

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WOMEN PRISONERS OF THE DISTRICT OF
COLUMBIA DEPARTMENT OF CORRECTIONS,
et al.,
Plaintiffs

v.

DISTRICT OF COLUMBIA,
et al.,
Defendants

Civil Action
No. 93-2052 (JLG)

FILED

MAR 16, 1995

CLERK U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

DEFENDANTS' SUBMISSION OF THE D.C. DEPARTMENT OF CORRECTIONS'
DEPARTMENT ORDER REGARDING SEXUAL HARASSMENT AGAINST INMATES

Defendants, by and through counsel, submit the attached Department Order regarding sexual harassment as mandated by paragraph three (3) et seq. of this Court's Order for Declaratory and Injunctive Relief dated December 13, 1994. The Department Order was approved by plaintiffs and the Special Court Monitor and signed by the Director of the D.C. Department of Corrections on

Women Prisoners/DC v. DC



PC-DC-011-008

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March 10, 1995. The Department Order is submitted by the defendants for the record.

Respectfully submitted,

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By: 

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CERTIFICATE OF SERVICE

I certify that one copy of the attached Defendants' Submission of the D.C. Department of Corrections Department Order Regarding Sexual Harassment of Inmates was mailed, postage pre-paid, on the 16th day of March, 1995, to:

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DEPARTMENT ORDER
DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS

Department Order Subject: Sexual Misconduct Against Inmates		Department Order Number: 3350.2
OPI Code: ORP	Chapter: Personnel Management	Effective Date: March 20, 1995
Signature: <i>Margaret A. Moore</i> Margaret A. Moore, Director	Related ACA Standards: 3-4268	FILED MAR 16 1995

I. Purpose: The purpose of this directive is to establish D.C. Department of Corrections (DCDC) policy regarding sexual misconduct against inmates; to discourage and prevent sexual misconduct against inmates; and, to establish uniform procedures for reporting, investigating, and adjudicating incidents of sexual misconduct in the DCDC.

II. Policy: It is the policy of the DCDC to prohibit acts of sexual misconduct against inmates and to fully investigate and discipline persons who violate this directive. Furthermore, the DCDC prohibits retaliation against inmates who file sexual misconduct complaints.

III. Applicability: This directive applies to employees, volunteers, visitors, and inmates under the purview of the DCDC.

IV. Authority: The Deputy Directors, Wardens, Deputy Wardens, Office Chiefs, Managers, and Supervisors are delegated authority to enforce the requirements of this directive.

V. Definitions: For the purpose of this directive, the following definitions shall apply:

A. Monitor - One or more members from the Office of the Special Officer of the U.S. District Court for the District of Columbia who shall monitor and investigate allegations of sexual misconduct against women inmates.

B. Respondent - The person accused of sexual misconduct.

C. Retaliation - An act of vengeance, covert or overt action, or threat of action, taken against an inmate in response to the inmate's complaint of sexual misconduct or cooperation in the reporting or investigation of sexual misconduct, regardless of the merits or the disposition of the complaint. Examples of acts of retaliation are unnecessary discipline; intimidation; unnecessary changes in work or program assignments; unjustified

transfers to other institutions or unjustified placement in involuntary protective custody; unjustified denials of privileges or services.

D. Sexual Misconduct - Sexual behavior which is directed toward inmates under the purview of the DCDC. This inappropriate behavior may be directed at inmates by a DCDC employee, volunteer, visitor, agent or individual working on behalf of the DCDC. Sexual misconduct toward inmates includes acts or attempts to commit acts of sexual abuse, sexual assault, sexual harassment, inappropriate physical contact, sexual obscenity, and consensual sex. Furthermore, sexual misconduct includes conversations or correspondence which demonstrates or suggests a romantic or intimate relationship between an inmate and employee. Sexual contact between an inmate and employee is sexual misconduct even if the inmate consents.

1. Sexual Abuse - Any sex act or sexual touching between a DCDC employee and an inmate under the purview of the DCDC; any sexual act in which a DCDC employee participates in, compels, or forces an inmate into engaging in sexual activity.

2. Sexual Assault - Forced, nonconsensual or coerced sexual conduct, e.g., rape, sodomy, sexual touching as defined by D.C. Statute.

3. Sexual Harassment is defined as:

a. making sexually offensive comments or gestures, or engaging in inappropriate physical contact with an inmate; or

b. influencing, promising or threatening an inmate's safety, custody, privacy, housing, privileges, work detail or program status in exchange for sexual favors; or

c. creating an intimidating, hostile or offensive environment to an individual or to others who observe sexually offensive behavior and/or sexually offensive language.

