

Addressing Staff Sexual Misconduct in Community Corrections
Audio Teleconference
Broadcast July 14, 2004

Supplemental Materials

- **Red Flags**
- **The Dirty Dozen**
- **Policy Development Guide**
- ***“Addressing Sexual Misconduct in Community Corrections”***
an article from the APPA Journal, *Perspectives*, Spring 2003

Red Flags



- Horseplay, overly familiar interaction between employees and offender
- Unusual caseload activity (transfers to or from the caseload, early terminations, unlikely violations of conditions)
- Ignoring violations or being blind to a particular offender's actions
- Unusual amount of office visits by an offender
- Unusual amount of field visits to a particular offender
- Employee isolation from other employees
- Over-identifying with an offender
- Employee in personal crisis (financial, divorce, ill health, death in family)
- Granting special favors or requests for an offender
- Employee consistently working more overtime than anyone else
- Employee being overly concerned about a particular offender
- Employee cannot account for their time
- Employee always volunteering for extra work or overtime
- Employee intervening or helping with offender's personal life, legal affairs, etc.
- Conversations between an employee and offender or between employees that are sexualized in nature or refer to physical attributes or appearance
- Employee discussing personal information with offender
- Drastic behavior change on the part of an offender or employee
- Rumors about a particular offender or employee
- Frequent absences or illnesses of particular employees
- Employee accessing files, computer data banks, logbooks, or other records when not related to their own cases, or an excessive amount of this kind of activity
- Frequent problems with particular employee concerning off-duty activities
- Employee having more than the necessary knowledge of an offender's personal life
- Employee being involved with offender's family

The Dirty Dozen

1. Do you find yourself looking forward to seeing a particular offender/client?
2. When it comes to a particular offender, are you reluctant to close a case or transfer supervision to another officer?
3. If you run into an offender at a local restaurant or bar, do you think it is acceptable to sit down and share a meal or drink?
4. Have you ever spoken to a peer and tried to convince that person to give a certain offender on their caseload “a break” because you know the offender personally?
5. Have you ever failed to report, or even considered not reporting, a violation of supervision because of your relationship with a client?
6. Have you done anything with someone you supervise that you would not want your family or supervisor to know about?
7. Have you discussed your personal life with or sought personal advice from someone you supervise?
8. Do you have thoughts or fantasies of being with a particular offender or client?
9. Have you ever done a “favor” for an offender, such as loaning them money or intervening with the offender’s employer; or have you asked them to do a favor for you?
10. Have you told an offender/client sexual jokes, or allowed them to tell you sexual jokes?
11. Have you become particularly friendly with a member of an offender’s family? Do you plan field visits for times when they will be home, or without any official need to see them?
12. Do you find that if you knew an offender before they were placed on supervision, such as attending the same school or same church, you are more friendly with them?

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Staff Sexual Misconduct with Offenders: Policy Development Guide For Community Corrections Administrators

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Introduction

Staff sexual misconduct with offenders is a challenging issue in corrections. Custodial sexual misconduct is illegal in 47 states. Currently, 25 states have some statute that criminalizes sexual misconduct in this setting. Although not as many states have specific statutes regarding misconduct in the community corrections setting, misconduct is no less a problem.

For more information on the history of this issue, along with a brief exploration of agency culture, legal issues, operational practices and investigations - see the attachments to this Guide.

You may also access NIC's Information Center at www.nicic.org.

Staff sexual misconduct in community corrections:

- Jeopardizes the integrity and credibility of the agency and its employees;
- Increases stress and trauma for all involved;
- Undermines the public's support;
- Exposes the agency and employees to liability;
- Creates a hostile work environment;
- Compromises professionals;
- Victimizes the already vulnerable;
- Violates the law in many states,
- Diminishes legislative support for funding and reforms; and
- Creates mistrust among employees.

Staff sexual misconduct may be a random incident involving a "bad apple" employee, or it may be indicative of a breakdown of the agency's culture, management and operational systems. Yet, how does an administrator know? What are the strategies to prevent misconduct as well as effectively investigate allegations?

The National Institute of Corrections has worked since 1994 to address staff sexual misconduct through development of resources to improve policies and procedures, staff training and investigations. The strategies that have emerged through this initiative as critical to addressing sexual misconduct are:

- Policies that establish the agency's zero tolerance for sexual misconduct;
- Definitions of prohibited behavior that are specific for both employees and those offenders under supervision;

- Multiple ways for employees and offenders to report allegations;
- Operational procedures that support zero tolerance;
- Strong investigative policies and protocols;
- Training of employees, volunteers, and contractors; and
- Orientation of offenders and other stakeholders to the agency's policies.

This Policy Development Guide is an outgrowth of NIC's work with community corrections professionals, jails and prisons. While NIC does not endorse a specific set of policies and procedures, this document provides tools for administrators to assess their own organization and implement strategies to prevent staff sexual misconduct.

Few agencies will escape allegations of sexual misconduct. An agency that has taken steps to evaluate operations and implement effective strategies before an allegation arises will be in a better position to successfully investigate the allegation than an agency that reacts only after an allegation surfaces. By using this Guide agencies can be proactive by identifying and correcting deficiencies, preventing sexual misconduct and preserving a safe working environment.

Using this Guide

This Guide is designed to help you analyze your current policies and procedures relating to staff sexual misconduct with offenders. By reviewing and answering the questions included in this Guide about your current operations, administrators can identify both potential revisions to current procedures, as well as identifying topics for further review. Each question points the reader to the page number(s) where additional information can be found.

Effectively addressing staff sexual misconduct is more than establishing one policy that prohibits illegal and unprofessional behavior. While this is an essential first-step, administrators need to carefully review operations and identify areas of the agency's strengths and weaknesses to prevent, address, and investigate misconduct. Operational practices must support the agency's zero tolerance policy on staff sexual misconduct.

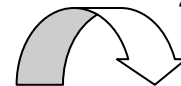
The range of administrative and operational issues that potentially impact sexual misconduct is large. For example:

- Defining professional boundaries;
- Discretion and autonomy of employees;
- Appreciating the conflict inherent in effective intervention models;
- Clarifying the expectations of on-duty and off-duty behavior of employees and offenders;
- Defining the limits of personal association;
- Guiding collateral contacts;
- Understanding the imbalance of power; and Clarifying the issue of consent.

Consideration by agency leaders of the wide-range of issues associated with sexual misconduct will better prepare the organization to evaluate operations with an eye toward prevention. Finally, and importantly, the agency's practices must be consistent with written policies and procedures.

For example:

<u>Policy Question:</u>	Yes	No	Page #(s)
Are applicants advised of the zero tolerance policy prior to hire?	Yes	No	19



Go to page 19 to find pertinent information

Employee Recruiting, Screening and Hiring

The agency's background investigation procedures identify past behaviors of applicants including violence, sexual abuse, domestic battery, and other indicators of inappropriate behaviors. If the agency uses pre-employment psychological testing, it has been validated.

Applicants are informed of the agency's policies regarding sexual misconduct.

How Do I Know If My Agency Needs a Policy?

Administrators of community corrections organizations have an obligation to provide staff with specific direction regarding all aspects of operations – including defining professional boundaries with those supervised by the agency, as well as with collateral contacts such as victims and families. While it seems chilling to acknowledge that some staff might not know their professional boundaries, there is sufficient evidence to support the view that staff needs more direction. Defining prohibited behaviors and holding everyone responsible is also a part of the prevention strategy.

For the purposes of this Guide, community corrections is defined as including, but is not limited to public entities who provide the following services:

- Probation and/or parole services
- Pre-trial supervision
- Day reporting
- Residential treatment
- Half-way and/or quarter-way houses
- Electronic monitoring
- Education, work or other furlough
- Conditional release
- Mandatory supervised release
- Restitution centers

This Guide will also be helpful to public agencies who contract with private organizations to provide services to offenders.

Some questions to ask yourself in determining if your agency needs to establish, revisit or update policies and procedures regarding professional boundaries and staff sexual misconduct are:

1. Does your agency's code of conduct specifically prohibit sexual misconduct or does your code of conduct for employees include only general prohibitions about being "over-familiar with offenders" or "conduct unbecoming"?
2. Do your agency's policies and procedures specifically define prohibited behaviors?
3. Do employees have, through training or experience, the skills they need to safely and effectively manage offenders, deal with the multiple roles when supervising offenders, and handle particularly manipulative offenders?
4. Have investigations into allegations of sexual misconduct been sidetracked because they end in "he said/she said"?
5. Are you concerned about a "sexualized work environment" or employee/employee romantic or inappropriate relationships impacting the operations of the office, employees and agency?

6. Has your agency received allegations of misconduct?
7. Are offenders and their family members oriented to the agency's policies and procedures regarding sexual misconduct, and how to report allegations of misconduct?

These are broad questions that might indicate that your agency needs to review current practices, and that employees and/or offenders need more direction.

What is Staff Sexual Misconduct?

Sexual misconduct is about more than employees having sex with offenders. Sexual misconduct is a wide range of inappropriate behaviors, perhaps associated more with the exercise of power than to sex. In corrections settings, offenders under the supervision are not capable of consenting to have sex with staff, just as those individuals with diminished mental capacity and juveniles are deemed unable to consent. The imbalance of power between those who supervise offenders, or those in a position to affect outcome of supervision, and the imbalance of power means the offenders cannot consent. Setting the tone in the organization that sexual misconduct seriously compromises safety and security, and that it is not tolerated, helps establish an environment that prevents misconduct.

Staff sexual misconduct is not just about violations of law or policy by male staff and female offenders. Many agencies find inappropriate relationships between male employees/female offenders, female employees/male offenders, and same sex relationships. Agencies who triage their policies with an eye toward prevention no matter the gender of the staff or the offender, will improve their opportunities for prevention.

Definitions

These definitions are intended as **examples only**.¹ As agencies develop definitions to include in their policies and procedures they should review their state statute, and consult with legal representatives and human resources professionals. Administrators are urged to develop definitions that are relevant for their agency responsibilities, taking into account the organizational structure and various forms of services provided.

Sexual Misconduct: *Any behavior or act of a sexual nature directed toward*

- a person under the care, custody, or supervision of the department
- any collateral contact of the above, including but not limited to: family members, employers, friends, and other close associates who have official contact with the department/agency on behalf of the person under the care, custody or supervision of the department/agency;

¹ "Training Curriculum for Investigating Allegations of Staff Sexual Misconduct with Offenders", Center for Innovative Public Policies, Inc. October 2000. Definitions used with the permission of the authors.

- victim
- or other person with whom the following has official contact as a result of their duties and responsibilities on the job,
by a department/agency
- employee;
- volunteer;
- visitor;
- contractor or service provider;
- intern;
- treatment provider;
- or other agency representative working in an official capacity.

Sexual misconduct includes but is not limited to acts or attempts to commit acts of

- sexual assault;
- sexual abuse;
- sexual harassment;
- sexual contact of the genitals, breasts or other intimate part of the body;
- conduct of a sexual nature by implication;
- obscenity or unreasonable invasion of privacy;
- conversations or correspondence which suggests a romantic or sexual relationship between parties in the groups referenced above.

