

# KANSAS DEPARTMENT OF CORRECTIONS

 <b>INTERNAL MANAGEMENT POLICY AND PROCEDURE</b>	<b>SECTION NUMBER</b>  <b>02-124D</b>	<b>PAGE NUMBER</b>  <b>1 of 9</b>
	<b>SUBJECT:</b>  <b>HUMAN RESOURCES: Sexual Harassment</b>	
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<b>APPLICABILITY:</b>	<input type="checkbox"/> <b>ADULT Operations Only</b>	<input type="checkbox"/> <b>JUVENILE Operations Only</b>	<input checked="" type="checkbox"/> <b>DEPARTMENT-WIDE</b>
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## POLICY STATEMENT

Kansas Department of Corrections shall strive to maintain a zero tolerance policy for sexual harassment. Sexual harassment is unlawful, exposes employees, supervisors, managers, and the Department to legal liability, and interferes with a fair and safe working environment. Sexual harassment in any form is prohibited (ACO 2-1C-11; ACI 3-4054-1; APPFS 3-3053) and will be dealt with promptly, by corrective action, preventive action, and disciplinary action, up to and including dismissal.

## DEFINITIONS

**Employee:** Any person employed full-time, part-time, or on a temporary appointment to the Kansas Department of Corrections, including any person employed by an entity under contract to provide services to the Kansas Department of Corrections.

**Sexual Harassment:** A form of sex discrimination, which is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, by males or females against males or females, when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual; or, (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Examples of sexual harassment may include suggestive notes, letters or other written material; graffiti; sexual photographs, computer images or drawings; sexual innuendos; comments about a person's clothing, body, or sexual activities; suggestive or insulting sounds; whistling in a suggestive manner; jokes about sex that denigrate either gender; sexual advances; sexual propositions or invitations; suggestive or obscene gestures; repeated insults against men or women; repeated flirtatious or sexual comments; patting, pinching, brushing, cornering, or other inappropriate touching of the body; spreading rumors of a sexual nature; talking about one's own sexual activity; referring to body parts, including reproductive anatomy; staring at a person's body; and/or leaning over someone at a desk unnecessarily close.

Insulting or offensive conduct that is not sexual in nature could result in a grievance, and may violate other Department policy. However, unless the conduct or words are of a sexual nature, and are hostile, serious or pervasive, and interfere with the employee's ability to perform his or her job, they are not sexual harassment.

**Quid Pro Quo:** A form of sexual harassment, "This for That", which is defined as making conditions of employment, such as hiring, promotion, retention, pay or job assignment, contingent on the employee providing a sexual favor. Even if a supervisor suggests to an employee that he or she will take an adverse job action if the

employee does not submit to a sexual advance, and in the end no adverse job action is actually taken, sexual harassment has occurred.

Unwelcome means behavior unwanted at the time that the employee did not invite or solicit.

Sexually Hostile Working Environment: A form of sexual harassment, which is defined as speech or conduct or actions of a sexual nature, which was not welcome nor encouraged, which would be so offensive to a reasonable person as to create an abusive working environment and/or impair the employee's job performance. The conduct must be unwelcome and severe or pervasive to be illegal. This means that one incident, if severe enough, could create a hostile work environment or that many minor incidents could accumulate, and become pervasive enough to create a hostile work environment. It does not matter whether the harasser intended to be offensive. A hostile work environment can be caused by a co-worker, a supervisor or a manager.

## PROCEDURES

### **I. Expectations**

- A. Every employee has the right to do his or her job in an environment free of sexual harassment.
  - 1. Every employee shall be provided information and training concerning sexual harassment issues to include employee and management responsibility, prevention and proper use of the Department's policy.
  - 2. Supervisors shall discuss the policy with each of their subordinates to ensure they are all familiar with and understand the policy.
- B. Every employee shall be treated with respect and dignity.
  - 1. Every work area shall be free from any form of treatment or work environment based on the submission to or rejection of conduct of a sexual nature.
  - 2. Every employee who reasonably believes he/she has been sexually harassed has the right to make a complaint of sexual harassment without fear of retaliation.
  - 3. Every report or accusation of sexual harassment shall be addressed in a fair and consistent manner.
- C. Managers and supervisors shall set a positive example, shall inform superiors of known instances of sexual harassment that are known or suspected, whether or not a formal complaint is made.
  - 1. The Department expects its managers to report and undertake reasonable action to prevent reoccurrence of even minor behaviors when it knows of them to prevent a pattern of practice from developing consistent with the informal procedure.
    - a. Any conduct of a sexual nature that would offend a reasonable person is wrong.
      - (1) For sexual harassment to occur the victim must have been offended by a reasonable person standard.
      - (2) It does not matter whether the harasser intended to be offensive.
    - b. A sexually hostile work environment can be caused by actions, behaviors or comments of a sexual nature from a co-worker, a supervisor or manager, or outsider visitors during work, if the actions interfere with the performance of the employee at work.
  - 2. When personally witnessed, managers and supervisors shall take immediate corrective action when violations of this policy are encountered.