4. Invasion of Privacy - The actual or attempted action of observing an inmate or interfering in an inmate's personal affairs without a sound penological reason. Invasion of privacy includes failure of an employee of the opposite sex to announce his/her presence when entering an inmate's housing unit.

VI. Procedures:

A. Responsibilities

1. **DCDC Employees** - Each employee shall strictly adhere to this directive by ensuring that his/her conduct does not constitute or promote sexual misconduct.

2. **Managers and Supervisors** - Managers and supervisors shall report each instance of alleged sexual misconduct that is brought to their attention, including allegations that are not brought by a specific complainant. Failure to report alleged sexual misconduct shall subject the manager or supervisor to sanctions under District Personnel Manual (DPM) Chapter 16. →

What kind of sanctions?

B. General Sexual Misconduct Procedures

1. Each employee who receives any information, from any source, concerning sexual misconduct is required to report the information in writing to the affected Warden or Office Chief. Each employee shall make the his/her report of sexual misconduct within twenty-four (24) hours of receiving the information.

See attached Table of Penalties

2. Failure of an employee to report any known or suspected incident of sexual misconduct shall subject the employee to disciplinary action.

What kind?

3. An inmate may file a sexual misconduct complaint to the Warden utilizing the DCDC's inmate grievance procedure (IGP) system, as described in Department Order 4030.1D, "Inmate Grievance Procedure (IGP)," dated May 4, 1992. The inmate may file the complaint as an "emergency," as defined in Department Order 4030.1D, and forward it directly to the Director.

4. Confidentiality

a. The sexual misconduct complaint, including all information and documents pertinent to the complaint, shall be handled in a confidential manner and shall only be revealed on a need to know basis, to include the Monitor(s), appropriate DCDC officials, and the respondent.

b. If an inmate so requests, he/she shall be treated as an anonymous informant.

c. Each party contacted in the course of an investigation shall be advised that any intimidation, retaliation, or breach of confidentiality is a separate actionable offense.

5. Interim Procedures Pending Investigations

a. Under appropriate circumstances and with the Director's approval, the Deputy Director may transfer or place a respondent on administrative leave pending the outcome of an investigation.

b. Employees who have been transferred during investigations shall not be permitted to work overtime, or work for any other reason, at the institution where the complainant is housed. Employees who have been transferred during investigations shall not be permitted to work at any institution housing women if the alleged sexual misconduct affects a woman inmate.

c. Whenever the decision is made not to transfer or place a respondent on administrative leave pending the outcome of an investigation, the respondent shall not be assigned to work in any area where he/she may come into contact with the complainant.

d. Transportation Officers who are under investigation, or who have been implicated in a sexual misconduct complaint, shall not be assigned to escort the complainant or escort other inmates.

e. When appropriate and necessary and with the Director's approval, the Deputy Director may transfer an inmate to another institution or make other appropriate housing accommodations. It is strictly prohibited to transfer an inmate involuntarily or place an inmate in involuntary protective custody in retaliation for reporting sexual misconduct. Each inmate shall be placed in protective custody in accordance with the Lorton Regulations Approval Act (LRAA). In addition, every effort shall be made to minimize any disturbance of the inmate's program activities.

6. Employee Discipline

a. When probable cause is determined by an investigation committee, within fifteen (15) calendar days receipt of the investigation's findings, the authorized management official shall take appropriate disciplinary action against culpable employees.

b. The authorized management official imposing discipline shall ensure that disciplinary action is proposed within the mandatory forty-five (45) day period, excluding Saturdays, Sundays, and legal holidays, from the date the DCDC

became aware of the offense.

7. Inmate Appeals

a. An inmate who is dissatisfied with the investigation or resolution of an allegation of sexual misconduct may appeal to the Director of the DCDC within five (5) calendar days of receiving written notice of the outcome of the investigation.

b. The Director shall respond in writing to the inmate within ten (10) calendar days. The Director shall notify the Monitor of each appeal and notify the Monitor of the response to each appeal.

c. An appeal shall not delay the implementation of authorized management actions.