Sexual Abuse – Includes, but is not limited to, subjecting another person to any sexual act or contact between an employee, volunteer, contractor, or agency representative, and an offender or client, by force, persuasion, inducement, or enticement; any sexual act or contact in which an employee, volunteer or agency representative participates or forces any offender or client to engage; subjecting another person who is incapable of giving consent by reason of their supervision or custodial status, physical or mental state; or rape, sexual molestation, prostitution or other form of sexual exploitation.

Sexual Assault – Any sexual touching or contact, including but not limited to rape, sodomy or unlawful touching (please refer to your state's relevant statutes).

Sexual Contact – Behavior that includes, but is not limited to, all forms of sexual contact, intentional sexual touching or physical contact in a sexual manner, either directly or through clothing, of the genitalia, anus, groin, breasts, inner thighs, buttocks, with or without the consent of the person; or any touching or inappropriate viewing with intent to arouse, humiliate, harass, degrade, or gratify the sexual desire of any person. [Note: agencies should consider developing specific policy regarding: touching, hugging, kissing, fondling, etc. between employees and offenders, employees and clients, treatment providers and offenders, contractors and offenders, volunteers and offenders, and interns and offenders.]

Sexual Harassment – Includes, but is not limited to, all of the following, whether by employees, volunteers, contractors, other agency representatives, or offenders: sexual advances; sexually offensive language, comments or gestures; influencing, promising or threatening any offender's or employee's safety, supervision status, conditions of supervision, custody status, or privacy, in exchange for personal gain or favor of a sexual nature; creating or encouraging an atmosphere of intimidation, hostility or offensiveness as perceived by any individual who observes the sexually offensive behavior or language.

Sexualized Work Environment - A work environment in which the behaviors, dress, and speech of either employees and/or offenders create a sexually charged workplace. Sexually explicit talk, inappropriate e-mails, posted cartoons, jokes, or unprofessional dress characterizes a sexualized work environment. In a sexualized work environment, often employee off-duty behaviors, dating, and other activities intrude into the everyday work environment. In a sexualized work environment talk or actions have sexual overtones. A sexualized work environment severely erodes professionalism and professional boundaries.

Offender - Any person committed to the supervision, care or custody of the correctional organization by any court or through judicial sanction. This definition includes offenders assigned to programs such as probation, parole, electronic monitoring, pre-trial release, alternatives to incarceration, work or educational release, or in any capacity where employees are supervising the individual.

Employee/Staff- Any person compensated by the agency for working full-time, part-time, or by paid internship.

Clients – Persons with whom employees have official contact as required for the supervision of offenders, such as offenders' family members, close personal friends and employers; victims and victims' families; and other persons

Collateral Contact - Any person with whom an employee of the agency may come in contact (other than offenders) for official reasons concerning an offender under the care, custody or supervision of the agency. Collateral contacts may include, but are not limited to: offenders' families, friends and associates; offenders' employers; treatment providers, medical providers; offenders' teachers, instructors, trainers, and supervisors; volunteer coordinators; attorneys; and judicial personnel.

Visitors - Any person having access to any of the agency's offices and workplaces, for personal and/or official reasons.

Volunteer - Any person who, by mutual agreement with the agency, provides service without compensation, or who voluntarily assists offenders or the agency in the course of the volunteer's duties.

Contractors - Any person or corporation, other than an employee, providing a service to the agency (i.e., supervision; treatment; custody responsibilities at facilities such as treatment centers, restitution centers, and others; drug and mental health treatment providers; vocational and educational programs; etc.) for an agreed upon form of compensation. Contractors may include other local government agencies that contract with the agency, or who have contact with those under supervision, care or custody of the agency in the community setting.

Hostile Work Environment - Harassment, speech or conduct that is based on the judgment of a reasonable person, severe or pervasive enough to create a hostile or abusive work environment, based on race, religion, gender, national origin, age, disability, veteran status, or, in some jurisdictions, sexual orientation, political affiliation, citizenship status, marital status, or personal appearance.

Violation of Privacy Rights of Offenders – This includes, but is not limited to, the act or the attempted act of observing or interfering with an offender's personal affairs without a reasonable need to do so for the immediate safety and security of the offender, employees, or others within the agency. Acts that may also be included consist of: reading personal mail or written materials of an offender when not required for supervision, safety and agency security, office or persons therein; searches of the offender not required to ensure compliance with the conditions of supervision and the safety of employees and other clients and offenders.

Zero Tolerance - An agency's policy that commits it to making it unacceptable for any employee, volunteer, intern, contractor or vendor to engage in any action that the organization defines as sexual misconduct.

These definitions of the various elements of sexual misconduct are intended to help agencies begin the process of developing or revising policies and procedures. This Guide provides further information about what agency administrators can consider as they develop or update the policies and procedures.

Red Flags – Are We Paying Attention?

The National Institute of Corrections has conducted training for several years on the topic of staff sexual misconduct. During the training, participants are asked to list those behaviors that they see as **RED FLAGS** -- events, actions or activities that should have tipped them off sooner to the possibility of staff sexual misconduct. Here are samples of participants' comments.

- Over-identifying with the offender ("my offender") or their issues (i.e. blind to offender's actions)
- Reluctance to closely supervise particular offender(s)
- Early termination of supervision outside of normal practices
- Horse-play, interaction with sexual overtones between employees and offenders
- Offenders knowing personal information about employees
- Employee isolation from others
- Offender has letters or photos of employees
- Employee granting special requests or showing favoritism
- Offenders appearing in the office when not scheduled or required
- Employee spending an unexplainable amount of time with an offender
- Excessive telephone calls to and from employee/offender with no appropriate official purpose
- Employee in the office during "off hours"
- Employee overly concerned about an offender
- Drastic change in behavior or appearance of an offender or employee – dress, make-up, hair
- employee allowing offender to perform a service such as car repair, housecleaning, etc.
- High/low number of offender grievances
- Employee intercepting offender violation reports, or attempting to persuade another employee from violating the offender
- Employee can't account for time
- Employee's family being involved with offender's family
- Employee transporting offenders in their car to appointments, etc.
- Employee in personal crisis (divorce, ill health, bankruptcy, death in family)
- Employee consistently works more overtime than peers
- Employee has excessive knowledge about an offender and his/her family
- Employee intervening, or helping with the offender's personal life, legal affairs, etc. when it is not necessary to the supervision of that offender
- Employee accepting or giving gifts to or from an offender
- Employee testifying for an offender, or requesting special treatment for an offender
- Overheard conversations between employees and offenders which are sexualized in nature, or refers to the physical attributes of staff or offenders
- Sexual or personal banter between employees, or employees and offenders
- Offenders using employee's first name when it is not the standard procedure in the agency or office.

Triage Your Agency's Operations

Review each question as it relates to your agency's policies, procedures and operational practices on staff sexual misconduct. If your response is "no", you can refer to the page number(s) immediately following for further direction and information.

Administrative and Management Practices

Policy Question	Yes	No	Page#(s)
Does the agency have a zero tolerance policy?	Yes	No	17
Does the policy include offenders/clients, as well as the family members of clients and collateral contacts?	Yes	No	17
Is there a specific policy regarding staff sexual misconduct that covers violations in all four gender quadrants ² ?	Yes	No	17
Does the policy define specific prohibited behaviors?	Yes	No	17
Does the policy address sexual harassment, hostile work environment, and sexual misconduct?	Yes	No	17,18,24
Does the policy require mandatory reporting of allegations of sexual misconduct by employees?	Yes	No	18
Does agency policy address/prevent retaliation against offenders/clients/ and employees who report allegations of misconduct?	Yes	No	18
Is training regarding this policy given to employees, volunteers, civilians and contractors?	Yes	No	23, 24
Does the policy authorize investigations?	Yes	No	18
Are stakeholders involved in policy development?	Yes	No	18
Is zero tolerance mandated for contractors?	Yes	No	19
Does policy define rules of conduct for contractors?	Yes	No	19
Does policy exist for crisis management plans and crisis de-briefings when allegations arise?	Yes	No	22

² Male staff/female offender, female staff/male offenders, and same-gender relationships.

<u>Policy Questions</u>	<u>Yes</u>	<u>No</u>	<u>Page#(s)</u>
Is the employee assistance program aware of the agency's sexual misconduct policy?	Yes	No	22
Are mental health protocols in place to assist employees involved as subject of allegation, witness or complainant?	Yes	No	22
Does policy provide a consistent, written employee disciplinary system?	Yes	No	19
Does policy require a background investigation of a prospective employees <u>and</u> contractors including past behavior of violence or abuse?	Yes	No	20
Are applicants advised of the zero tolerance policy prior to hiring?	Yes	No	20
Does the agency review and assess the operational impact of data from internal investigations, offender/client grievances and employee grievances?	Yes	No	19
Are there written rules for on and off duty conduct for employees, and reporting requirements of current personal information?	Yes	No	20
Are gender-specific supervision caseloads considered and if so, are they addressed in policy?	Yes	No	21
Does policy address work place privacy of employees?	Yes	No	21
Is the use of phones, radios, e-mail and Internet covered in privacy policies?	Yes	No	21
Does the agency have a comprehensive media policy?	Yes	No	22
Does the agency have a policy about releasing information about current and former employees, volunteers and contractors?	Yes	No	22, 23
Does the agency specify record keeping and report formats, such as case notes, violation reports, warrant requests, treatment referral reports, etc. and train employees on these formats?	Yes	No	23

<u>Policy Questions</u>	<u>Yes</u>	<u>No</u>	<u>Page#(s)</u>
Does the agency formally recognize and reward employees?	Yes	No	19
Is there an effective employee grievance system?	Yes	No	20
Is analysis of employee grievances required by policy?	Yes	No	20
Are employee performance appraisals done at regular intervals?	Yes	No	20
Are exit interviews conducted with employees?	Yes	No	22
Is the work environment regularly assessed to identify and address office safety issues, a sexualized work environment and whether procedures match written policies?	Yes	No	24

Policy Issues - Administrative

Agency Policy:

- The agency's position on staff sexual misconduct is a matter of policy.
- The policy establishes a zero tolerance for staff sexual misconduct with offenders. This policy includes potential misconduct on all gender quadrants (male staff/female offenders, female staff/male offenders, and same gender relationships).
- The policy includes specific prohibited behaviors, not just "over-familiarity" or "conduct unbecoming".
- The policy addresses and defines prohibited behaviors between employees, employees and offenders, employees and collateral contacts (family, friends of offenders, etc.) contractors and offenders, offenders and volunteers, and includes discussion addressing the following, but is not limited to:
 - Touching, hugging, kissing, sexual assault, penetration, fondling, inappropriate viewing, sexual conduct, sexual harassment, sexual abuse, sexual gratification, romantic relationships, relationships between staff/offenders.
- The policy addresses:
 - Mandatory reporting by employees allegations of sexual misconduct;
 - The reporting process, including multiple paths for reporting allegations

- by employees and offenders;
 - Safeguards for those who report, including prohibitions against retaliation;
 - Consequences for failing to report;
 - Consequences of making deliberately malicious or false reports by employees, offenders, and other parties;
 - Training for all persons who have contact with, communication with or who supervise offenders, including:
 - Certified and civilian employees (including clerical, etc);
 - Vendors/contractors;
 - Treatment providers;
 - Volunteers; and
 - Other agency personnel who have access to offenders and information on offenders.
 - Orientation of offenders to the agency's policies and procedures regarding zero tolerance, reporting procedures, safeguards, and consequences of deliberately making false or malicious allegations.
- The policy establishes the agency's authority (or the authority of a specific outside entity, if applicable) to conduct investigations (criminal, administrative, both) into allegations. (See also investigative policies and procedures)
- Policy includes zero tolerance for retaliation against those who report allegations, and consequences of those who commit retaliatory acts.
- The agency addresses involvement of stakeholders in the development of policies.

