented on the "Acknowledgement Form" (Attachment A).
- c. Each new employee will receive a copy of this Program Statement.

17. **ANNUAL REVIEW AND CERTIFICATION.** This PS will be reviewed at least annually and revised, as necessary, by the SI.

A handwritten signature in black ink, appearing to read 'T. Faust', with a stylized flourish at the end.

Thomas Faust
Acting Director

ATTACHMENTS:

- Attachment A – Acknowledgment Form
- Attachment B – Poster