

 State of Connecticut Department of Correction  <b>ADMINISTRATIVE          DIRECTIVE</b>	Directive Number 2.2	Effective Date 9/15/2008	Page 1 of 10
	Supersedes Sexual Harassment, dated 5/1/2007		
Approved By 	Title Sexual Harassment		

1. Policy. It is the policy of the Department of Correction to provide its employees with a workplace free of sexual harassment, retaliation and related misconduct. The Department shall investigate and provide appropriate discipline, remedial measures and resolution for each complaint and each reported violation of this policy. Any employee who engages in conduct prohibited by this policy shall be subject to discipline, up to and including termination. Any non-employee who violates this policy shall be counseled and may be subjected to loss of benefits including but not limited to loss of visitation rights, cancellation of contract, and denial of right to be on Department property. Some of the provisions of this policy are intentionally broader than the prohibitions against sexual harassment provided under state and federal law.
  
2. Authority and Reference.
  - A. United States Code, 42 USC 2000e.
  - B. Code of Federal Regulations, 29 CFR 1604.11.
  - C. Connecticut General Statutes, Sections 18-81, 46a-60, 46a-68 and Chapter 14.
  - D. Orr v. State of Connecticut, Docket No. CV3:02CV1368(AHN/HBF).
  - E. Allen v. Armstrong, Docket No. CV3:02CV1370(AHN/HBF), Stipulated Agreement, April 17, 2003.
  - F. Regulations of Connecticut State Agencies, Sections 46a-68- 31 through 74 inclusive.
  - G. Administrative Directives, 1.10, Investigations, 2.1, Equal Employment Opportunity and Affirmative Action, 2.6, Employee Discipline, and 2.17, Employee Conduct.
  - H. American Correctional Association, Standards for the Administration of Correctional Agencies, Second Edition, April 1993, Standard 2-CO-1C-11.
  - I. American Correctional Association, Standards for Adult Correctional Institution, Fourth Edition, January 2003, Standard 4-4056.
  - J. American Correctional Association, Performance-Based Standards for Adult Local Detention Facilities, June 2004, Standard 4-ALDF-7E-01.
  - K. American Correctional Association, Standards for Juvenile Detention Facilities, 2002 Standards Supplement, January 1993, Standard 3-JDF-1C-05-1.
  - L. American Correctional Association, Standards for Adult Probation and Parole Field Services, Third Edition, August 1998, Standard 3-3053.
  - M. American Correctional Association, Standards for Correctional Training Academies, First Edition, May 1993, Standard 1-CTA-1C-14.
  
3. Definitions. For the purposes stated herein, the following definitions apply:

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- A. Related Misconduct. Failure of a supervisor or manager to comply with the requirements for detecting, reporting and intervention set forth in this Directive.
  - B. Retaliation. Any intimidation, threat, coercion, discrimination or other restraint against an employee, volunteer, vendor, contractor or visitor to a Department facility because the individual:
    - 1. made a written or verbal complaint of sexual harassment, retaliation, or related misconduct;
    - 2. resisted or opposed any conduct that violates this Directive;
    - 3. refused to participate in or condone any conduct that violates this Directive; or,
    - 4. testified at, assisted in or otherwise participated in any investigation or proceeding concerning sexual harassment.
  - C. Sexual Harassment. Any unwelcome sexual advance, request for sexual favors, disparagement or hazing on the basis of gender, gender identity or sexual orientation, or conduct, verbal or physical, that is of a sexual nature or that is addressed to sexual attributes when:
    - 1. submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
    - 2. submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting the individual;
    - 3. such conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment; or,
    - 4. such conduct substantially and adversely affects the working conditions of an employee or person providing services as a vendor, volunteer or contractor or the privileges of any non-inmate at a Department facility.
  - D. Terms and Conditions of Employment. Working conditions and benefits of all kinds, including but not limited to assignment, shift, promotional opportunities, training opportunities, treatment, and discipline.
4. General Principles.
- A. Sexual harassment is a form of misconduct that undermines the integrity of the employment relationship and the professionalism and efficiency of the Department.
  - B. This policy shall protect both employees and non-employees including volunteers, vendors, contractors, and visitors.
  - C. This policy protects employees from sexual harassment in their employment, regardless of the source of the sexual harassment.
  - D. This policy prohibits sexual harassment by employees against other employees and against non-employees at Department facilities.
  - E. This policy does not prohibit normal, courteous, respectful, pleasant and non-coercive interactions.