Assignment of Employees/Cross Gender Supervision:

- Procedures establish guidelines for cross gender assignments, if any, along with oversight by a supervisor. Cross gender supervision policies address EEO requirements and labor/management contract issues.

Contract/Provider Management:

The agency's process for advertising and awarding contracts for services:

- Clearly states the agency's zero tolerance for sexual misconduct;
 - Defines prohibited behavior by contractors;
 - Specifies training for contractors and other service providers;
 - Establishes reporting requirements and timetables for contractors and service providers to report allegations or suspicions of sexual misconduct; and
 - Defines procedures for suspending services from contractors during investigations.
-
- The contract award document(s) incorporates the agency's policies and procedures on professional behavior and sexual misconduct.
 - Includes procedures for contractors and service providers to report suspected staff sexual misconduct.
 - The agency monitors all contracts to assure compliance with professional, legal and contractual obligations.

Data Analysis:

The agency considers:

- An analysis of sexual misconduct complaints, offender grievances, complaints of favoritism, misconduct, etc. Data is reviewed by administration and/or the investigative designee, to determine patterns or areas of concern involving specific employees, contractors, providers, offenders, volunteers, office locations, employee assignments, caseloads etc.
- Investigative reports recommend improvements in policy, operations, training and related administrative areas based on findings.

Employee Commendation and Awards:

- The agency regularly and publicly recognizes and rewards employees for outstanding work. Employees value this practice and receive meaningful acknowledgments.

Employee Discipline Process:

- Employee confidence in the discipline and internal investigation systems is essential to their willingness to report allegations of misconduct. Therefore, the agency provides information and training to employees about the internal investigative process, as well as employee's rights and responsibilities.

- The policy conforms to current labor/management agreements.
- Data generated from analyses of sustained employee discipline is used in modifying agency management and operational practices.

Employee Grievances:

- The agency has an employee grievance process that allows issues to be expressed and appropriately addressed. Employees trust the grievance process and are educated concerning policy, practice, and expectations. The grievance process is fair, consistent, and applies appropriate sanctions.

Employee Performance Appraisal:

- The agency's staff performance appraisal system contributes to a positive work environment, provides the opportunity to comment on the outstanding performance of subordinates, and correct or improve the areas that need attention.

Employee, Payroll:

- The agency reviews employee overtime, reviews caseload assignments, and related information. The agency's overtime policy addresses how, under what circumstances, by whom, and when employees are assigned tasks that will require overtime.

Employee Recruiting, Screening, Hiring:

- The agency's employment background investigation identifies past behaviors of violence, sexual abuse, domestic battery, and other indicators of inappropriate behavior. If the agency uses pre-employment psychological testing, it is validated for use in the agency.
- Applicants are informed of the agency's policies regarding sexual misconduct.

Employee Rules of Conduct:

- The agency's employee code of conduct includes zero tolerance for staff sexual misconduct.
- The agency specifies acceptable, as well as prohibited behavior, on and off duty requirements, including dating and romantic relationships among employees and, especially between employees and supervisors.
- The agency defines appropriate and inappropriate employee relationships and behavior in the workplace, with consequences for inappropriate behaviors.

- The agency policy addresses relationships between employees and individuals who were previously under the supervision by the agency or other criminal justice entity; or previously or currently in custody of the department, state prison system, or jails.
- The agency specifies the on-duty dress code for employees, volunteers and contractors and includes sanctions for failure to comply.
- The agency requires that employees notify the agency of changes in personal address and phone numbers in a timely manner.
- The agency periodically audits employee telephone numbers and personal contact information.

Employee Work Assignments:

- Policy addresses the amount of overtime employees may work within a given period.
- Procedures require periodic review of use overtime hours by individual employees.

Employee Work Site Privacy:

- The agency establishes, in writing, expectations for privacy of employees, offenders, contractors, visitors, volunteers, and others while in agency workplaces.
- Policy addresses searches of persons and property, parking lots, lockers, vehicles, workspace, as well as telephone, radio, Internet, and e-mail use. The policy complies with all laws and court decisions regarding workplace privacy and search.
- Employees sign the policy acknowledging the agency's privacy and surveillance policies.
- Policy addresses the issue of gratuities and gifts from offenders, offenders' families, victims and other clients. Included in the policy are specifics on how employees officially note and/or report any offer of gratuities or gifts from those mentioned above.

Exit Interviews:

- The agency conducts exit interviews with employees, volunteers, or contractors. The process is established to provide feedback, and identify any possible misconduct. The policy specifies what information provided is to remain confidential and how information will be used by the agency.

Medical and Mental Health Support to Staff/Employee Assistance Programs

- The agency considers medical, mental health, and employee assistance referrals for employees who are subjects or witnesses in sexual misconduct investigations.
- The agency considers the impact of allegations of sexual misconduct on the agency's entire workforce. Peer debriefing and/or other professional interventions occur to address these matters.
- The agency's provider of employee assistance is involved with planning for referrals of employees who are alleged to be involved with staff sexual misconduct, who have reported allegations, or who are witnesses in investigations. This coordination includes periodic review of outcomes and effectiveness by both the agency administrator and the employee assistance program.

Public and Media Relations:

- Agency policy defines:
 - When the public will be informed of allegations;
 - What information is to be released to the public;
 - Who is authorized to speak to the media and the public;
 - How media inquiries concerning allegations and investigations will be handled and by whom; and
 - What specific information is considered confidential, aligning with legal requirements (such as victim information, etc)?
- The agency considers involving the public and stakeholders in development of policies.

Release of Information about Current or Former Employees, Volunteers, Contractors:

- Agency personnel procedures specify what information is released, and by whom, about current and former employees, interns, volunteers and contractors.
- Agency policy specifies what investigative information becomes public record (if any), and policy aligns with current laws of confidentiality.

File Maintenance and Record Keeping:

- Procedures specify how, where and when case notes are maintained, what is to be contained in case notes, and who has access.
- Employees receive training on record keeping and the requirements for use and submission of standard forms (such as violation reports, affidavits, treatment records, offender monthly reports, and all other documentation required as part of case supervision.
- Procedures insure that reports of staff sexual misconduct from either employees or offenders who do not wish to put complaints in writing are not rejected solely for that reason.
- Policy specifies who has keys, passwords, and access to all types of database information, including but not limited to: NCIC and state criminal records databases; offender databases, files and information; employee personnel files and personal information; and any other official information maintained officially by the agency.

Office Access and Security:

- Procedures specify who has access to agency workplaces, hours that offices and workplaces are to remain open, and supervision of all official workplaces and offices during opening hours.
- Procedures specify the procedures and notifications required when employees enter workplaces and offices during times other than opening hours.

Training:

- The agency has curriculum for training *all* employees (this includes professional staff, support staff, clerical, etc. – all of whom have direct contact with offenders), volunteers, contractors, interns, treatment providers, and others providing official service to the agency. This includes pre-service and in-service training regarding the agency's policy on sexual misconduct, prohibited behaviors and reporting requirements.
- Training includes *at least* agency policies and procedures, specific definitions, state statutes, penalties, reporting requirements, "red flags", issues of "consent", and an overview of the investigative process. In-service training covers the basics with information on lessons learned from closed investigations, and any changes in procedures.
- Employees, contractors, treatment providers, interns, and volunteers are trained in the skills they need to identify and maintain professional boundaries, expectations

of the agency concerning ethical behavior, and managing offenders and clients, including manipulative offenders and clients.

Volunteers, Selection, Screening, Training, Supervision, Evaluation, Rules of Conduct:

- The agency's volunteer program provides that:
 - Volunteers are screened, trained and monitored while providing services;
 - Training specifically addresses sexual misconduct;
 - Volunteers are given direction as to the agency's policy regarding touching, hugging, etc.;
 - Volunteers are informed of mandatory reporting requirements, how to report, and time frame requirements;
 - Volunteers are advised of the consequences of involvement in prohibited behaviors;
 - Volunteers are advised of what are acceptable and unacceptable behaviors while in an official capacity, and;
 - Volunteers are required to acknowledge in writing, that they have received and understand agency policy and procedures.

Work Environment:

- The agency periodically assesses the work environment to ensure professionalism and ethical behaviors. This includes review of employee/employee and employee/offender relationships and communications; an assessment to determine if procedures match written policies; elimination of any elements of a hostile work environment.
- The agency assesses the work environment to ensure that it has not become "sexualized", eroding professional boundaries between staff and offenders.
- The agency policy makes distinctions between sexual misconduct, sexual harassment, a sexualized workplace, and hostile work environment.

Case Management and Supervision

Policy Question	Yes	No	Page#(s)
Do supervisors conduct regular case reviews to assure that cases are properly managed?	Yes	No	26
Do review procedures ensure that each case is reviewed within a specific time period?	Yes	No	26
Are supervisors required to regularly observe each employee they supervise as they perform their duties?	Yes	No	27
Is there written policy on the contents of offender files, which documents are included and in what order within the files?	Yes	No	26
Is there written policy concerning confidentiality of case files, who has access to files? Does policy address how files are to be physically handled and maintained, both in the office and outside of the office?	Yes	No	26, 27
Does policy specify under what circumstances information may be released from case files, to whom, and by whom?	Yes	No	26
Does policy address specific procedures and reasons for transferring cases from one caseload to another?	Yes	No	26, 27
Does agency policy address outside agencies that supervise offenders, or that provide services to the offender as part of their supervision?	Yes	No	27
Does policy address cross gender visual surveillance of offenders, including procedures for obtaining urine samples for drug/alcohol analysis, and other situations that require visual observance of similar activities?	Yes	No	27
Is there a policy concerning the transporting of offenders, offenders' family members, victims, and other such collateral contacts by agency staff in either personal vehicles or agency-owned/operated vehicles?	Yes	No	27
Is there a policy concerning cross gender searches?	Yes	No	27
Is there a policy for searching offender homes, vehicles and other such locations?	Yes	No	27

Does policy address procedures and requirements for when employees may or are required to work in teams, in pairs, individually, etc.?	Yes	No	26
Are there procedures and instructions in place for employees who will be the first responders to incidents of sexual misconduct, or who may encounter such incidents that require immediate action?	Yes	No	28

Policy Issues – Case Management and Supervision

Case Reviews and Caseload Assignments:

- Policy includes specific procedures for completing regularly scheduled case reviews by supervisors. Scheduling of case reviews is carefully maintained, and assures that cases are reviewed at least every six months to one year. Results of case reviews are discussed with the employee, and recommendations for action are followed-up by supervisor.
- Case assignments are specified by policy, including special caseloads (i.e. drug offender, sex offender, etc.), and any case assignments that are assigned by gender (including the justification of such assignments according to law and practice).
- Policy specifies the reasons and procedures for transferring cases from one caseload to another. Transferring of cases is conducted with the approval and knowledge of administration or a supervisor.
- Policy delineates those circumstances when staff will work in pairs, team or alone, in the field, in the office and in other official capacities.

