

Jim Doyle
Governor

Matthew J. Frank
Secretary



Mailing Address

3099 E. Washington Ave.
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 240-5000
Fax (608) 240-3300

State of Wisconsin Department of Corrections

EXECUTIVE DIRECTIVE 16-A

August 2006

SUBJECT: Staff Sexual Assault of Offenders

I. Background

State law, Department of Corrections (DOC) policy and sound correctional practice prohibit corrections employees from engaging in any sexual contact or sexual intercourse with offenders under the custody and control of the Department. Under the current law, if a corrections employee has sexual contact or sexual intercourse with offenders it is deemed to be sexual assault.

Section 940.225(2)(h) Wis. Stats., makes it a criminal offense for correctional staff members to have sexual intercourse or sexual contact with an individual confined in a correctional institution. Similarly, §940.225(2)(i) Wis. Stats., makes it a criminal offense for probation, parole, or extended supervision agents to have sexual intercourse or sexual contact with individuals they are supervising.

The Department's policy is zero tolerance toward staff sexual assault of offenders. Allegations of staff sexual assault, except as provided in III. B below, will be referred to law enforcement for investigation. Staff who are found to have engaged in such conduct will be terminated from employment and those criminally convicted of this offense may be fined up to \$100,000 and imprisoned up to 40 years.

Under §940.225(4), consent is not an element in a criminal case of staff sexual assault of an offender. The law presumes that consent is impossible because of the unequal power relationship between staff and offenders.

All allegations of staff sexual assault of offenders will be treated seriously. The DOC response to allegations of staff sexual assault of offenders will be to determine the merits of the allegations, consistent with the following goals:

- Protection of victims from further staff sexual assault, retaliation, or intimidation;
- Preservation of the integrity of criminal and personnel investigations;
- Protection of staff against false accusations of sexual assault of offenders;
- Support for victims so that reporting of sexual assault is not deterred; and
- A fair and just resolution of allegations.

II. Definitions

A. Offender means any person who is under the supervision of the Department of Corrections, including juveniles, inmates, probationers, parolees, or persons on extended supervision.

B. Sexual assault means any sexual contact or sexual intercourse as defined by §940.225(5)(b) and (c), and §939.22(36), Wis. Stats., as follows:

1. Sexual Contact:

- a.) Intentional touching by the offender or staff member, either directly or through clothing by the use of any body part or object, of the offender's or staff member's intimate parts if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the offender or sexually arousing or gratifying the staff member or if the touching contains the elements of actual or attempted battery.
- b.) Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the staff member upon any part of the body clothed or unclothed of the offender if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the offender or for the purpose of sexually arousing or gratifying the staff member.

2. Sexual Intercourse:

Sexual intercourse requires only vulvar penetration and does not require emission. Sexual intercourse also includes cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the staff member or upon the staff member's instruction. The emission of semen is not required.

C. Staff member means:

- 1. An individual who works at a correctional institution, including volunteers; or
- 2. Any probation, parole or extended supervision agent who supervises the offender, either directly or through a subordinate in his or her capacity as a probation, parole or extended supervision agent, or who has influence or has attempted to influence another probation, parole or extended supervision agent's supervision of the offender.

D. Personal Search (also known as a "pat search") means a search of an inmate, including, but not limited to, the clothing, frisking the body, and an inspection of the mouth.

III. Law Enforcement Notification

- A. Any statement by an offender, DOC staff member, or others, alleging sexual contact or sexual intercourse by a DOC staff member, except as provided in III. B., shall be reported to supervisory staff who will notify the Warden, Regional Chief or Superintendent, who will notify local law enforcement of the allegations and the known facts.
- B. An inmate allegation of staff sexual contact involving a personal search authorized under DOC Administrative Code section 306.17 shall be reported to law enforcement only if the Department's internal investigation substantiates a violation of this Executive Directive. The internal investigation shall be commenced promptly. The authority responsible for making the determination regarding referral to law enforcement shall be the institution Warden, Superintendent or Regional Chief, as applicable.

- C. The Warden, Regional Chief, Superintendent, or his/her designee shall cooperate with law enforcement to ensure that evidence needed by law enforcement to complete an investigation is secured and preserved.
- D. The Division Administrator shall be notified when law enforcement is notified of allegations of DOC staff sexual contact or sexual intercourse with an offender and when further formal steps in the criminal process occur.
- E. The Divisions shall maintain records of all law enforcement contacts related to DOC staff sexual contact or sexual intercourse with an offender/offenders.

