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## ADMINISTRATIVE DIRECTIVE

**SUBJECT: Sexual Harassment Investigative Procedures**

**NUMBER: 19-12**

**SUPERSEDE: 13-16**

**APPLICABILITY: All employees**

**REFERENCE: AR 226 - Sexual Harassment**

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**APPROVED: Original signed by Wendy Kelley**

**EFFECTIVE DATE: 2/25/2019**

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### **I. POLICY:**

It is the policy of the Department of Correction that all allegations of sexual harassment (as defined in AR 226) will be handled in an expeditious and thorough manner while maintaining the confidentiality of the allegations, as much as possible.

### **II. PURPOSE:**

Sexual harassment allegations must be investigated, and if sexual harassment is found to have occurred, appropriate action must be taken to ensure it is stopped and does not reoccur.

### **III DEFINITIONS:**

1. Sexual Harassment – Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
  - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.
2. Discrimination – Treatment or denial of normal privileges to persons because of their race, age, sex, nationality or religion.
3. Hostile Work Environment – A situation in which the repeated actions of an employer or coworker has make it impossible for an employee to perform his or her job duties.

#### **IV PROCEDURES:**

An employee must notify a supervisor at any level in the organization, EEO/Grievance Officer at Central Office or Warden, that she/he is being sexually harassed or if he/she is aware of sexual harassment in the work place. The following procedure shall be used by supervisors or EEO/Grievance Officer in the handling of sexual harassment allegations. An employee must notify the Warden after notification to the supervisor or EEO/Grievance Officer.

##### **A. Upon Receiving Allegation:**

Supervisors or EEO/Grievance Officer at Central Office must immediately notify the Warden/Administrator of the allegation.

##### **B. Investigative Stage: The Warden/Administrator, upon receiving the allegation, shall take the following steps:**

1. Advise the complainant that an investigation will be conducted.  
**Note:** This refers to “complainant” but a third party may have reported it.
2. Notify the accused of the allegation and eliminate work place interaction between the complainant and the accused.
3. Avoid taking any action, including involuntary reassignment of the complainant to less desirable job duties, which might be interpreted as punishing the complainant for making the allegation.
4. Keep the investigation as confidential as possible, but avoid guaranteeing absolute confidentiality to any of the parties.

5. The Warden/Administrator shall contact the Internal Affairs Division and may ask for assistance in investigating the allegation.
6. The investigation must be begun and completed promptly.

C. Investigative Steps:

1. Interview the complainant and gather as much information as possible, including specific details of what happened, when, where, and whether there were any witnesses or supporting evidence. Ask the complainant how he/she responded to the alleged conduct, including whether the complainant expressed in any way that the conduct was unwelcome. Ask when the complainant first complained about this conduct and to whom. Advise the complainant that any further alleged misconduct must be reported immediately. Remind complainant to keep the matter confidential pending the investigation.
2. Interview the accused and explain the Department's policy against sexual harassment, the need to investigate, and that any retaliation against the complainant is strictly prohibited. Ask for his/her version of the events, getting as much detail as possible. If the accused denies the allegation or claims that some or all of his/her behavior was welcomed by the complainant, ask for any supporting evidence or witnesses. If the allegation is denied, explore whether the complainant would have any motive to fabricate an allegation. Remind the accused to keep the allegation confidential pending the investigation and to avoid all contact with the complainant.
3. Interview any witnesses who have been identified. Consider interviewing other employees of the same sex as the complainant who have worked with the accused, to see whether they had any similar experiences. Remind witnesses to keep information confidential pending the investigation.

- D. Evaluate Evidence: After gathering as much information as feasible, evaluate the evidence to arrive at a conclusion. Consider the demeanor of the complainant and the accused, whether there are any inconsistencies in either of the stories, any possible motives for fabrication, the statements from witnesses, whether there have been any similar allegations asserted against the accused, and any other available evidence. The complainant's burden or proof is met if the evidence as a whole makes it more likely than not that the allegation is true. It is not necessary that the allegation be proven "beyond a reasonable doubt."

If the investigation is inconclusive, disciplinary action is not warranted, but the accused should be counseled that sexual harassment will not be tolerated and that actions will be taken if any harassment occurs in the future. The Warden/Administrator should consider taking appropriate actions to minimize future contact between the complainant and the accused. The accused should be advised that even a baseless complaint can give rise to disciplinary action and liability should there be any retaliation.

If the investigation substantiates the allegation, disciplinary action must be taken against the accused in accordance with the appropriate Administrative Directive on employee conduct standards. The Warden/Administrator should consider the seriousness of the harassment and history of similar problems on the part of the accused. The corrective actions must be reasonably calculated to put an end to the harassment. If the accused is not discharged, he/she should be warned that any future harassment or retaliation may result in discharge. The Warden/Administrator should take any other appropriate action to avoid further problems between the two affected employees.

- E. Report: A written report should be prepared and filed with Internal Affairs summarizing the allegation, the accused's response, other evidence, all conclusions, and the action to be taken. The Warden/Administrator should then inform the complainant and the accused of the results of the investigation, i.e., whether the allegation was substantiated or not substantiated. After concluding the investigation, and taking any immediately appropriate corrective actions, the Warden/Administrator should continue to monitor the situation to ensure that no further problems develop.
- F. A staff member who observes conduct that constitutes sexual harassment, even if no such allegations are made by the victim(s), must make a report to the Warden/Administrator.
- G. If the Warden/Administrator is the subject of a sexual harassment allegation, the term "Warden/Administrator" in the preceding subsections should be replaced with that person's supervisor or other appropriate official higher in the chain of command.
- H. Policy Dissemination: Policy will be distributed to all employees of the Department of Correction.

**EMPLOYEE ACKNOWLEDGEMENT OF RECEIPT  
OF THE ARKANSAS DEPARTMENT OF CORRECTION  
ADMINISTRATIVE DIRECTIVE  
INVESTIGATION PROCEDURES FOR SEXUAL HARASSMENT  
ALLEGATIONS**

I have received a copy of the Administrative Directive, Investigation Procedures for Sexual Harassment Allegations, and understand that it is my responsibility to read and become familiar with herein.

If I have questions regarding this information, it is my responsibility to contact the EEO/Grievance Officer at the Central Office or Unit Human Resource Manager for assistance and/or explanation.

\_\_\_\_\_  
Employee Name (Printed)

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Social Security #

\_\_\_\_\_  
Unit

\_\_\_\_\_  
Date

Distribution:    White:    Human Resources  
                      Yellow:    Unit Personnel File  
                      Pink:     Employee Copy