Case File Maintenance and Confidentiality:

- Confidentiality of case file materials is mandated and defined by policy.
- The release of any information from case files is directed by policy, which includes under what circumstances information is to be released, the actual information that can and cannot be released, who has authority to release, who has the authority to receive and request such information, and careful maintenance of the names to whom information is released.
- Policy directs how files are to be protected and handled within the office setting and outside the office setting, to assure that file materials are secure, complete, and that confidentiality of materials is protected.
- Storage of files is secure, access to files is limited, and records are kept as to who accesses files.

Supervisors:

- Policy requires that supervisors regularly observe employees under their supervision in the performance of their duties. This may include ride-along days on a regular basis, observance of interviews, and regular meetings and dialogue.
- Supervisors should be trained to identify “red flags” among employees, and how to appropriately address concerns in a timely manner.
- Supervisors regularly monitor caseload movements, changes in case assignments, and other activity on cases.
- Supervisors are available and accessible for questions from employees, concerns from offenders, and concerns from family of offenders, contractors and providers.

Transportation, Surveillance and Searches:

- Procedures delineate the circumstances (if any) for transporting offenders, offenders’ families, victims, and other collateral persons by employees.
- Vehicles are searched before and after each transport.
- Procedures protect the privacy of the offender within Constitutional and other lawful parameters, both during the conduct of surveillance, and other visual events such as drug screens, etc.
- Searches are conducted by same-gender employees whenever possible, and the procedure for conducting searches is specified in the policy.

Contractors, vendors and treatment providers:

- Support staff, contractors, vendors and other providers of services to the agency are covered in policies that prohibit sexual misconduct with offenders.
- The agency’s policy of zero tolerance is provided in writing to all of the above.
- Prohibited behaviors and requirements and procedures for reporting misconduct are delineated.
- Training and orientation is provided to all of the above.

First Responders (staff), and Collecting and Preserving Evidence:

- Procedures and training provide:

- Information on how to identify evidence of misconduct;
 - Guidance on preserving the security of evidence and crime scenes;
 - Who is to collect evidence; and
 - How to preserve the chain of custody of any evidence that is collected.
- The agency has memoranda of understanding (MOU) with agencies or organizations responsible for collecting, preserving and analyzing evidence. The MOU delineates responsibilities of all parties.
- The agency uses the local sexual assault treatment center [rape crisis center] for collection of evidence in rape allegations. The agency has a MOU with the center.

Investigations

Policy Question	Yes	No	Page#(s)
Are investigators properly trained, and do they have the appropriate experience required to conduct sexual misconduct investigations?	Yes	No	32
Are employees, and/or those who are responsible for collecting and preserving evidence, trained in the proper procedures for identifying, collecting, and preserving evidence?	Yes	No	30, 32
Are there official procedures for notifying staff who are subject of investigations, following the mandates of <u>Miranda</u> and <u>Garrity</u> ? Are notifications made in writing?	Yes	No	30
Is there a policy on use of informants and intelligence gathering?	Yes	No	29
Is there policy and standard operating procedure on initiating criminal and administrative/internal investigations?	Yes	No	30
Is there policy for oversight and supervision of investigations, along with an identified chain of command?	Yes	No	30
Is there a policy for confidentiality of investigations?	Yes	No	30
Is there a policy for coordination with the prosecutor?	Yes	No	31
Does policy address the establishment of memoranda of understanding with outside agencies who will either conduct the internal investigations, assist with the investigations, or in any way have a part in the conduct of investigations?	Yes	No	31

Policy Issues – Investigations

Intelligence:

- The agency has a policy regarding the collection of intelligence and use of informants. The policy addresses reliability and identification of informants along with procedures for documentation.

Notifications to Staff and Protections for Staff:

- Investigative procedures include standard formats for notifying employees and other persons who are subject of investigation.
- Employees are informed of their rights and protections as provided by Miranda and Garrity concerning the conduct of criminal and administrative investigations.
- Investigators are properly educated and trained about the principles and protections of Miranda and Garrity.

Internal Investigations:

Policies, standard operating procedures and protocols governing internal investigations address:

- Guide whether investigations are initiated as criminal or administrative;
- Complaints received either orally or in writing; how received and processed;
- The internal path and external paths of allegations to insure reports reach administrators or investigations, and are not “lost” or “diverted”;
- Confidentiality of information, those who report, witnesses, etc.;
- Management and access to the incident scene;
- Evidence collection, processing, storage, and lab testing and reporting;
- Designation of persons or positions authorized to initiate investigations;
- Supervision of the investigation, including investigatory chain of command;
- Protocol for deciding whether to proceed with criminal or administration investigations, or both;
- Use of surveillance technology and undercover personnel;
- Protocols for covert operations;
- Re-assignment of staff who are involved as complainant, witness or subject;
- At what point, if any, the investigation is made public;
- Qualifications, selection and training process for investigators;
- Job description of investigators;
- Location and procedures for conducting interviews;
- Protocols for involvement of mental health professionals in interviews of vulnerable offenders;
- Recording of interviews, (i.e. tape or video);
- Collection of DNA evidence from employees and offenders;
- Coordination with the prosecutor and/or other law enforcement agencies;
- Procedures for interviewing released offenders or offenders as witnesses;
- Transfer of supervision of offenders during investigations (subject, victim, witness);
- Content and formats for investigative reports, including findings and recommendations;
- Designation of investigative outcomes (founded, unfounded, etc.,) including

differentiation between allegations that are unfounded and those that are false and deliberately malicious;

- Review of investigative conclusions to improve agency operations;
- Protocols for taking witness and victim statements;
- Procedures for referral to employee assistance programs;
- Communicating with the witnesses, victims during an investigation;
- Reporting to the state's central criminal records exchange;
- Reporting to the state's sexual offender registry; and
- Reporting to state licensing agencies for physicians, nurses, psychologists, and clergy.

Outside Agencies:

- If outside entities are responsible for conducting investigations within the agency, agency policy should include memoranda of understanding with each outside entity involved. MOU should include, at least:
 - The responsibilities of the outside investigating entity;
 - The responsibilities of the agency;
 - Point of contact between each outside entity and the agency;
 - Guidelines for cooperation between each, including notification of status of investigation, and sharing of information.
- In most cases, outside entities will be involved in some part of an official investigation within the agency, even if the agency has the primary investigative authority. These may include prosecutors, forensics laboratories, law enforcement, medical and mental health providers etc. Agency policy should include MOU's with each of these entities to include at least the above-mentioned aspects.

Investigators:

- Those responsible for investigation allegations of staff sexual misconduct possess the appropriate, specific, and thorough training and experience for these unique investigations.

Offender Grievances, Orientation and Programming

Policy Question	Yes	No	Page#(s)
Is there a procedure regarding how offenders report allegations of sexual misconduct, including multiple ways to report?	Yes	No	33
Is mental health and/or medical assistance available to offenders after reporting allegations or critical incidents?	Yes	No	34
Are medical and mental health providers, and other treatment providers who have contact with offenders, required to report suspicions of sexual misconduct?	Yes	No	18, 34
Is there an effective offender grievance procedure?	Yes	No	34
Is data analysis of offender grievances required?	Yes	No	34
Are offenders provided with formal orientation that informs them of proper reporting procedures, definitions, the agency policy on zero tolerance, and the consequences of false and malicious reporting?	Yes	No	32-33
Is there a policy for offender dress code, appropriate for each gender, when reporting to the office?	Yes	No	33

Policy Issues – Offender Grievances, Orientation and Programming

Female Offenders:

- The agency provides programs and services for women offenders that are gender responsive and meet their unique needs.

Offender Orientation:

- Offenders are informed about their right to be free from sexual misconduct from all employees, contractors and volunteers.
- Reporting guidelines and procedures are clearly explained to offenders at orientation.
- Offender orientation includes specific, language-appropriate rules about prohibited behaviors, prohibitions against sexual activity with staff, contractors, volunteers,

etc.; provides for multiple reporting paths, discusses consequences for false reporting, and answers questions in a meaningful way.

Offender Reporting Procedures:

- Agency procedures address:
 - The process by which offender grievances or reports about misconduct are handled by those who receive them, and to whom these allegations are forwarded;
 - Time limits for reporting;
 - Penalties for not reporting;
 - Prohibitions against retaliation for reporting; and
 - Offender orientation concerning the reporting procedures.
- Policy and procedures include multiple avenues for reporting allegations, to assure that those who need to report them are able to do so.

Offender Dress Code:

- The agency has a specific offender dress code.
- Policy specifies how these situations are to be noted in the file.
- Offenders are provided with the dress code in writing, and are informed of consequences of not abiding by the dress code.

Offender Grievance Procedures:

- The offender grievance process complies with professional standards and case law. Grievances are monitored and analyzed for patterns that may indicate evidence of misconduct or other related potential problems.
- Grievance procedures include prohibition against retaliation for filing grievances.

Offender Orientation:

The offender orientation includes:

- Specify prohibited behaviors between staff and offenders;
 - Privacy expectations;
 - Specify reporting procedures for allegations of sexual misconduct; and
 - Describes how offenders can access medical or mental health services.
- Information for offenders is specific, preferably in writing, and in a grade level appropriate language. Languages other than English are available as needed.

Offender Health and Mental Health Services:

- Policy provides offender access to health and mental health services.
- Policy includes the conditions under which medical and mental health staff notify administrators of suspicions of sexual misconduct. Time lines and reporting channels are established.
- Investigative protocols define when mental health professionals are involved in investigations either to assist investigators, or as witnesses.

Offender Privacy and Searches

- Procedures address cross gender visual surveillance during routine operations of areas such taking of urine samples and any type of surveillance required as a condition of supervision, or within facilities.
- Procedures address in detail, how searches are to be conducted, including when cross-gender search is permitted and under what circumstances.

Offender Programs and Services:

- All program providers are trained regarding the agency's zero tolerance policies for sexual misconduct.

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*Bibliography compiled by Center for Innovative Public Policies for the National Institute of Corrections, August 2000.
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Writing Policies and Procedures

The information in this Guide is intended to help community corrections administrators consider the scope of issues associated with prevention and investigation of allegations of staff sexual misconduct. The policy addressed in this document includes those policies and procedures that involve field supervision of offenders. The Guide was based on a previously developed Policy Development Guide for Sheriffs and Jail Administrators, which addressed policies and procedures for custodial facilities. Some community corrections organizations that have custodial responsibilities (such as juvenile detention, halfway houses, restitution centers and residential treatment facilities), may find that particular Guide a helpful additional resource. That document is:

Staff Sexual Misconduct with Inmates: Policy Development Guide for Sheriffs and Jail Administrators, by Susan W. McCampbell and Larry S. Fisher, August 2002.

NIC has developed an additional document to help agencies with the process of writing or updating policies and procedures for custodial facilities. Some community corrections agencies, particularly those that include custodial situations, may find this a helpful additional resource. This document is:

Martin, Mark D., “Developing/Revising Detention Facility Policies and Procedures,” National Institute of Corrections, Jails Division, June 1996
www.nicic.org/pubs/1996/013551.pdf

Both publications are available on the NIC website, or you may contact the NIC Information Center at (800) 877-1461, or e-mail asknicic@nicic.org.