8. Sexual Assaults

a. Sexual assaults shall be handled in accordance with DCDC policy and applicable laws and regulations. A sexual assault committed against an inmate shall be immediately reported to a DCDC supervisor and the Warden or Office Chief. Sexual assaults shall also be reported immediately to the appropriate law enforcement agencies having jurisdiction where the crime was committed.

b. When a sexual assault is alleged, the immediate supervisor on duty shall secure the crime scene pending action by the appropriate law enforcement agency. The affected inmate shall be immediately given the necessary emergency medical treatment, without compromising the integrity of available physical evidence, and transported for appropriate medical attention. The Monitor shall be notified by the Warden within twenty-four (24) hours of a sexual assault incident against a female inmate.

9. **Counseling** - Based upon an inmate's request, an inmate who has been the victim of sexual misconduct shall be provided psychological counseling by a mental health professional. Any employee who receives a report of sexual misconduct from an inmate shall advise the inmate that psychological counseling is available.

C. Sexual Misconduct Complaint Procedures (Female Inmates)
[Note: The following procedures for female inmates shall be in effect if required by court order, Civil Action 93-2052 (Women Prisoners v. D.C.). If this court order is not implemented the

procedures established in this directive for male inmates shall apply to female inmates also.]

1. Each employee is required to report alleged incidents of sexual misconduct against female inmates to the appropriate Warden and Monitor within twenty-four (24) hours.

2. The Monitor will thoroughly investigate each allegation of sexual misconduct and report the findings to the affected Warden or other appropriate DCDC official.

3. A female inmate may make a confidential report of sexual misconduct through the established twenty-four (24) hour telephone hotline. The telephone hotline shall be supervised by the Monitor.

4. A female inmate may also file a sexual misconduct complaint by filing an IGP or forwarding a written letter to the Warden, appropriate Office Chief, or the Monitor.

5. Investigations

a. The Monitor will ensure that each reported sexual misconduct complaint is thoroughly investigated and documented. The Monitor will submit a final written report to the affected Warden, or other appropriate management official, within thirty (30) calendar days of the Department's knowledge of the incident. The report will include the investigation's factual findings and a conclusion as to whether a preponderance of evidence shows that sexual misconduct occurred. Each female inmate shall be advised of her right to counsel during interviews with any investigation committee member.

b. If the Monitor cannot complete a final written report within the thirty (30) calendar day due date, the Monitor will notify the Director of this fact. The Monitor will notify the Director within eight (8) calendar days from the written report's due date, if unusual circumstances necessitate additional time for an investigation or submission of the final written report.

c. Within forty-eight (48) hours after the receipt of the Monitor's written report, the Warden or other appropriate DCDC official, shall inform the inmate complainant in writing of the outcome of the sexual misconduct investigation.

d. Within fifteen (15) calendar days of receipt of the Monitor's written report, the Warden or appropriate management official shall take appropriate disciplinary action

against employees or inmates who are determined guilty of sexual misconduct. The Warden or appropriate management official responsible for employee discipline shall ensure that disciplinary action is proposed within the mandatory forty-five (45) day period, excluding Saturdays, Sundays, and legal holidays, from the date the offense was known by the DCDC.

D. Sexual Misconduct Complaint Procedures (Male Inmates)

1. Each employee is required to report alleged incidents of sexual misconduct by male inmate complainants to the appropriate Warden, Office Chief, or Supervisor within twenty-four (24) hours.

2. Each sexual misconduct complaint by male inmate complainants shall be forwarded through the appropriate chain-of-command to the appropriate Deputy Director. The Deputy Director shall appoint an investigation committee to review the complaint and present written findings and recommendations.

3. Investigation Committee

a. The investigation committee shall be comprised of managers who are not assigned to the institution where the sexual misconduct complaint originated. The investigation committee members shall not have been involved in any form in the preliminary investigation of the subject sexual misconduct incident or shall not have knowledge of the alleged sexual misconduct, with the exception of hearsay. Any person who has a pending sexual misconduct complaint or any person who has been found guilty of sexual misconduct shall not participate on an investigation committee.

b. The investigation committee shall conduct a thorough and objective investigation of all allegations. The investigation may include interviewing the complainant, respondent, witnesses, and shall include reviewing all documents and physical evidence. Each inmate shall be advised of his right to have counsel present during interviews with any investigation committee member.

c. Within thirty (30) calendar days of the DCDC's knowledge of a complaint of sexual misconduct, the investigation committee shall submit its written report of findings and recommendations to the Deputy Director.

d. Within fifteen (15) calendar days of receipt of the investigation committee's report, the Warden or appropriate management official, shall take appropriate

disciplinary action against employees or inmates who are determined guilty of sexual misconduct. The Warden or appropriate management official responsible for employee discipline shall ensure that disciplinary action is proposed within the mandatory forty-five (45) day period, excluding Saturdays, Sundays, and legal holidays, from the date the offense was known by the DCDC.