- a. In addition, any supervisor or manager who engages in sexual harassment, or who enables or ignores known sexual harassment, shall be subject to disciplinary action, up to and including dismissal.
- D. Actions away from work violate this policy when they involve inappropriate actions or behaviors at work related or sanctioned functions and/or if the actions of staff of the Department that occur at other locations are severe enough to reasonably carry over to and interfere with the employee's Departmental work environment.

## **II. Prevention of Sexual Harassment**

- A. It is the responsibility of the Department's managers, supervisors, and employees to create a positive working environment that is free of sexual harassment and retaliation.
  - 1. It is the responsibility of the Department's supervisors and managers to undertake individual action to eliminate sexual harassment when they know, or reasonably should have known about sexual harassment.
  - 2. Supervisors and managers who fail to act under this policy can be disciplined for failing to act.
- B. The appointing authority of each facility and office shall implement specific methods for circulation of this policy on an ongoing basis.
  - 1. The Department's sexual harassment policy, and the methods by which a complaint for sexual harassment may be made, as spelled out in this policy, shall be posted throughout the Department's facilities and offices.
- C. Every employee including all new hires shall receive a copy of this policy and the employee shall acknowledge the receipt, in writing, on the EEO Acknowledgement Form (Attachment A).
  - 1. If and when it becomes necessary for this IMPP to be revised, provisions shall be made for distribution of such revisions to each employee and to each new hire.
- D. Each employee within a correctional facility, in a field office within Parole Services, or in Kansas Correctional Industries shall receive training regarding sexual harassment during his or her initial basic training.
  - 1. Persons employed by DOC Central Office shall receive such training during the initial one-week orientation period.
  - 2. Refresher training relative to sexual harassment shall be provided during annual training or more often if the appointing authority determines that a need for such training exists.

## **III. What to do if you are a Victim or Have Knowledge of Sexual Harassment**

- A. Any employee who believes he or she has been a victim of sexual harassment, or who has knowledge that sexual harassment is occurring is responsible to tell at least one member of the staff designated in this policy.
  - 1. An employee may contact any of the following to report the same:
    - a. Any EEO representative of the office or facility where the employee works or where the harassment is occurring;
    - b. The Manager of EEO/AA in Central Office;
    - c. The Human Resource Director;

- d. The Human Resources Manager of the facility where the employee works;
  - e. The appointing authority or any facility manager or supervisor; or
    - (1) The appointing authority or their designee will assign the complaint to an appropriate EEO representative.
  - f. Through the Department's toll free hotline at 1-844-522-1956.
    - (1) The toll free hotline goes directly to the desk of the Manager of EEO/AA. In order to ensure an adequate investigation is conducted regarding the allegation of discrimination, employees are urged to provide specific and detailed information about the sexual harassment.
- B. Any person listed in Section III.A.1. a. through f. above to whom a report of sexual harassment is made, shall:
- 1. Request that the employee prepare a report of the reported sexual harassment, in accordance with this policy;
  - 2. If the employee is unwilling to make a written report on his/her own, prepare a written report in accordance with this policy incorporating all of the information known; and,
  - 3. Notify the Manager of EEO/AA and when appropriate the appointing authority and/or HR Manager in accordance with this policy.
- C. No employee shall be required to report sexual harassment to his or her immediate supervisor or other designated staff in order for the allegation to be investigated.
- D. The appointing authority of each facility and office shall ensure the posting of a current and complete list of EEO Representatives who may be contacted for reporting sexual harassment by any employee of the facility or office.
- 1. The posting shall include current mailing address, work phone number, electronic address (if applicable), facsimile number (if applicable), or any other means of contact for each person listed.
  - 2. The posting shall be made on employee bulletin boards, in facility or office newsletters, in areas where employees congregate or areas of high employee traffic, or, any other location, which the appointing authority believes will enhance access to the list.
- E. A complaint or report of sexual harassment may be made by any employee, to any of the persons listed at Section III.A.1.a. through f. above, in writing or verbally, by regular mail, by electronic mail, by facsimile, in person, or by telephone.
- F. A complaint or report of sexual harassment may be made by any employee anonymously when sufficient information is provided to investigate the complaint.
- 1. If an employee reports sexual harassment but does not claim to be the victim of the same and asks that his/her identity be protected and remain anonymous, his/her request shall be honored to the extent feasible but the name of the victim must be provided as a sexual harassment finding requires that a behavior be unwanted.
    - a. Knowingly making a false complaint and intentionally providing false information is not a protected action and can result in discipline.
- G. No employee shall be subject to discipline for sexual harassment without that employee being provided with a full and fair opportunity to be heard and/or without a thorough, fair, and objective investigation.