Technical Assistance

The National Institute of Corrections provides technical assistance to agencies to address, prevent and investigate allegations of staff sexual misconduct with offenders. This assistance may include:

- Short term technical assistance providing subject matter experts to visit an agency, assess issues as defined by the agency head, and providing specific recommendations; and
- Training for agency decision-makers and trainers.

For more information or to request technical assistance, contact:

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Prior to founding the Center for Innovative Public Policies, Ms. McCampbell was the Director of the Department of Detention and Community Control for the Broward County, Florida, Sheriff's Office for four (4) years. This system is one of the largest local jail systems in the United States. During this time, Ms. McCampbell served as Acting Sheriff for this full-service Sheriff's Office for six (6) months following the death of the Sheriff.

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Ms. Layman retired from the State of Florida with 17 years service in corrections and parole, where she served as a parole/probation officer, administrative hearing officer, and regional director for the Florida Parole Commission. Prior to service with the state of Florida, Ms. Layman was a police officer and detective with the Arlington County, Virginia Police Department for 9 years.

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Mr. Fischer has 28 years of service with the Office of the Sheriff. Rising through the ranks by promotion, he has seen and experienced all facets of jail operations. His involvement as the Transition Coordinator for the Public Safety Facility allowed the migration from the old jail facilities into the new complex without the negative consequences experienced by other jail operations in the State. Mr. Fischer has served for 5 years as the Corrections Training Coordinator bringing the Corrections Division improved and expanded training.

Mr. Fischer has completed numerous courses of study at the National Institute of Corrections including the Executive Excellence Program of which there are currently a limited number of graduates nationally.

Mr. Fischer is an upstate New York native, a member of the Southern Tier East Regional Planning and Development Criminal Justice Advisory Board and the NY ACA chapter Training and Education Chairman.

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Introduction¹

INAPPROPRIATE RELATIONSHIPS BETWEEN OFFENDERS AND EMPLOYEES of community-based corrections organizations have emerged as a serious issue.² Among the most dangerous and destructive of these inappropriate relationships is sexual misconduct. The very nature of community corrections, with semi-autonomous employees, the increasing focus on a rehabilitative rather than the punitive model, the increase of offenders assigned to these programs, and actual allegations of sexual misconduct have raised the awareness of administrators of the need for action.

The bottom line: Sexual misconduct jeopardizes the safety of the public. Employees who compromise their professional ethics and responsibilities by engaging in inappropriate and, in most states, illegal behavior, undermine the criminal justice system, further victimize vulnerable individuals, put the safety of themselves and their peers in jeopardy, and erode public and legislative support for the mission of their agency.³

Community corrections agencies that have yet to experience allegations of sexual misconduct have a range of options available in preventing misconduct that may not exist for agencies where allegations are public, or where litigation has begun. Agency administrators should be, therefore, proactive and aggressive in taking steps to prevent sexual misconduct. Otherwise, they risk the inevitable allegation that forces the agency into a reactive posture.

This article addresses:

- Definitions of staff sexual misconduct with offenders;
- Myths and realities of sexual misconduct in corrections;
- National developments that have affected staff sexual misconduct with offenders;
- State laws prohibiting staff sexual misconduct with offenders;
- Critical issues for community corrections;
- Actions agency administrators can take to address and prevent staff sexual misconduct; and
- Investigations.

Defining Staff Sexual Misconduct with Offenders

Sexual misconduct includes a range of behaviors – from sexual innuendo, harassment, hostile work environment, to incidents of sexual contact and coerced sex and rape.

For discussion purposes:⁴

Sexual misconduct includes, but is not limited to, acts or attempts to commit acts such as sexual assault, sexual abuse, sexual harassment, sexual contact, obscenity, sexual gratification for any party, unreasonable and unnecessary invasion of privacy, behavior of sexual nature or implication, and conversations or correspondence suggesting a romantic or sexual relationship. Staff sexual misconduct is also behavior such as sexualized name calling between offenders, and between staff and offenders, staff who “observe” offenders of the opposite sex during period of partial or total nudity for periods of time longer than necessary for facility security interests, staff having physical contact with offenders outside the need for searches and related security functions, and staff who make explicit comments about the physical appearance of offenders.

This definition is intended to highlight a range of inappropriate behaviors that are most often identified with sexual misconduct. Administrators should review their state statutes⁵ for additional language and adopt definition(s) that are the most relevant for their operations.

Often the code of conduct for employees and offenders, does not specifically describe behaviors that are acceptable and prohibited. A critical first step in preventing sexual misconduct is defining it. An agency’s code of conduct that directs staff to avoid “over-familiarity” or “conduct unbecoming” in working with their clients is insufficient to hold employees and offenders accountable for professional behavior. While one would expect employees to know that sexual relationships with offenders, especially offenders under their supervision is just plain wrong, the absence of agency direction on the matter can provide a convenient scapegoat for ignorance. This ignorance places the agency staff member and the offender at risk.

BY MAUREEN BUELL, ELIZABETH LAYMAN, SUSAN W. McCAMPBELL AND BRENDA V. SMITH

COVER STORY

Myths and Realities⁶

Many “myths” have emerged about staff sexual misconduct.

Myths

1. Staff know their professional boundaries and have the skills to enforce these boundaries with offenders.

Focus groups of community corrections professionals, at all levels, have revealed that there is a critical gap in staff’s ability to establish and maintain professionalism. That gap is that there is not a universally shared and publicly acknowledged and defined standard about sexual misconduct. Should agencies have to specifically tell staff not to become involved in sexual activities with offenders under supervision? Apparently, they do. Community corrections staff report they are unclear about their boundaries, which are further blurred by being responsible for increasing treatment and counseling functions, rather than a strict supervision. As a result of unclear boundaries, and employees’ emerging role as helper rather than enforcer, the “slippery slope” of seemingly minor indiscretions and unprofessional behavior can result in sexual misconduct.

Focus group participants also report that training, both pre-service and in-service, for employees in many states is deficient. New employees may be trained in the nuts and bolts of the agency’s policies and paperwork requirements, but should also receive information about offenders and interpersonal skills needed to be safe and successful. Too often new employees don’t know the significance of the abuse history of their clients and how that history will impact their supervisory relationships. Staff receive information not just about work behaviors to avoid, but what behaviors to embrace in their work. Employees often look to supervisory staff in the organization as their role models and mentors, and if the appropriate behaviors are not there, employees are left to develop their own set of professional boundaries. Supervisors often are unprepared or overloaded to provide appropriate guidance.

The multi-generational workforce does not share the same values or ethics. This is neither good nor bad, just a statement of fact. It is up to the agency to define for all workers acceptable behavior and support that critical directive with training and role modeling.

2. This is a male staff/female offender issue.

Available data from institutional settings indicates that, although the issue of sexual misconduct emerged in women’s prisons, the misconduct is occurring on all “four quadrants” – female employees/male offenders, female employees/female offenders, male employees/ female offenders and male employees and male offenders.⁷ Therefore an agency’s strategic response to addressing and preventing misconduct must include policies that recognize this reality.

In some organizations, cross gender supervision has been blamed for misconduct. While thoughtful deployment of staff, based on fiscal and other management concerns, is a responsibility of agency leadership,

banning cross gender supervision will not halt all staff sexual misconduct. It may, however, decrease offenders’ sense of vulnerability and thereby lessen sexual misconduct, but is not the answer.⁸

3. Offenders consent to inappropriate relationships with employees.

Most state statutes, the policies in many agencies, and several court decisions, do not accept or recognize the ability of offenders to consent to illegal or inappropriate behavior with employees. The custodial and supervisory power that community corrections programs and employees have over the offender – most clearly the power to request revocation of an offender’s probation or parole – makes the relationship a grossly unequal one. When that level of an imbalance of power exists, there can be no consent.

4. Offenders manipulate inexperienced employees into compromising situations.

In the current work environment, there are many staff that are inexperienced with the offender population they are assigned to supervise. Offenders with long histories of physical and sexual abuse, may view the world quite differently than those who have not experienced these events. These offenders present challenges to the most seasoned corrections professional. Agency leadership has an obligation to prepare and supervise all employees to understand these clients, and give these employees the skills needed to work with them. An excuse for misconduct cannot be that staff are ill-prepared or too inexperienced for their responsibilities.


5. Only new employees get involved with misconduct.

There is no one profile of the staff person who gets involved in sexual misconduct. In some cases they are staff who, for whatever reason, allow their professional boundaries to be crossed, with serious ramifications; in other, rarer instances, they are “predators” watching for vulnerable victims. Employees who get involved are those who are newly hired, and those who have long tenure with an organization. Exemplary employees get involved, as well as problem employees. Supervisors and managers get involved.

At the conclusion of investigations into sexual misconduct allegations, agencies often recognize that there were plenty of early warnings that problems existed, but no one acted on these red flags.⁹ Prevention includes making both staff and supervisors aware of the indicators, as well as the skills and resources to confront the issues.

Realities

The reality of sexual misconduct is that the leadership of the organization sets the tone for the professional conduct of all employees. In the absence of clear policy and procedures, effective training and contract management, misconduct will develop. The leadership of the organization is responsible for assuring that the culture of the organization is healthy,



promotes professionalism, encourages and rewards staff's ability to report misconduct, ensures competent investigations, and prevents the development of a sexualized and hostile work environment. If staff do not believe that the organization has their interests at heart, or if past agency conduct, whether real or perceived, supports these beliefs, a "code of silence" will develop. When established, this code of silence is difficult to address, and it inhibits agency leadership from determining what is really going on in the organization.

The National Scope

Several national and international reports have addressed, explored and investigated the issue of staff sexual misconduct. While none of these reports have specifically addressed community corrections, they are relevant. A summary of these reports is provided so the reader will appreciate the scope of this attention and identify the potential impact on community corrections.¹⁰

- **Fifty State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners**, Brenda V. Smith, National Women's Law Center (1997). This survey provided the first analysis of state statutes' prohibitions of staff sexual misconduct with offenders. This study examines elements of these statutes, including scope, consent, defenses and penalties.
- **In December 1996, Human Rights Watch organization published "All Too Familiar: Sexual Abuse of Women in U. S. State Prisons."** This report described numerous incidents of sexual harassment, sexual abuse, sexual contact and privacy violations of women in six large correctional facilities, including one combined prison/jail system.¹¹
- **In 1997, the United States Department of Justice (DOJ) filed civil rights lawsuits against two states' Departments of Corrections.** The results of this litigation were settlement agreements, involving extensive reorganization and revision of policies and procedures. The actions of the U. S. DOJ were based on their findings that the departments failed to sufficiently protect female inmates from sexual misconduct by staff.¹²

- **In July 1998, "Nowhere to Hide: Retaliation Against Women in Michigan State Prison" by Human Rights Watch.** The report examined numerous allegations of retaliation against the female inmates who had filed suit or complaints against the department for acts of sexual misconduct.¹³
- **In 1999, United Nations, "Report of the mission to the United States of America on the issue of the violence against women in state and federal prisons" [pp. 55-63]** was issued. The report concluded that sexual misconduct by staff is widespread in U. S. prisons, especially when compared to systems in other industrialized countries. The report offered many recommendations, including the criminalization of sexual misconduct between staff and inmates.¹⁴
- **In June 1999, the United States General Accounting Office published "Women in Prison: Sexual Misconduct by Correctional Staff."** Four jurisdictions, accounting for more than one-third of the total prison population, were studied. The report found that the following areas were significantly lacking attention: training, reporting methods, procedures for responding to allegations, procedure for preventing

"The reality of sexual misconduct is that the leadership of the organization sets the tone for the professional conduct of all employees. In the absence of clear policy and procedures, effective training and contract management, misconduct will develop. The leadership of the organization is responsible for assuring that the culture of the organization is healthy, promotes professionalism, encourages and rewards staff's ability to report misconduct, insures competent investigations, and prevents the development of a sexualized and hostile work environment."