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- F. Identification of conduct, verbal or physical, as sexual harassment does not depend on the intention or motivation of the actor but on whether such conduct meets the definition of sexual harassment and/or could reasonably be perceived as sexual harassment by the person experiencing it.
  - G. Conduct need not be repeated, severe or pervasive to constitute a violation of this Directive.
  - H. Sexual harassment may occur between individuals of either gender and between individuals of the same gender as well as those of different genders.
5. Specific Prohibitions of Sexual Harassment. Any conduct that constitutes sexual harassment as defined in Section 3 of this Directive is prohibited. The following specific conduct are examples of sexual harassment that violates this policy:
- A. Sexual flirtation or touching;
  - B. Advances or propositions after an indication that such are unwelcome;
  - C. Verbal conduct of a sexual nature;
  - D. Graphic or sexually suggestive comment about an individual's dress, body, sexual attributes, sexual activities, gender identity, or sexual orientation;
  - E. Use of sexually degrading words to describe an individual;
  - F. Display in the workplace of sexually suggestive objects, pictures, or photographs;
  - G. Making a comment or starting or spreading a rumor that has the effect of embarrassing, ridiculing, or demeaning an individual on the basis of his or her sexual attributes, gender identity, or sexual orientation;
  - H. Making a decision concerning an employee's terms or conditions of employment on the basis of an employee's refusal to submit to sexual advances or any kind of sexual harassment as defined herein or threatening or insinuating that such refusal will adversely affect an employee's terms and conditions of employment in any way;
  - I. Making a decision concerning an employee's terms or conditions of employment or stating or insinuating that any term or condition of employment will be favorably affected by an employee's willingness or appearance of willingness to tolerate sexual advances or other sexual harassment, as defined herein;
  - J. Jokes, pranks, vandalism or banter that tend to denigrate or show hostility toward an individual or group on the basis of gender, sexual attributes, or sexual orientation;
  - K. Sexual assault;
  - L. Exposing one's genitals, buttocks or breasts; or,
  - M. Unnecessary touching or physical interference with the movements of another person.
6. Specific Prohibitions of Retaliation. Any conduct that constitutes retaliation as defined in Section 3 of this Directive is prohibited. The following specific conduct, when engaged in because the employee has refused to participate in sexual harassment or because an employee has reported, complained of, or otherwise opposed any violation of this policy, are examples of retaliation that violates this policy.

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Some of these examples of retaliatory conduct may also constitute sexual harassment:

- A. Taking any adverse action against an employee with regard to any term or condition of employment;
  - B. Subjecting an employee to a hostile work environment in any way, including but not limited to:
    - 1. shunning or ostracizing the employee;
    - 2. labeling the employee a "snitch" or a "rat" or calling the employee lewd, disgusting or derogatory names;
    - 3. stalking or harassing the employee;
    - 4. making obscene, threatening, harassing or hang-up telephone calls;
    - 5. refusing or threatening to refuse to provide back-up support in performing work duties, including emergencies;
    - 6. engaging in demeaning gossip or spreading of rumors;
    - 7. divulging private information about the employee, except as required by directives governing reporting and investigations;
    - 8. tampering with, vandalizing or interfering with the employee's security equipment, vehicle or personal belongings;
    - 9. denying the employee timely and adequate restroom breaks; or,
    - 10. preventing the employee from making radio transmissions.
  - C. Selectively disciplining the employee or selectively threatening to impose discipline against the employee;
  - D. Holding the employee to a higher standard of performance than other co-workers;
  - E. Denying the employee training opportunities, favorable transfers or promotions;
  - F. Giving the employee unfair or inaccurate performance evaluations;
  - G. Telling other employees, with the exception of other managers or supervisors that have a need to know, or inmates that an employee has made a complaint or identifying an employee as the person who made a complaint, except as required by directives governing reporting and investigations;
  - H. Refusing to investigate when the employee reports violations of rules, regulations or directives or refusing to take corrective action when such violations are found to have occurred;
  - I. Taking adverse action toward a person who has participated in or supported the investigation of a complaint of violation of this Directive or who has refused to participate in a violation of this Directive;
  - J. Involuntarily transferring the employee to different and less desirable facilities, positions or shifts; or,
  - K. Subjecting a complainant to discipline for failing to make an immediate report of conduct that violates this Directive.
7. Employee Responsibility. An employee shall not engage in behavior that constitutes sexual harassment, retaliation or related misconduct. The Department will not tolerate violations of this Directive and strongly encourages victims of sexual harassment to report such harassment as

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soon as feasible after it occurs. Any employee who witnesses sexual harassment, retaliation or related misconduct or who becomes aware that an employee has been subjected to sexual harassment, retaliation or related misconduct should report same to a supervisor, manager, the Unit Administrator or the Affirmative Action Unit as soon as feasible and must do so immediately if the conduct jeopardizes the safety or security of the operation or of personnel.