E. Training - The Administrator, Training Academy, shall ensure that training is conducted for each employee who works with women inmates, and as follows:

1. Each correctional employee assigned to an institution where women inmates are housed, shall receive comprehensive instruction in the prohibition, identification, reporting and prevention of sexual misconduct against inmates. This training shall also include emphasis on the consequences for violating DCDC policy concerning sexual misconduct. This training shall be provided on a quarterly basis.

2. Nonsupervisory, uniform and nonuniform correctional employees, who are not assigned to a correctional institution, shall receive training during in-service training period regarding the prohibition, identification, reporting, and prevention of sexual misconduct of inmates and the consequences for violating DCDC policy concerning sexual misconduct.

3. The orientation and training program for new employees shall include scheduled instruction on the prohibition, identification, reporting, and prevention of sexual misconduct of inmates and the consequences for violating policy concerning sexual misconduct.

4. Wardens shall ensure that this directive is reviewed at roll call instruction for three (3) consecutive days on a quarterly basis. The review of this directive shall be incorporated in the Warden's staff meeting agenda on a biannual basis and managers shall subsequently conduct biannual training with subordinates.

5. Sexual misconduct training shall be developed for women inmates so that they know how to recognize and report sexual misconduct. Formal training sessions shall be conducted monthly for the first year succeeding the court order (*Women Prisoners v. District of Columbia*) and on a quarterly basis thereafter.

F. Disciplinary Causes

1. The DCDC shall impose stringent disciplinary action against persons found in violation of the directive on inmate sexual misconduct in accordance with Chapter 16 of the DPM. Cause for such violations shall be cited as provided in DPM Section 1603.1 (d); "Inexcusable Neglect of Duty" and/or 1603.1 (p) "Other conduct during and outside of duty hours that would affect adversely the employees's or the agency's ability to perform effectively." One or both of these causes shall be cited depending on the nature and severity of the offense.

2. Managers and supervisors who fail to report or take appropriate actions when instances or complaints of sexual misconduct against inmates are brought to their attention shall also be subject to disciplinary action. DPM Section 1603.1 (d) shall be cited as cause for such failure to abide by this directive or take appropriate action. Failure to follow a direct order to initiate appropriate action by a supervisor/manager may also be grounds to charge the supervisor/manager for cause under DPM Section 1603.1 (e), "Insubordination." Further, failure by any employee to refuse to answer questions during an official investigation may also be grounds to charge the employee for cause under DPM Section 1603.1 (m), "Willful disobedience except as authorized by law." Penalties for causes not specifically listed under the Table of Penalties contained herein, shall be taken consistent with DPM Section 1618.

3. The DCDC shall impose discipline for cause as cited above, based on an administrative determination that inmate sexual misconduct has occurred. However, this does not preclude the DCDC from taking separate and distinct disciplinary measures against an employee who has later, under separate proceedings, been found in violation of DPM Sections 1603.1 (j), "Conviction of a Felony"; or, 1603.1 (t), "A finding by the Office of Employee Appeals, the Office of Human Rights, the Commission on Human Rights, or a court of competent jurisdiction in the District of Columbia that the employee has violated the guaranties in D.C. Code Title 1, Chapter 6, Subchapters I and VII, in the performance of that employee's official duties"; or, 1603.1 (v), "Conviction of a misdemeanor, when the conviction is based on conduct that would affect adversely the employee's or the agency's ability to perform effectively."

G. Table of Penalties

1. The "Table of Penalties" (Attachment) shall be used by supervisors and managers in assessing disciplinary penalties for each of the listed instances of misconduct. In selecting the

appropriate penalty from the range of penalties specified, consideration shall be given to the severity and nature of the offense as well as mitigating or aggravating circumstances as appropriate. Time limits for citing prior infractions are governed by DPM Section 1608.2.

2. The "Table of Penalties" shall not be considered to be all-inclusive. A specific instance of sexual misconduct which is not listed in the "Table of Penalties" may be the basis for disciplinary action if it is shown to be an instance of one or more of the causes listed in DPM Section 1603.1. In any instance where an offense is not specifically listed, the determination of an appropriate penalty shall be made through a comparison with the offenses/penalties listed herein.