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retaliation against those filing reports, conducting competent investigations, maintaining records of reports and investigations and tracking the progress of investigations.^{15, 16}

- **In 2001, Amnesty International published “Abuse of Women in Custody – Sexual Misconduct and Shackling of Pregnant Women: A State-by-State Survey of Policy and Practices in the U. S.”** This report expanded on AI’s 1999 report “Not Part of My Sentence: Violations of Human Rights of Women in Custody” through a national review of policies relating to the treatment of female offenders, with emphasis on the treatment of pregnant offenders.

Clearly, the 1990s created an awareness of the problem of sexual misconduct where an imbalance of power exists – in the military, in religious institutions, in high schools and colleges, and in prison and jail settings. Currently, forty-seven of the states have passed laws criminalizing sexual relationships between staff and inmates (also Puerto Rico, Federal Bureau of Prisons, and the District of Columbia).¹⁷ This number is an increase from 32 states with legislation in 1996. The Association of State Correctional Administrators passed a resolution in 2000 declaring zero tolerance for staff sexual misconduct. The National Sheriffs’ Association passed a resolution in June 2002 supporting efforts by sheriffs and jail administrators to aggressively address misconduct.

Litigation regarding allegations of misconduct is increasing. Seldom does a month go by where litigation is not initiated, or a court ruling made.¹⁸ Although the U. S. Supreme Court has not dealt specifically with this issue, many lower federal courts have.

While few managers use only the threat of litigation to promote policy development and training, the interests of plaintiffs’ attorneys, the courts, as well as the appalling treatment of offenders in regard to sexual misconduct should provoke agencies to action.

Legislation

Another outcome of the increased attention to staff sexual misconduct with inmates has been the enactment of laws specifically prohibiting sexual contact between correctional staff and inmates.¹⁹ In the early 1990s, few states had laws specifically prohibiting sexual contact between corrections staff and inmates.²⁰ In the absence of such statutes, many incidents of sexual misconduct could not be prosecuted under existing general sexual assault statutes where consent is a defense to the conduct. Often, involved staff claimed that the inmate had either enticed them or had consented to the conduct.²¹ States enacted laws, often in the wake of visible incidents, prohibiting any sexual contact between prisoners and staff.²² These laws differ in their coverage – some applied only to prisons or other detention facilities,²³ while others cover prisons, parole, probation and work release programs.²⁴ Still others covered juvenile facilities.²⁵ Some states took the approach of covering anyone under custody or authority of law.²⁶

A cursory review of these laws makes clear that states either have or are moving to cover the conduct of community corrections employees. Existing

legislative language that refers specifically to community corrections agencies or seeks to cover anyone under custody or authority of law casts a broad net. Currently, with no revisions, community corrections employees could be subject to criminal penalties for sexual abuse of offenders in 27 states.²⁷ However, a number of issues remain that are very specific to the structure of community corrections agencies. First, many of these statutes require that the correctional officer have direct supervisory or disciplinary authority over the offender.²⁸ It leaves open the possibility that relationships between offenders and other community corrections staff who are not directly supervising an inmate could engage in sexual and other intimate relations. While stories abound of correctional staff – both in facilities and in community corrections agencies – who have gone on to have relationships, father or mother children with offenders, and marry, few agencies have developed policies to address these situations.

Then there are other states that have taken the position that relationships between offenders and probation and parole authorities are off limits in their statutes. For example Nevada’s law prohibiting staff sexual misconduct with inmates specifically exempts parole and probation from its coverage.²⁹

Third, there is the issue of states like South Carolina that have codified sanctions for false reporting. South Carolina’s statute provides that any “person who knowingly or willfully submits inaccurate or untruthful information concerning sexual misconduct” can be imprisoned for up to one year.³⁰ These statutes have a chilling effect on reporting by both staff and inmates.

Finally, the organizational structures that parole and probation agencies find themselves under may determine the application of these laws prohibiting staff sexual misconduct. Many of the statutes only cover the departments of correction.³¹ If community corrections agencies are separate, part of the Department of Public Safety³² or part of the courts, there may be separate sanctions or no sanctions at all. Because some parole and probation officers are licensed social workers there may also be licensing ramifications for sexual misconduct with offenders. This points to the need for a thorough review of your state law, agency policies and licensing regulations.

Community Corrections Environments

The community corrections environment presents a host of challenges to administrators in developing policy and practice to address staff sexual misconduct. There are significant differences between community corrections and traditional institutions in, among other areas:

- organizational structure;
- human resources;
- role autonomy;
- employees’ access to confidential information about offenders;
- need for quality supervision of treatment and counseling responsibilities; and
- extremely high caseloads.

Although the vast majority of incarcerated offenders will eventually return to their communities, many under some type of correctional



supervision, the profile of community corrections offender is different from those who are incarcerated. Many community corrections' clients present a lower level of public safety risk and will never see the inside of a correctional institution. Although staff sexual misconduct reaches across all four quadrants the increase of women under community supervision presents additional challenges to staff who are not knowledgeable about the impact of an offender's abuse histories with current behavior, particularly behavior toward authority figures.

As with institutions, it is important to consider the inclusion of volunteers, contractors and third-party providers of services in policy development. With organizations experiencing budget shortfalls and the increased reliance on private providers, the imbalance of power is present with the same potentials for misuse.

In the Community

For purposes of discussion, the following are examples of areas for the attention of administrators. The list is not intended to be exhaustive, but intended rather to generate thinking and discussion regarding the potential for and the impact of staff sexual misconduct within a community corrections environment.

Legislation, Policy and Procedures

Of the 47 states that have criminalized staff sexual misconduct in an institutional setting, 27 states' statutes also extend to community corrections. Administrators must assess whether policies that address staff sexual misconduct are fully relevant to the community corrections environment and enforceable.

Organizational Structure

Uniquely, community corrections organizations fall in a wide variety of organizational structures – including the courts, county government, sheriffs' department, state department of correction, state government functions within another agency or some combination thereof. These variations give rise to challenges in defining the acceptable, legal and prohibited staff and offender behaviors; how, to whom and where to report allegations; which entity conducts an investigation; and who administers discipline. In addition to probation and parole functions, there may be variety of other legal statutes or regulations that place offenders in the community, such as furlough or conditional release.

Where does the responsibility lie to develop policy and procedure and effectively address sexual misconduct? Certainly, if an organizational structure presents challenges to administrators, imagine the impact on staff and the offender population in trying to understand the rules, negotiate through the system to report allegations and seek protection against retaliation.

Agency Culture

All correctional organizations have a culture that is unique, regardless of whether they are institutional or community environments. Many elements of culture are positive for the organization, but issues of sexual

harassment, poor staff morale, hostile work environments and sexualized work environments can be equally present in community agencies as in other institutional settings. When an agency administrator takes steps to address staff sexual misconduct, the organization's culture needs to be analyzed and addressed in the strategies. Unaddressed, the potential for sexual, as well as other misconduct, is great. The opportunities for systemic misconduct may be somewhat different than in an institutional setting, but the dynamics of sexual misconduct – abuse of power and breaching professional boundaries – are consistent.

Ethics and Professional Boundaries

Many community corrections staff have enhanced their effectiveness through acquisition of skills often previously provided by trained treatment providers. But too often, treatment services for offenders are viewed within a correctional context rather than a treatment context. Without appropriate supervision, treatment and supervision boundaries may become blurred, placing both offenders and staff in vulnerable positions. Many of the cognitive behavioral strategies – techniques that enhance professionalism of staff and have proven effective with offenders – can create opportunities for misuse of relationships and information. Staff using these tools often do so without appropriate supervision increasing the potential for diminishing professional boundaries.

Power and Autonomy of Community Corrections Staff

Staff performing community supervision functions generally work quite independently, assuming sole responsibility for the caseload, with enormous discretion in responding to offender behaviors. Within the role, much of the work occurs away from supervisors, peers and outside of a traditional office setting. To effectively monitor offender change, staff/offender contact occurs in offender's personal environments, which may often include their residence. Maintaining professional boundaries while still providing effective supervision is a balancing act in community settings.

Prior or Current Personal Contact with Offenders

It is true in many communities that community corrections staff may have had prior relationships with offenders. In less populated communities, staff and offenders may have gone to school or worked together, their children may be involved in the same activities, frequent the same community services and have any number of legitimate prior connections. The fact that many offenders placed on community supervision may be seen by the officer or the neighborhood as more socially acceptable, can have the effect of relaxing professional boundaries. It is even a possibility for supervisors to discover that an offender has offered to perform legitimate services for a staff person (i.e. car repair). Taken as an individual event, such a situation may be a minor concern, or even accepted as part of the daily workings of the organization. In reality, this acts contribute to relaxing professional boundaries and opens the staff up to future favors requested by the offender.

Most community corrections organizations have work rules that discourage or prohibit personal relationships between staff and offenders.

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A Success Story

One organization overcame these obstacles when faced with public allegations of staff sexual misconduct – and the allegations were true. Their first step was to develop the agency’s policy regarding zero tolerance and overcome staff resistance. The agency provided very specific training and policies on staff sexual misconduct, and clearly announced their zero tolerance policy. Newly hired staff receive training from experienced staff explaining the damage to the work environment when violations are allowed to continue. Finally, and importantly, the training covers how and why internal affairs investigations are conducted. Many staff are unaware of how many steps in most agency’s internal investigations process are actually geared at protecting staff, rather than being “out to get” staff, regardless of their guilt. Inmates were also oriented to the agency’s policies and procedures. The sheriff personally meets with all staff in pre-service and in-service training to support this policy.

Contact Sheriff Beth Arthur, Arlington County, Virginia, Office of Sheriff, barthur@co.arlington.va.us

However, some community corrections staff have argued that having a personal relationship with an offender that they do not supervise, or having become unknowingly involved with an offender under supervision, should not be characterized as misconduct. Agencies must articulate clearly what activities are prohibited and thoughtfully address areas that can arise – subjects which tend to be ambiguous in a community corrections setting.

Administrative Leadership and Support

The impact of staff sexual misconduct on an organization is devastating. As within institutions, sexual misconduct often starts with small, seemingly harmless actions, which if detected, would diminish the occurrence of incidents. Supervisors need the time, talent and support to effectively manage their subordinate staff. Often part of this equation is missing and well-intended supervisors are clearly “stretched too thin” to provide quality and timely supervision. In addition to sufficient training and support, staff must be encouraged and supported to openly discuss their interpersonal challenges and the potential professional compromises inherent in supervising offenders. While institutions have publicly attempted to meet these challenges, focus group participants gathered for the purpose of discussing this issue in community corrections indicate that it is rare that staff sexual misconduct is discussed within the community corrections arena. Supervisory staff often do not have sufficient information to address this issue. Organizations must develop the resources to train and support supervisors to be both vigilant in addressing staff sexual misconduct and to provide staff with the tools to do their jobs professionally.