8. Manager or Supervisor Responsibility.

- A. Each manager or supervisor has a responsibility to maintain the workplace free of any form of sexual harassment, retaliation or related misconduct, to monitor working conditions in order to detect violations of this Directive, and to take prompt action to correct and report any violation through the chain of command.
- B. Any manager or supervisor who witnesses conduct that violates this Directive or receives a report of conduct that is alleged to violate this Directive shall immediately report such conduct to a senior manager or the Unit Administrator, who shall advise the Equal Employment Opportunity Director of any violation or alleged violation as soon as feasible.
- C. Failure of a manager or supervisor to take action upon witnessing or receiving a report of sexual harassment or sexual misconduct committed by an inmate against an employee constitutes a violation of this Directive.

9. Filing a Complaint. The Department shall investigate and remedy sexual harassment, retaliation and related misconduct that come to its attention whether or not an employee has made a complaint. The following procedures apply to complaints:

- A. A complaint of sexual harassment, retaliation or related misconduct shall be made within sixty (60) days of the conduct complained of; however, the Equal Employment Opportunity Director has discretion to accept and investigate complaints made after sixty (60) days and shall do so for good cause shown. The Equal Employment Opportunity Director shall accept and investigate such complaints without a showing of good cause for delay if they allege ongoing or continuous misconduct that has continued by the same alleged wrongdoer(s) within the sixty-day period.
- B. Complaints may be made in the following ways:
  - 1. On CN 2101, Affirmative Action Complaint Form. The complainant may attach CN 6601, Incident Report to the complaint form (additional forms and documents are not required);
  - 2. By any other written complaint, letter or report;
  - 3. By telephone;
  - 4. In person; or,
  - 5. By filing a complaint with the Equal Employment Opportunities Commission (EEOC) or the Connecticut Commission on Human Rights and Opportunities (CHRO), which refer such complaints to the Department.

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- C. A complaint of violation of this Directive may be made directly to any of the following in any of the ways listed in Section 9(B) of this Directive:
1. Affirmative Action Unit;
  2. Human Resources;
  3. Unit Administrator or Director;
  4. Any manager or supervisor;
  5. The independent consultant appointed by the Permanent Commission on the Status of Women (PCSW); or,
  6. The Permanent Commission on the Status of Women.
- D. Any of the above recipients of a verbal complaint shall, within five (5) business days, reduce the complaint to writing and give it to the Equal Employment Opportunity Director, who shall notify the complainant of the need to sign the complaint with or without revisions. The investigatory and other obligations, and the time limits set forth, shall not commence, in the case of a verbal complaint, unless and until the complaint is signed. The Affirmative Action Unit shall acknowledge receipt of the complaint through written confirmation provided to the complainant.
- E. In addition to making a complaint within the Department, an employee may make a complaint to other agencies, which have jurisdiction to investigate and remedy such complaints. The filing of a complaint with such agencies shall not terminate the Department's investigation of a complaint related to the same allegations.
- F. If a complaint concerns a situation that should have also been the subject of an incident report, but where no such incident report was filed, no discipline beyond formal counseling shall be imposed for such failure, and counseling shall not be imposed in retaliation for the filing of a complaint of a violation of this Directive. Discipline shall not be imposed unless:
1. The Commissioner determines that the delay in filing an incident report materially threatened the safety or security of the institution; and,
  2. The Commissioner has consulted with the Consultant to the Permanent Commission on the Status of Women before imposing any discipline for late reporting. Discipline shall not be imposed if the delay was caused by good faith reasons including, but not limited, to fear of retribution, embarrassment or other disincentives, or delay in ascertaining that the acts at issue were related to sexual harassment, retaliation or related misconduct.
10. Investigation of Complaint.
- A. The Affirmative Action Unit shall send each complainant a written acknowledgment of receipt of the complaint.
  - B. Any recipient of a verbal complaint shall, within five (5) business days, reduce the complaint to writing and give it to the Equal Employment Opportunity Director, who shall notify the complainant of the need to sign the complaint.