- H. No employee who claims to be the victim of or who reports sexual harassment or participates in a sexual harassment investigation shall be subjected to retaliation.
  - 1. Any employee who has been threatened with, or subjected to, retaliation shall immediately notify his or her appointing authority and/or the Manager of EEO/AA.
  - 2. Any employee who threatens or engages in retaliation of any form against any person for reporting, complaining of, or providing information for an investigation regarding sexual harassment may be subject to discipline, including suspension, demotion or dismissal, if appropriate.
- I. If any employee complains of or reports sexual harassment, the appointing authority shall see that the matter is addressed and/or an investigation is conducted, in accordance with the procedures set out at Section IV. below.
  - 1. If a complaint or report is made against an appointing authority, the complaint or report shall be referred directly to the Manager of EEO/AA who shall determine the appropriate course of the investigation.
- J. If the Department receives notice of an employment related complaint or charge concerning sexual harassment from an outside agency, or in any court, the procedures for processing such a complaint, as set out in IMPP 02-101D, shall be followed.

#### **IV. Investigation of Sexual Harassment**

- A. Any complaint or report of sexual harassment shall be promptly and fairly investigated, and the alleged victim advised of the results of the investigation.
- B. Any person contacted during an investigation regarding sexual harassment shall be instructed that the investigation is confidential, and shall not divulge any allegations, facts or content of the investigation without the proper prior approval of the Manager of EEO/AA.
  - 1. Any person who fails to adhere to this requirement shall be subject to discipline, up to and including dismissal
- C. Informal Process
  - 1. Within five (5) days of a triggering event, employees are encouraged to discuss sexual harassment concerns with their supervisor indicating that they believe their concern to be related to sexual harassment.
    - a. Any concern which names their supervisor may be directed to the next level in the supervisory chain.
    - b. No employee is required to make a complaint to their supervisor.
  - 2. When so notified, supervisors shall undertake reasonable action to look into and address the concern.
    - a. They shall issue a response in writing within five (5) days of being notified, copying the Appointing Authority and the Manager of EEO.
  - 3. If an appropriate manager or supervisor, and/or the EEO Representative can address or achieve a mutually agreeable resolution, they may do so and draft a written report of the resolution at this informal stage.
- D. Formal Process

1. Employees or others who have a complaint or report of sexual harassment or retaliation are encouraged to set out the details of the complaint by completing the KDOC EEO Discrimination/Sexual Harassment Complaint/Report (Attachment B) within 10 days of the event or 10 days of receiving the informal response.
  - a. If an employee complaining of or reporting sexual harassment is unwilling to complete this form, the appointing authority or designee shall complete the form based upon the information available.
  - b. If the Complaint/Report is being completed by the appointing authority's designee, it shall be completed within five (5) working days from the date the complaint or report is made.
- E. The Complaint/Report shall be reviewed by the appointing authority or designee and by the Manager of EEO/AA for an initial determination that the report or complaint is, in fact, on the topic of sexual harassment or retaliation.
  1. If the complained of conduct, taken as true, does not constitute sexual harassment or retaliation, the complaining or reporting party (if known) shall be referred to the Department's general grievance procedure, per IMPP 02-115D.
    - a. If the identity of the complaining or reporting employee is not known, a statement shall be made on the complaint or report form that the complained of conduct, taken as true, does not constitute sexual harassment or retaliation, and the complaint or report shall be maintained by the Manager of EEO/AA.
- F. If it is determined that the Complaint/Report pertains to sexual harassment or retaliation, within seven (7) working days of that determination the appointing authority or designee shall notify the complainant, or the reporting party and the victim (if known that the complaint will be investigated).
  1. As part of this notification, each person notified shall be specifically informed of this policy's requirements concerning confidentiality and non-retaliation, including the penalty for failing to comply.
    - a. Except in cases where a complaint is determined to be without merit or unrelated to EEO, the accused shall be provided the opportunity to respond to each allegation listed in a complaint during the investigatory process.
- G. The appointing authority or designee shall refer the Complaint/Report to the designated investigator. An investigation shall be completed within 20 working days of the referral.
  1. The Manager of EEO/AA is responsible for the complaint procedure and to assure fairness may ask for the assignment of a different representative or choose to individually investigate any complaint of sexual harassment.
- H. All employees with information or material pertaining to the complaint/report shall cooperate in the investigation and must maintain confidentiality.
  1. This provision does not require a complainant or reporter who wishes to remain anonymous to disclose his or her identity.
- I. Information relevant to EEO/AA and sexual harassment investigations is sensitive in nature. With or without a written complaint being received, once sexual harassment is verbally alleged, all sharing of information between prospective witnesses and others shall cease and any breach of confidentiality can result in discipline, which may include termination.
  1. No employee shall engage in any gossip or other unofficial discussion regarding the complaint.