VII. Notifications:

A. Inmate Notifications

1. Each inmate shall be notified of the prohibition against sexual misconduct and of this directive. Each inmate shall be provided information on sexual misconduct and how to report sexual misconduct during the inmate's intake and orientation period.

2. This directive shall be read, explained and appropriately communicated to inmates with reading or physical limitations and shall be interpreted to Limited English Proficient (LEP) inmates in their own language.

3. This directive shall be posted on inmate bulletin boards, placed in Law Libraries, and as appropriate, in inmate publications.

B. Staff Notifications

1. This directive and any other written directives pertaining to procedures for handling allegations of sexual misconduct against inmates shall be given to and thereafter made readily available to each DCDC employee.

2. This directive shall be thoroughly reviewed and/or explained to all volunteers, agents, individuals who conduct business in DCDC facilities.

3. This directive shall be posted on employee bulletin boards.

VIII. Dissemination:

A. Deputy Directors, Wardens, and Office Chiefs shall issue a copy of this directive to each supervisor and manager under their authority.

B. Each manager or supervisor shall issue a copy of this directive to each employee under his/her authority.

IX. References:

- A. Court Order in Civil Action 93-2052 (JLG), Women Prisoners of the District of Columbia Department of Corrections vs. DC., dated December 13, 1994.
- B. District of Columbia Government Integrity Standards.
- C. District of Columbia Personnel Manual (DPM) Chapter 16.
- D. Manual of Regulations and Orders (July, 1960) "Basic Regulations for All Employees," Chapter I.
- E. Department Order 3350.1, "Employee and Inmate Relationships," dated June 29, 1992.
- F. Department Order 4030.1D, "Inmate Grievance Procedures (IGP)," dated May 4, 1992.
- G. Department Order 5410.1, "Procedure for Handling Institutional Persons Suspected of Committing Crimes in Institutions," dated November 14, 1969.
- H. Department Order 5410.3A, "Reporting Assaults Committed on or by Residents," dated June 23, 1978.

Attachment

TABLE OF PENALTIES

OFFENSE	PENALTIES		
	1st Offense	2nd Offense	3rd Offense
1. A sexual assault and/or sexual abuse by any employee directed to any inmate as defined in Department Order 3350.2, Sec. V (D1) and (D2).	Termination	N/A	N/A
2. Sexual harassment, as defined in Department Order 3350.2, Sec. V(D3) by any employee and directed at an inmate.	Reprimand to Termination	30-Day Suspension to Termination	Termination
3. Invasion of an inmate's privacy by an employee without sound penological reasons or failure to follow appropriate penological procedures as defined in Department Order 3350.2, Sec. V(D4).	Reprimand to 15-Day Suspension	15-Day to 30-Day Suspension	30-Day Suspension to Termination
4. Retaliation by any employee against another employee or an inmate for reporting complaints of sexual misconduct, assisting in making such a report, or for cooperating in the investigation of such a complaint regardless of the merits/disposition of the complaint. Examples of retaliation against an inmate include, but are not limited to: disciplining, changing work or program assignments, denying privileges, transferring to another facility or placing under involuntary protective custody for other than sound and supportable penological reasons.	15-Day Suspension to Termination	Termination	N/A

TABLE OF PENALTIES

OFFENSE	PENALTIES		
	1st Offense	2nd Offense	3rd Offense
<p>5(a). Any interference with investigations of sexual misconduct.</p> <p>5(b). Unjustified refusal to testify or answer proper questions in an official District or Federal Government investigation, inquiry or proceeding, including the Monitor's investigation, as defined in Department Order 3350.2, Sec. VI(F)2. [Cause for charge 6(b) will be cited as a violation of DPM Section 1603.1(m).]</p>	Termination	N/A	N/A
6. Any breach of confidentiality by any employee concerning any report of sexual misconduct.	Reprimand to 15-Day Suspension	15-Day to 30-Day Suspension	30-Day Suspension to Termination
<p>7(a). Failure by any employee to report any suspected incident of sexual misconduct against an inmate.</p> <p>7(b). Failure by any employee to report any witnessed incident of sexual misconduct against an inmate.</p>	<p>Reprimand to 15-Day Suspension</p> <p>15-Day Suspension to Termination</p>	<p>15-Day to 30-Day Suspension</p> <p>Termination</p>	<p>30-Day Suspension to Termination</p> <p>N/A</p>