Administrative and Political Issues

Staff sexual misconduct issues may be less defined in the community. Existing personnel policies may present challenges to effective reporting, investigating and the ability to adequately protect alleged victims. Hiring standards currently in place may not be sufficient as there may be conflict in policy regarding off-duty behavior, or determining whether a particular staff person is actually appropriate to supervise offenders. There may be resistance by collective bargaining units to criminalize staff sexual misconduct with offenders in the community, especially because of the issue of “freedom of association.” Agency administrators may believe it to be less of an issue in the community environment or are unsure how to begin to address the issue. Where power and authority over another exists, so does the potential for staff sexual misconduct.

Investigations and Data Collection

Who is responsible for carrying out investigations of alleged incidents of staff sexual misconduct? Many community corrections organizations have no authority to initiate or investigate allegations, have no investigative protocols and often must assign their own staff, many of who are not trained investigators, and who must add an investigation to their already overburdened work schedule. Some organizations have informal arrangements within their larger organization to conduct investigations. Some agencies may rely on outside law enforcement agencies or create a memorandum of understanding with an entity to perform investigations. Without a credible and consistent investigation process, the quality of investigations is undermined and staff and alleged victims will have little confidence in the process. If staff and offenders do not believe in the investigative process, they will be less likely to report, and a code of silence will flourish.

Collecting and maintaining data on allegations and findings is often missing within community corrections environments. The structure to adequately develop and keep information, which often may not appear to be relevant or even connected, is often non-existent with an inability to assess the extent of presence of the problem.

Administrators in community corrections organizations must begin the process of addressing staff sexual misconduct with offenders. Many lessons and resources can be drawn from the prison



and jail experience. The unique organizational structure of many community organizations will present challenges to effectively addressing misconduct, with union, staff and political barriers to overcome. As noted previously, administrators can be proactive or reactive. The proactive approach lends itself to preservation of the agency's reputation and integrity, assures protection for staff and offenders, and allows leaders to develop their own solutions, rather than having solutions thrust on them. As one sage correctional administrator observed, public allegations about staff sexual misconduct with offenders are not career builders.

Preventing Sexual Misconduct

An agency with the best policies, procedures, training and supervision may well receive allegations of sexual misconduct by staff. That is a fact of life. But the agency that has proactively pursued policy development and training is certainly in a better position to address allegations. So, what are the prevention strategies?

1. Establish a zero tolerance policy.

Written policy is the best offense. This proactive strategy is built with the commitment to a policy of zero tolerance for staff sexual misconduct. This commitment must be clearly role modeled by agency leadership, through public statements and adoption of concise and descriptive policies. Without all three – public statements, policies and setting the example – staff receive mixed messages. Even model behavior is not enough when written policy does not exist.

If personal integrity, public safety and professionalism are not sufficient reasons to adopt zero tolerance for staff sexual misconduct, then vicarious liability should be. Vicarious liability is created when:

Someone else (such as a supervisor) knew or should have known what was occurring or about to occur, but did nothing to correct the situation, and that lack of action was the proximate cause of subsequent harm, injury, or death.

Vicarious liability³³ can result from the failure to train, negligent supervision, or negligent hiring or retention. Under vicarious liability, administrators are responsible for activities within their organizations. Administrators who develop effective policy, who stay abreast of legal issues, who assess their organization's vulnerabilities and address problems as they arise through reprimand, training, investigation and sanctioning, will have a far greater chance of insulating themselves and their agencies from individual staff member's actions.

Gaining staff support of the zero tolerance policy is a challenge for some agency administrators. Getting staff to see what's in it for them is often the first question needing to be overcome. Staff are usually suspicious and untrusting of the internal investigative process, and see few reasons to risk becoming a snitch. The "wall of silence" exists in many organizations, where the agency's informal culture protects staff whose behavior is out of step with agency policy or the law.

2. Define prohibited behaviors.

Specifically defining prohibited behaviors is essential to insuring education of staff and offenders, as well as prompting compliance. Without knowing the specific agency policy on what constitutes misconduct, it is difficult to hold staff and offenders accountable for prohibited actions.

3. Require mandatory reporting by employees.³⁴

Agencies that have been successful in addressing misconduct report that requiring staff to report suspicions of misconduct is an integral part of their prevention strategies. Most agencies require staff to report suspicions of illegal activities, but in the case of staff sexual misconduct, the administrators need to assess whether they believe that they are receiving reports.

4. Review all policies to insure they are consistent with and promote zero tolerance.

Adopting a single policy is a first step. Agency administrators should also examine if their other policies and procedures support zero tolerance in the workplace.³⁵

5. Develop or amend contracts for services that require the contractor to adopt zero tolerance, agency definitions, reporting requirements and protection for the agency's clients of contractors who are accused of misconduct.

With many services in community corrections organizations provided by third party contracts, agency contracts must include requirements for contractor behaviors consistent with the agency's definitions of sexual misconduct, state law, as well as mandatory reporting and cooperation during investigations. Requests for proposal for services should include the agency's zero tolerance policies and definitions and require the incorporation of these policies in the final contract language. It may be possible to amend existing contracts for services to require the contractor to adopt protocols to prevent and address misconduct, and define how the agency's clients will be protected from contractors accused of misconduct during the investigative process. Contracts should include language that places harsh penalties for inappropriate contractor behavior, consistent with the agency's penalties, as well as the means by which the agency can terminate contracts that violate the agency's zero tolerance policies.

6. Train staff not only regarding policies and procedures, but also equip them with the skills and knowledge they need to supervise offenders on their caseload.

Staff frequently learn what not to do in the course of their job responsibilities, but often don't receive formal training on what to do.

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Miranda v. Arizona, 384 U.S. 436 (1966):

If an investigation involves possible criminal allegations, and becomes accusatory, then Miranda rights apply to all parties. Those parties are protected from making self-incriminating statements under coerced conditions, and without proper legal advice and representation.

When the investigation or interrogation reaches the point where the respondent (person under investigation) may be making self-incriminating statements, he/she must be advised of their rights under the Constitution as defined by Miranda. It is highly recommended to include a written form, delineating the Miranda warning, signed by the respondent and witnessed by at least one investigator.

Garrity: v. New Jersey, 385 U.S. 493 (1967):

In Garrity, the Supreme Court decided a case where police officers were ordered and compelled by internal investigators, with authority of a N.J. statute, to give a statement about alleged conduct. The officers were told that if they did not make the statement, they would lose their jobs. The officers gave the statements, which were later used to incriminate them in a criminal prosecution. The court found that states have the right to compel such statements as a condition of employment, but such statements cannot be used against officers in criminal prosecutions. What does this mean for corrections administrators and investigators?

- Statements can only be compelled as a condition of continued employment if there is immunity from using the statements to self-incriminate in criminal court.
- If the respondent staff member is granted immunity, but refuses to answer specific questions as part of an administrative inquiry, directly related to official duties, the respondent may be dismissed or suffer disciplinary consequences for failing to answer.
- If the respondent staff member is granted immunity from criminal prosecution, and the statement given provides probable cause, administrative sanctions are allowed.

It is highly recommended that Garrity warnings be given in writing and signed by the respondent staff member with at least one witness.

Training staff about the agency's zero tolerance policy and reporting procedures is critical. As critical is giving staff the skills they need to effectively supervise their client caseloads. Role modeling and mentors can assist both new and longer-term staff as they face the daily challenges of their workplace. Agencies should also consider orienting staff to the internal investigative process as a means to gain the staffs' understanding and, hopefully, confidence in the process. This confidence is critical to reporting suspicions.

7. Orient offenders and their families to the agency's policies, including multiple reporting mechanisms and protections against retaliation.

Offenders and their families need to know the definitions for the acceptable and unacceptable behavior by agency employees during the course of the supervision relationship. Only through targeted education, with multiple reporting points and guarantees against retaliation, can administrators receive credible and full information.

Many agencies and staff fear that an aggressive zero tolerance policy, coupled with offender orientation/training about staff sexual misconduct, will invite and encourage malicious and deliberately false allegations by offenders against staff with whom the offender seeks to "get even." Agencies with aggressive policies report this infrequently occurs. The real danger is to allow this fear to prevent the development and enforcement of a zero tolerance policy, or to resort to a watered-down approach that can leave staff and offenders more confused and with less direction. Agencies must also be clear in distinguishing between malicious allegations and allegations for which no corroborating evidence could be found.

Prevention is a multi-pronged strategy. Critical to this discussion is that agency options diminish when an allegation is made public. Proactive management before an allegation surfaces means administrators can plot a deliberate course of action to achieve prevention through development of policies and procedures, training staff, orienting offenders and defining the investigative process.

Investigations

One of the most critical issues facing community corrections professionals regarding staff sexual misconduct with offenders is the investigative process.



Because there are many different types of organizational structures, it is difficult to present a single investigative model that fits each and every organization. Managers are faced with the task of developing an investigative process specific to their particular agency's organizational structure, state statute, or administrative regulations. Designing protocols and written memoranda of understanding with outside organizations who will investigate allegations (i.e. state police, local police, inspector general, etc.) are also recommended.

There are, however, a few basic principles of investigating allegations of staff sexual misconduct that apply across the spectrum. These elements can be included in memoranda of agreements that agency administrators wish to conclude with investigating agencies, if other than their own. These elements include:

- An investigative process supported by written policies and procedures that require thorough, timely, and fair investigations into allegations of staff sexual misconduct;
- Investigators who are specially trained to handle these sensitive and critical investigations;
- An internal investigative process clearly understood by all staff and offenders to eliminate the air of mystery and fear which often results in the strengthening of the code of silence;
- Specific and clear reporting procedures for staff, offenders and third parties that provide a safe atmosphere for those who report allegations, assure protection from retaliation and provide for appropriate handling of false allegations; and
- Cross training of personnel from other agencies who may be investigating allegations of sexual misconduct.

Each agency should consider establishing investigative protocols *before* allegations arise, whether or not another organization will be the investigating body. At a minimum, these protocols should address:

- How reports are received and processed;
- Preliminary inquiry procedures;
- Identifying, collecting and preserving evidence, including chain of custody;
- Who investigates each type of allegation;
- Procedures for notifying staff and offenders of an investigation, where required by state law, administrative regulations, policy, or collective bargaining agreements;
- Medical and mental health interventions, as needed, for those involved, both staff and offenders, including referral of staff to employee assistance programs/resources;
- Reassignment of staff and offenders, if necessary, during the investigation;

Red Flags

The National Institute of Corrections has conducted training for several years entitled "Staff Sexual Misconduct with Inmates." At the conclusion of that training, participants are asked to list those behaviors that they now see as RED FLAGS — events, actions or activities that should have tipped them off sooner to the possibility of staff sexual misconduct. Some of these red flags are relevant in the community corrections setting:

- Over-identifying with an offender or their issues (i.e. blind to offender's actions)
- Horse-play, sexual interaction between staff and offender
- Offender knowing personal information about staff
- Staff isolation from other staff
- Staff granting special requests or showing favoritism
- Staff spending an unexplainable amount of time with an offender
- Offender grape-vine, rumors
- Staff overly concerned about an offender
- Drastic behavior change on the part of an offender or staff
- Staff confronting staff over an offender
- Staff/offender improving his/her appearance, dress, make-up, hair
- Staff can't account for time
- Staff's family being involved with offender's family
- Staff in personal crisis (divorce, ill health, bankruptcy, death in family)
- Staff who consistently work more overtime than peers and who volunteers to work overtime
- Staff having excessive knowledge about an offender and his/her family
- Staff intervening, or helping with the offender's personal life, legal affairs
- Overheard conversations between staff and offender which are sexualized in nature, or refer to the physical attributes of staff or offender

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- Format of the report;
- Timelines for completion (generally);
- Point of contact (person) between the investigators and your agency;
- Confidentiality of information;
- Access to agency personnel and offender records;
- Interview protocols for staff, offenders, and third parties, including when mental health practitioners may be helpful to the investigation;
- Use of covert equipment, surveillance, etc.;
- Production of evidence (fiscal, physical (DNA), telephone records);
- Establishing partnerships with the external investigative body and outside agencies, such as prosecutors, state and local law enforcement agencies, hospitals, advocacy groups, etc.