- a. This includes unauthorized management discussion prior to the completion of an investigation.
2. Each employee interviewed in an EEO/AA or sexual harassment investigation shall sign the KDOC EEO/Sexual Harassment Acknowledgement of Confidentiality (Attachment C).
- J. Upon completion of the investigation, the person conducting the investigation shall submit a written report, with copies of all materials, records and summaries of all interviews, and his or her investigative findings to the Manager of EEO/AA.
- K. As soon as possible following receipt of the investigator's report, the Manager of EEO/AA shall review the information contained in the report, seek any additional information, and provide a draft report to the Human Resources Director and the Chief Legal Counsel for their review.
  1. Within 20 working days following receipt of the investigator's report, the Manager of EEO/AA shall forward the final written report to the Appointing Authority, for his/her determination.
  2. The Manager of EEO/AA will provide guidance as to whether the complaint/report appeared to be sustained or not, and recommend what action should be taken, in accordance with Section VI. below.
- L. If at any time during this process, the appointing authority, the Human Resources Director or the EEO Manager determines it necessary to insure the integrity of the investigation, the complaint may be reassigned to a different investigator.

**V. Informal Resolution/Mediation**

- A. A decision to undertake a written resolution prior to the completion of an investigation but after the informal complaint procedure, requires the concurrence of the Manager of EEO/AA and the appointing authority and any final resolution must be approved by the appropriate appointing authority.
  1. The resolution shall be signed by all parties to the agreement.
  2. The original agreement shall be maintained by the Manager of EEO/AA. A copy of the agreement shall be provided to the appointing authority and to each of the parties to the agreement.
- B. If the Manager of EEO/AA and the appointing authority believe that mediation between the parties would be beneficial, mediation shall be recommended. Any agreement reached must be sufficient to likely preclude the reoccurrence of similar inappropriate behavior.
  1. If the victim and accused harasser both agree to mediation, the Manager of EEO/AA and appointing authority shall select a mediator, subject to the approval of all parties.
  2. The parties shall agree on rules of mediation in advance and shall agree to be bound by the outcome of the mediation.
  3. If the parties reach an agreement in the mediation, which resolves the complaint, that agreement shall be adopted as the resolution of the complaint.
    - a. A written agreement shall be signed by the parties, and the mediator, reflecting the resolution.
    - b. This written agreement shall be maintained in the investigation file, and shall be adopted as the resolution of the complaint.

## **VI. Correction of Sexual Harassment**

- A. If an investigation discloses that sexual harassment has occurred, corrective action shall be taken.
- B. Upon receipt of a report and a conclusion that sexual harassment has occurred, the appointing authority shall confer with the Chief Legal Counsel and the Human Resources Director or their designees concerning appropriate disciplinary action.
- C. The appointing authority shall make the final determination about what disciplinary action shall be imposed and what corrective action shall be taken.
- D. The appointing authority or designee shall inform the complainant or victim regarding any found harassment.
  - 1. If the investigation resulted from a report made by someone other than a victim, the reporting employee shall be notified that the investigation is complete. The reporting employee shall not be informed of the specific outcome.

## **VII. Extension of Time Limits**

- A. Time limits set out in this policy may be extended for a period up to 30 working days.
- B. Any person obligated to act within a specified time period, who requires an extension of time, shall contact the Manager of EEO/AA to request the extension.
  - 1. The Department's Manager of EEO/AA shall determine if the extension should be granted and, if so, the length of the extension. This decision shall be final.
  - 2. If an extension is granted, the party requesting the extension shall provide notice of the extension to the complaining or reporting person, the investigator(s), and the appointing authority of the facility or office where the complaint or report originated.