IV. Internal Investigation

- A. A DOC internal investigation of allegations of staff sexual assault of an offender will proceed whether or not a law enforcement investigation is opened. If a law enforcement investigation is opened, DOC will coordinate with law enforcement as to the timing and process of the investigations to ensure the integrity of the internal and law enforcement investigations.
- B. The version of the Oddsden Warning given to DOC staff in the course of an internal investigation of staff sexual assault of an offender shall be coordinated with law enforcement to ensure that evidence is not obtained in a manner which may compromise the criminal investigation of staff member being investigated for violation of §940.225(2)(h) or 940.225(2)(i), Wis. Stats.
- C. The DOC disciplinary process may proceed prior to the conclusion of a criminal investigation or proceeding.
- D. DOC shall take whatever personnel actions, up to and including termination, it deems appropriate based on the results of its investigation, regardless of the outcome of any criminal investigation or proceeding. Staff who are found to have committed a sexual assault will be terminated from employment.
- E. The Administrator of each Division will maintain central records of all allegations, investigations, and dispositions involving staff sexual assault.

V. Staff and/or Offender Placement Pending Investigation

- A. The Warden, Regional Chief, or Superintendent, in collaboration with the Division Administrator, and consistent with the goals set forth in Section I above, shall take appropriate action as to staff and offender placement during an investigation. Consideration will be given to the nature of the allegations, the safety of the alleged victim, and preservation of the integrity of the investigation. The Appointing Authority shall separate the accused staff from the alleged victim to protect the alleged victim, to prevent victim intimidation and retaliation, to protect accused staff against claims of inhibiting the investigation or intimidating the accuser, and to preserve evidence. Options for separating the accused staff member from the alleged victim may include:
 1. Transfer of the alleged victim to another unit, location or agent;
 2. Internal reassignment of the staff member; or
 3. Placement of the staff member on administrative leave.
- B. Until completion of the investigation, segregation or temporary lock-up (TLU) of an inmate or juvenile who is an alleged victim of staff sexual assault in an institutional setting should not be presumed. No inmate or juvenile who is the alleged victim of staff sexual assault should be placed in segregation or TLU unless:
 1. Extraordinary circumstances exist requiring the protection of the alleged victim during the investigation and such placement is approved by the Division Administrator;

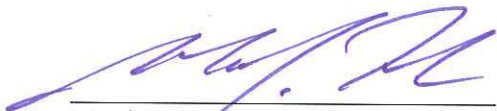
2. After the completion of an investigation, it is determined that the inmate knowingly provided false information or otherwise violated the administrative code or conditions of probation, parole or extended supervision; or
3. The inmate or juvenile is already in segregation or TLU for unrelated conduct.

VI. Offender Discipline Pending Investigation and Notification of Victim Services

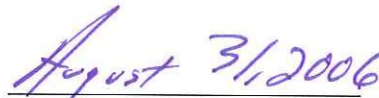
- A. No disciplinary action shall be taken against the offender unless, as a result of an investigation, it is determined that the allegations were false or that the offender violated the administrative code or conditions of probation, parole, or extended supervision. If the DOC determines that the offender is a victim of staff sexual contact or sexual intercourse, the offender shall not be disciplined.
- B. If allegations of staff sexual assault are later proven, and it was determined that an inappropriate classification was made or an inappropriate sanction was taken against the victim, DOC shall assure that the victim's former classification is restored and any inappropriate disciplinary records are expunged.
- C. Upon notification of the allegations, the Warden, Regional Chief, or Superintendent shall provide the offender information about victim services available in their local jurisdiction. If the allegation involves a personal search authorized under DOC Administrative Code section 306.17, information regarding victim services shall be provided if the Department's internal investigation substantiates a violation of this Executive Directive.

VII. Employee Statement

- A. All Department of Corrections employees shall sign and return to their supervisors a Form DOC-1558 acknowledging receipt of the staff sexual assault of offender's policy. New employees shall complete and return Form DOC-1558 within the first 14 days of employment with DOC.



Matthew J. Frank
Secretary



Date