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- The investigatory and other obligations, and the time limits set forth, shall not commence, in the case of a verbal complaint, unless and until the complaint is signed.
- C. The Affirmative Action Unit shall conduct and complete a fair, objective, comprehensive, and, to the extent possible, confidential investigation into each and every complaint of sexual harassment, retaliation or related misconduct. At the complainant's request, investigations shall be conducted at a confidential, off-site location.
  - D. The investigation should be completed within forty-five (45) days; however the time to investigate may be extended for good cause, upon three (3) days written notice to the complainant and the PCSW Consultant. The Department shall comply with CHRO regulations that require resolution of complaints within ninety (90) days unless good cause is shown for a longer period for resolution.
  - E. The Unit shall forward its report of the completed investigation to Human Resources for a determination whether a pre-disciplinary hearing should be afforded to the person or persons identified as having engaged in sexual harassment, retaliation or related misconduct. After that determination and the conclusion of any such hearing, Human Resources shall follow the routing process for recommendation of level of discipline to the Commissioner, who shall make the final decision on the actions to be taken.
  - F. The Affirmative Action Unit shall, for purposes of assessing credibility, determine from its records whether a person claimed to have violated this Directive has been identified in past complaints of conduct violating this Directive and what findings or corrective action were taken by the Department.
  - G. The Affirmative Action Unit shall not represent the Department in any EEOC or CHRO proceedings concerning complaints of sexual harassment or retaliation. Such representation shall be assigned by the Commissioner.
  - H. In the course of investigation, the Affirmative Action Unit shall report to the Department of Public Safety any conduct that the investigator or the Equal Employment Opportunity Director reasonably believes constitutes criminal conduct, regardless of any mitigating or other circumstances.
  - I. At least once a month until the final resolution of the complaint, the Affirmative Action Unit shall inform the complainant and the subject(s) of the complaint, in writing, of the status of the investigation, disciplinary process, including all appeals.
  - J. In the event of a determination that there is not sufficient evidence to substantiate a finding of a violation of this Directive, the complainant and the subject(s) of the complaint shall be notified within five (5) business days of this determination.
  - K. Investigation of a complaint shall not be suspended because of the filing of the same complaint with the EEOC or the CHRO. Upon adoption of the final report and discipline to be imposed, if any, the complainant shall be promptly notified in writing that the investigation has concluded and informed of the discipline imposed. Upon request, the complainant shall be provided with the final report and any letters of discipline consistent with the

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provisions of Chapter 14 of the Connecticut General Statutes (Freedom of Information Act).

11. Disciplinary Action. Any employee, manager or supervisor who is found, after investigation, to have (a) engaged in conduct prohibited by this Directive; (b) failed to cooperate fully and truthfully in an investigation; or (c) to have lied or given false testimony during the course of an investigation shall be subject to consequences appropriate to the violation, including discipline up to and including dismissal. A person who is the victim of alleged misconduct under this Directive shall not be subject to discipline solely for choosing not to pursue a complaint or because a complaint is not substantiated.  
  
Any manager or supervisor who is found, after investigation to have (a) engaged in related misconduct as define in Section 3(C) of this Directive; (b) been negligent in pursuing appropriate action to enforce this policy; or (c) failed to comply with the obligations it imposes on manager or supervisors, shall be subject to consequences appropriate to the violation, including discipline up to and including dismissal.
12. Remedial Action. Upon a recommendation from the Equal Employment Opportunity Director or the Commissioner's own determination, the Commissioner may order appropriate measures to remedy conditions that violate this Directive. Such remedial measures may include steps necessary to protect the complainant, other employees, and supportive witnesses from harassment or retaliation during and after the investigation, including but not limited: to counseling the alleged harasser to refrain from conduct that may be, or perceived to be harassing or retaliatory; transferring or placing on administrative leave the alleged harasser; or offering the complainant, where available an administrative transfer to another facility or location. No complainant shall be transferred in connection with a complaint of sexual harassment, retaliation, or related misconduct to a shift different from the complainant's current shift unless the complainant agrees in writing to such a shift change.
13. Appeal. If the complainant disagrees with the findings of the investigation, the complainant may request that the Commissioner or designee review the findings. An employee shall make such a request in writing to the Commissioner or designee within fifteen (15) calendar days of the notification of finding. The Commissioner or designee shall conduct a review and notify the complainant of the results of the review.
14. Confidentiality. The identity of a complainant and the facts and circumstances of a complaint and pending investigation shall, to the extent possible, be kept confidential and shared only on a need-to-know basis.
15. File Management. The complaint file, including all information and documents pertinent to the complaint, shall be maintained in the Affirmative Action Unit.