Many of these investigations involve human interactions at their worst, as staff are alleged to have compromised their integrity, and possibly, friends and co-workers. The investigator must have an understanding of these human dynamics and how they affect communication, particularly during initial and follow-up interviews. The investigator must also be able to handle the potential of criminally prosecuting a fellow employee, and even someone of higher rank. The investigator must also understand how the abuse histories of offenders will impact an investigation. Investigators must be skilled at assessing the impact of post traumatic stress disorder as investigations progress, and understand how and when to involve mental health professionals to protect vulnerable victims and to enhance the investigative outcome.

Community corrections personnel have identified investigations as one of their most trying dilemmas when addressing allegations of misconduct. This is especially true when they don't have the authority, personnel, mandate, or skills to conduct a timely, credible investigation. Those outside agencies who may be required or assigned to investigate allegations are often uninterested in promptly pursuing allegations, or their lack of knowledge about community corrections limits their effectiveness. Meantime, staff and offenders are watching this drama and ascertaining for themselves whether investigation of allegations and addressing misconduct is really a priority for the agency.

Summary and Conclusions

Zero tolerance policy; clear and consistent procedures; a well-designed investigative process or development of investigative protocols; thorough, timely, fair and competent investigations; training for all levels of the issue; offender orientation/training — these elements will support an organization in its efforts to not only prevent staff sexual misconduct with offenders, but also effectively manage allegations to protect the integrity of the organization and its staff.

Resources

The National Institute of Corrections has resources currently available to community corrections administrators. Some of these resources are on NIC's website, www.nicic.org. NIC also has funding available for on-site technical assistance and training. For more information, contact Allen Ault, Ph.D., Chief, Special Projects Division, National Institute of Corrections, aault@bop.gov. Other resources have been noted and footnoted throughout this article.

Endnotes

¹ The source material for this article was gathered by the Center for Innovative Public Policies, Inc., during development of a National Institute of Corrections (NIC) funded projects [Cooperative Agreements 01P18GIR4, 01P18GIR4, Supplement # 1, 02P18GIR4, Supplement #2] to produce training curriculum for agency personnel charged with investigating allegations of staff sexual misconduct with inmates, and provide training and technical assistance. The Center for Innovative Public Policies, Inc. would like to acknowledge the work of NIC, its staff and numerous consultants who have provided leadership and support of the field in this important public initiative. For more information about this subject, or to obtain NIC technical assistance and/or training, please see the resources section of this article.

² See *Smith v. Cochran*, 216 F. Supp.2d 1286, *Sepulveda v. Ramirez*. 967 F.2d 1413 (9th Circuit 1992).

³ See Brenda V. Smith, *Fifty State Survey of State Criminal Laws Prohibiting the Sexual Abuse of Prisoners*, 2002. [hereinafter *Fifty State Survey*] See also Training Program, Investigating Allegations of Staff Sexual Misconduct with Inmates, July 7 – 12, 2002. www.wcl.american.edu/faculty/smith/02conf.cfm for an electronic version of this document.

⁴ For additional definitions see *Staff Sexual Misconduct with Inmates: A Policy Development Guide for Sheriff and Jail Administrators*, Susan W. McCampbell and Larry S. Fischer, National Institute of Corrections, August 2002. This document is available at www.cipp.org, and will be available through the NIC Information Center (www.nicic.org).

⁵ Op. Cit. *Fifty State Survey*

⁶ See also, "Investigating Allegations of Staff Sexual Misconduct: Myths and Realities," Susan W. McCampbell and Elizabeth P. Layman, *Sheriffs*, November-December 2002. [www.cipp.org/sexual/article2.pdf]

⁷ A description coined by A. T. Wall, Director, Rhode Island Department of Corrections. See also the National Institute of Corrections video conference, December 12, 2002, www.nicic.org.

⁸ Brenda V. Smith, *Watching You, Watching Me: Judicial Responses to Cross Gender Supervision of Prisoners* (forthcoming 2003) on file with author.

⁹ See page 35 for a list of "red flags" developed in NIC's training work with corrections agencies. Thanks to Jennie Lancaster, North Carolina Department of Corrections, and Teena Farmon, California Department of Corrections (retired) for their work in this area.


¹⁰ See also "Sexual Misconduct in Corrections," by Elizabeth P. Layman, Susan W. McCampbell, Andie Moss, *American Jails*, November/December 2000. [www.cipp.org/sexual/article2.html]

¹¹ Human Rights Watch, Women's Rights Project: *All Too Familiar: Sexual Abuse of Women in U. S. Prisons*, 1996. www.hrw.org.

¹² *U. S. v. State of Michigan*, Civil Action No. 97-CVB-71514-BDT (E.D. Michigan, 1997), *U. S. v. State of Arizona*, No. 97-476-PHX-ROS.

¹³ Human Rights Watch, *Nowhere to Hide: Retaliation Against Women in Michigan State Prisons*, 9/98. www.hrw.org/reports/98/women.

¹⁴ United Nations Economic and Social Council, Commission on Human



Rights 55th Session: Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights Resolution 1997/44; Addendum – Report of the mission to the USA on the issue of violence against women in state and federal prisons: E/CN.4/1999/68/Add.2GE.99-10012(E), 4 Jan 99. www.un.org/pubs.

¹⁵ United States General Accounting Office: *Women in Prison: Sexual Misconduct by Correctional Staff*; Report to the Honorable Eleanor Holmes Norton. House of Representatives; GAO-GGD 99-104, June 1999. www.goa.gov.

¹⁶ See also, United States General Accounting Office, *Women in Prison: Issues and Challenges Confronting U. S. Correctional Systems*, Report to the Honorable Eleanor Holmes Norton. House of Representatives; GAO-GGD 00-22, December 1999.

¹⁷ The states currently without specific statutes are Vermont, Alabama and Oregon. Op. Cit., *Fifty State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners*.

¹⁸ Kristine Mullendore & Laurie Beever, *Sexually Abused Female Inmates in State and Local Correctional Facilities*, 1 WOMEN, GIRLS & CRIM. JUST. 81-96 (Oct./Nov. 2000) (providing thorough case summaries of recent litigation involving sexual abuse of women prisoners).

¹⁹ See generally Brenda V. Smith, *Fifty State Survey of State Criminal Law Prohibiting the Sexual Abuse of Prisoners* (2002) [hereinafter 50 state survey 2002].

²⁰ At present, only three states – Alabama, Oregon, and Vermont – have not enacted legislation specifically prohibiting sexual contact between staff and inmates. Legislation in Vermont is pending. See 50 STATE SURVEY 2002, *supra* note 1.

²¹ See e.g., *Carrigan v. Davis*, 70 F. Supp.2d 448, 451 (1999) (citing defendant's assertion that his sexual activity with the plaintiff was not only consensual, but that she seduced him); *Long v. McGinnis*, 97 F.3d 1452 (6th Cir. 1999) (alleging plaintiff's consent to sex with male inmate); *Freitas v. Ault*, 109 F.3d 1335 (8th Cir. 1997) (noting that if a state legislature's treatment of the injury is *de minimis* – in that sanctions for crimes are relatively lax – it will result in *de minimis* review at trial when a violation of the law is alleged); *Fisher v. Goord*, 981 F. Supp. 140 (W.D.N.Y. 1997) (ruling that consensual sex engaged in before the enactment of New York's law characterizing such activity as statutory rape was legal, while acknowledging the particular situation in prisons that operates to make "consensual" sex a sham).

²² See Smith, *50 State Survey 2002*, *supra* note, at 3 (noting that COLO. REV. STAT. §18-3-404 (West 2000) provides that any actor subjecting any person in custody to any sexual contact is guilty of unlawful sexual conduct.)

²³ See *id.* at 15, 22, 26, 29 (Idaho, Louisiana, Massachusetts, Mississippi, New York and Pennsylvania are among states who have enacted legislation prohibiting sexual contact with inmates only in prisons or detention settings).

²⁴ See *id.* at 13, 20, 41 (Georgia, Kansas, and North Dakota are among states that have enacted legislation covering prisons, parole, probation, and work release programs).

²⁵ See *id.* at 19-20, 23-25, 31, 37 (Iowa, Kansas, Maine, Maryland, Montana, and New Mexico are among states that have enacted legislation expressly prohibiting sexual contact with inmates in juvenile facilities).

²⁶ See *id.* at 10-12, 19 (The District of Columbia, Florida, and Iowa are among states that have enacted legislation covering anyone in custody or under

authority of law).

²⁷ See *Fifty State Survey*, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Nebraska, New Hampshire, New Jersey, New York, Oklahoma, South Carolina, Utah, Virginia, Washington, West Virginia and Wyoming

²⁸ See, e.g., *Fifty State Survey*, Connecticut, District of Columbia, Georgia, and Illinois.

²⁹ See NEV. REV. STAT. 212.187(1) (1997). The language of the statute specifically provides that "[a] person who voluntarily engages in sexual conduct with a prisoner who is in lawful custody or confinement, other than in the custody of the division of parole and probation and of the department of public safety of residential confinement, is guilty of a category D felony." (emphasis added) *Id.*

³⁰ S.C. Code Ann. §44-23-1150 (D).

³¹ See, e.g., ARIZ. REV. STAT. ANN. §13-1419 (West 1989 and Supp.); DE. CODE ANN. tit. 11, § 1259 (1995 and Supp.) (using the term "detention facility"); IDAHO CODE §18-6110 (Michie 1997 & Supp.); KY. REV. STAT. ANN. § 510.120 (Michie 2000); MO. REV. STAT. § 405 (West 1996 & Supp.); R.I. GEN. LAWS §11-25-24 (1999); S.D. CODIFIED LAWS §24-1-26.1 (Michie 1998 and Supp.); (using the term "detention facility"); VT. STAT. ANN. § 3256 (2000).

³² See Nev. Rev. Stat. 212.187(1) (1997), *supra* at n. 11.

³³ See *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978).

³⁴ Two states, Florida and Missouri, include as part of their statute mandatory reporting by staff. Failure to report is a separate criminal offense.

³⁵ Op. cit. McCampbell/Fischer, *Staff Sexual Misconduct with Inmates: A Policy Development Guide for Sheriffs and Jail Administrators*. □

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