## **VIII. Records, Confidentiality & Reports**

- A. When a sexual harassment investigation has been completed, whether formally or informally, the Manager of EEO/AA shall maintain all records of the investigation.
  - 1. All records shall be maintained in a secure area with limited access in the EEO Office.
- B. The facts and content of the investigation of a report or complaint of sexual harassment shall be confidential and shared only with those with a need to know. Any signed investigatory statements will be kept confidential to the maximum extent feasible.
  - 1. Any employee who fails to maintain the confidentiality and/or anonymity of any complaining or reporting party as described in this policy, shall be subject to discipline, including suspension, demotion or dismissal if appropriate.

**NOTE:** The policy and procedures set forth herein are intended to establish directives and guidelines for staff and offenders and those entities that are contractually bound to adhere to them. They are not intended to establish State created liberty interests for employees or offenders, or an independent duty owed by the Department of Corrections to employees, offenders, or third parties. Similarly, those references to the standards of various accrediting entities as may be contained within this document are included solely to manifest the commonality of purpose and direction as shared by the content of the document and the content of the referenced standards. Any such references within this document neither imply accredited status by a Departmental facility or organizational unit, nor indicate compliance with the standards so cited. The policy and procedures contained within this document are intended to be compliant with all applicable statutes and/or regulatory requirements of the Federal Government and the state of Kansas. 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.

**REPORTS REQUIRED**

None.

**REFERENCES**

IMPP 02-101D, 02-115D  
ACO 2-1C-11  
ACI 3-4054  
APPFS 3-3053

**ATTACHMENTS**

<b>Attachment</b>	<b>Title of Attachment</b>	<b>Page Total</b>
A	EEO Acknowledgment	1 page
B	KDOC EEO Discrimination/Sexual Harassment Complaint/Report	1 page
C	KDOC EEO/Sexual Harassment Acknowledgment of Confidentiality	1 page



**KANSAS DEPARTMENT OF CORRECTIONS**

**EEO DISCRIMINATION/SEXUAL HARASSMENT COMPLAINT/REPORT**

1. Name of Person Reporting or filing complaint: \_\_\_\_\_  
Position \_\_\_\_\_ Facility/Office \_\_\_\_\_  
At what phone number should we call you? \_\_\_\_\_

2. Name(s) of Person(s) Alleged to have committed the actions:

_____	_____
Name	Position Title/Rank
_____	_____
Name	Position Title/Rank
_____	_____
Name	Position Title/Rank

Facility/Office \_\_\_\_\_

3. Date(s) of incident(s): \_\_\_\_\_

4. Describe the incident(s) in detail. Include names, dates, locations, approximate time of day, etc.; (use additional pages and attach if necessary)

5. State the name and phone number or work location of any person(s) who witnessed any of the alleged harassment. Briefly explain what you think they know about this complaint and how they were involved or observed the alleged incident:

6. Have you discussed this alleged incident with any other person(s) within the Department of Corrections? If so, tell us their name(s), and phone number(s) or work location(s) the dates on which such discussions occurred and what, if anything, happened as a result of your discussion.

7. How would you like to see this complaint resolved? What action would you like to see take place?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Complainant/Reporter      Date of Filing      Signature of Person Receiving Complaint      Date Received

=====

**FOR OFFICE USE ONLY**  
Resolution:  
Date of Resolution: \_\_\_\_\_

## KDOC EEO/Sexual Harassment Acknowledgement of Confidentiality

I, \_\_\_\_\_, an employee of \_\_\_\_\_,  
(Print Name) (Facility or Office)

hereby affirm that the Kansas Department of Corrections policies on maintaining confidentiality related to EEO and/or sexual harassment investigations has been made available to me. I further acknowledge that I have read and fully understand the policies as they apply to any involvement I may have in an EEO and/or sexual harassment investigation. I understand that I am not to discuss or divulge any information I have obtained or will obtain in the course of an EEO and/or sexual harassment investigation with anyone other than the Manager of EEO/AA, the assigned EEO Representative(s), the Human Resources Director, DOC legal counsel, investigators from outside enforcement entities, and when appropriate the local Human Resources Manager and/or the Appointing Authority unless directed to do so by the Manager of EEO/AA and that a breach of confidentiality can result in disciplinary action up to and including termination.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness' Signature

\_\_\_\_\_  
Date