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16. Notification of Complainant's Rights. Upon receiving a complaint of violation of this Directive, the Affirmative Action Unit shall provide the complainant with written information setting forth:
- A. the procedures and deadlines governing the Department's investigation and resolution of the complaint;
  - B. the complainant's right to file complaints with the EEOC and CHRO and the deadlines and procedures applicable to filing such complaints; and,
  - C. the names and telephone numbers of persons and organizations, within and outside of the Department, to contact with questions concerning the complainant's rights and/or the investigation process:
- 1. United States Equal Employment Opportunity Commission (EEOC), John F. Kennedy Federal Building, 475 Government Center, Boston, MA 02203.  
  
Contact numbers are:
    - a. Telephone. (617) 565-3200 or (800) 669-4000;
    - b. TTY. (800) 669-6820; and,
    - c. Website. [www.eeoc.gov](http://www.eeoc.gov).
  - 2. Connecticut Commission on Human Rights and Opportunities (CHRO), 21 Grand Street, Hartford, CT 06106.
    - a. Contact numbers are:
      - 1. Telephone. (800) 477-5737;
      - 2. TTY. (860) 541-3459; and,
      - 3. Website. [www.ct.gov/chro](http://www.ct.gov/chro).
    - b. CHRO Regions:
      - 1. Capital Region, 999 Asylum Avenue, 2<sup>nd</sup> Floor, Hartford, CT 06105. Telephone: (860) 566-7710.
      - 2. Southwest Region, 1057 Broad Street, Bridgeport, CT 06604. Telephone: (203) 579-6246.
      - 3. West Central Region, Rowland State Government Center, 55 West Main Street, Suite 210, Waterbury, CT 06702. Telephone: (203) 805-6530.
      - 4. Eastern Region, 100 Broadway, City Hall, Norwich, CT 06360. Telephone: (860) 886-5703.
17. Compliance Report. The Commissioner and the Equal Employment Opportunity Director shall compile and evaluate data concerning sexual harassment, retaliation, and related misconduct, investigation of such complaints and disciplinary and remedial actions taken, and shall prepare quarterly written reports that shall be made available to all Department employees.

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18. Working Group on Sexual Harassment. The Commissioner shall establish a Working Group on Sexual Harassment, which shall consist of outside experts and advisors in the field of sexual harassment and women employed within the public safety profession. The members of the working group shall be chosen, in equal numbers, by the Commissioner, the Permanent Commission on the Status of Women, and the Office of the Attorney General.

The Working Group on Sexual Harassment shall assist the Department in the review of existing Department policies, procedures and practices, and in the development of recommendations and best practices to address and correct any sexual harassment, retaliation, related misconduct and sexually hostile working conditions within the Department.

The Working Group on Sexual Harassment shall be co-chaired by the Executive Director of the Permanent Commission on the Status of Women and the Equal Employment Opportunity Director. The group shall meet at least quarterly with Department staff (including the Director of Human Resources, the Director of Training and Staff Development, and the Commissioner).

19. Advisory Committee on Women's Issues. The Commissioner shall establish an Advisory Committee on Women's Issues which shall: (a) provide a forum for employees to express their views concerning sexual harassment and retaliation; and (b) review, discuss and offer recommendations to enhance the employment policies, practices and working conditions of female employees in the Department.

The Advisory Committee on Women's Issues shall be chaired by the Equal Employment Opportunity Director. The committee shall include employees from the various levels and worksites of the Department. The committee may include representatives from the Office of the Attorney General and the Permanent Commission on the Status of Women. The Commissioner shall appoint members from employees who respond to the general notice soliciting candidates. Department employees who are members shall be released from their regular duties. The Commissioner shall determine the size of the committee. The Advisory Committee shall meet at least quarterly.

20. Exceptions. Any exceptions to the procedures in this Administrative Directive shall require prior written approval from the Commissioner.