

ADM-11.39, "Staff Sexual Misconduct with Inmates," July 1, 2004

SCDC POLICY/PROCEDURE

NUMBER: ADM-11.39

TITLE: STAFF SEXUAL MISCONDUCT WITH INMATES

ISSUE DATE: JULY 1, 2004

RESPONSIBLE AUTHORITY: DIVISION OF HUMAN RESOURCES

OPERATIONS MANUAL: ADMINISTRATION

SUPERSEDES: ADM-11.39 (April 1, 2003)

RELEVANT SCDC FORMS/SUPPLIES: NONE

ACA/CAC STANDARDS: 4-ACRS-7E-07, 3-4048

STATE/FEDERAL STATUTES: Section 44-23-1150, S. C. Code of Laws, 1976, as amended

THE LANGUAGE USED IN THIS POLICY/PROCEDURE DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS POLICY/PROCEDURE DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY/PROCEDURE, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

NOTE: THIS POLICY/PROCEDURE ONLY APPLIES TO SEXUAL MISCONDUCT BETWEEN SCDC STAFF, AGENTS, CONTRACTORS, TO INCLUDE PRIVATE OR PUBLIC WORK SUPERVISORS, OR VOLUNTEERS AND INMATES. OTHER IMPROPER EMPLOYEE-INMATE RELATIONS ARE ADDRESSED IN SCDC POLICY/PROCEDURE ADM-11.34, "EMPLOYEE-INMATE RELATIONS."

PURPOSE: This policy/procedure clearly states the South Carolina Department of Corrections' zero tolerance regarding illegal sexual employee misconduct with inmates and provides information on the Agency's response to such activities, as well as the Agency's commitment to discipline any employee found guilty of these offenses and to pursue prosecution of employees who engage in illegal sexual activities with inmates and/or who fail to report such information to appropriate authorities.

POLICY STATEMENT: Sexual relations between staff, agents, contractors, to include private or public work supervisors or volunteers of those having responsibility for inmates or patients confined in prisons, jails, or mental health facilities, or criminal offenders under supervision in the community, and persons committed to their care or supervision is inappropriate, contrary to the expectations of the State, and

provides opportunities to compromise security thereby threatening the maintenance of order and discipline. It is the public policy of the State of South Carolina to discourage such misconduct by declaring certain acts to be illegal and providing for criminal sanctions. The South Carolina Department of Corrections (SCDC) has zero tolerance for sexual misconduct between any staff or other specific persons and any inmates and/or any other persons presently under the jurisdiction of SCDC. SCDC will pursue prosecution, if appropriate and such conduct will result in corrective action up to and including termination. SCDC expects employees, volunteers, agents, and contractors to conduct themselves in a professional manner in their relationship with inmates and/or any other persons under the jurisdiction of SCDC. To uphold the professional working/living environment within the SCDC, employees will maintain a pleasant, but firm demeanor in their relationship with inmates and/or any other persons under the jurisdiction of the Agency. (4-ACRS-7E-07, 3-4048)

SPECIFIC PROCEDURES:

1. ILLEGAL SEXUAL MISCONDUCT:

1.1 An actor is guilty of the crime of sexual misconduct when the actor, knowing that the victim is an inmate, offender, or patient, voluntarily engages with the victim in an act of sexual intercourse, whether vaginal, oral, or anal, or other sexual contact for the purpose of sexual gratification.

1.2 When the sexual misconduct involves an act of sexual intercourse, whether vaginal, oral, or anal, the actor is guilty of the felony of sexual misconduct first degree and, upon conviction, must be imprisoned for not more than ten years. In addition, such conduct will result in corrective action up to and including termination pursuant to SCDC Policy/Procedure ADM-11.04, "Employee Corrective Action."

1.3 When the sexual misconduct does not involve sexual intercourse, but involves other sexual contact which is engaged in for sexual gratification, the actor is guilty of the felony of sexual misconduct second degree and, upon conviction, must be imprisoned for not more than five (5) years. The term sexual contact, as used in this subsection, refers to an intrusion of any part of a person's body or of any object into the 'intimate parts', as defined in Section 16-3-651(d) of the South Carolina Code of Laws, 1976, as amended, of another person's body, or to the fondling of the 'intimate parts' of another person's body, which is done in a manner not required by professional duties, but instead is done to demonstrate affection, sexually stimulate that person or another person, or harass that person. In addition, such conduct will result in corrective action up to and including termination pursuant to SCDC Policy/Procedure ADM-11.04, "Employee Corrective Action."

1.4 A person who knowingly or willfully submits inaccurate or untruthful information concerning sexual misconduct as defined in this section is guilty of the misdemeanor of falsely reporting sexual misconduct and, upon conviction, must be imprisoned for not more than one year. In addition, such conduct will result in corrective action up to and including termination pursuant to SCDC Policy/Procedure ADM-11.04, "Employee Corrective Action."

1.5 A person who has knowledge of sexual misconduct who has received information in the person's professional capacity and fails to report it to the appropriate law enforcement authority, or a person who threatens or attempts to intimidate a witness is guilty of a misdemeanor and, upon conviction, must be fined not more than \$500.00 or imprisoned for not more than six (6) months, or both. Any employee, volunteer,

agent, or contractor of the Agency who observe sexual misconduct or receive information concerning sexual misconduct towards an inmate and/or any other person presently under the jurisdiction of the Agency must report it immediately to one of the following: Warden of the institution; appropriate member of the Director's Staff; Division Director of Human Resources; or the Inspector General. Failure to report such conduct will result in corrective action up to and including termination pursuant to SCDC Policy/Procedure ADM-11.04, "Employee Corrective Action." See SCDC Policy/Procedure ADM-11.17, "Employee Conduct," for additional information.

2. **INAPPROPRIATE CONDUCT:** See SCDC Policy/Procedure ADM-11.34, "Employee-Inmate Relations," for information pertaining to inappropriate conduct between staff and inmates.

3. **OTHER ILLEGAL ACTS:** See SCDC Policy/Procedure ADM-11.04, "Employee Corrective Action" and ADM-11.17, "Employee Conduct," for additional information about SCDC response to other illegal acts.

4. **ANNUAL TRAINING:** Employees will be required to attend annual mandatory training concerning this policy/procedure as part of the Agency's staff training program.

5. **DEFINITIONS:**

Actor refers to an employee, volunteer, agent, or contractor, to include private or public work supervisor of a public entity that has statutory or contractual responsibility for inmates or patients confined in a prison, jail, or mental health facility. Actor includes individuals who supervise inmate labor details outside of an institution or who have supervisory responsibility for offenders on parole, probation, or other community supervision programs.

Contractor refers to an individual, to include private or public work supervisor, who provides services to inmates or any unit of the Department via a contract either individually or through an organization.

Intimate Parts refers to the primary genital area, anus, groin, inner thighs, or buttocks of a male or female human being and the breasts of a female human being.

Sexual Contact refers to any behavior that includes, but is not limited to, hugging, fondling, kissing, intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thighs, or buttocks of another individual or any other physical contact except handshakes or that allowed by policy for purposes of life saving and maintaining security (examples of prohibited contact include neck rubs, back rubs, hair touching, massages and caresses).

Sexual Misconduct refers to any form of consensual or non-consensual physical contact or communication of a sexual nature directed towards an inmate for the purpose of sexual gratification.

Victim refers to an inmate or patient who is confined in or lawfully or unlawfully absent from a prison, jail, or mental health facility, or who is an offender on parole, probation, or other community supervision programs. A victim is not capable of providing consent for sexual intercourse or sexual contact with an actor.

Volunteer refers to an individual who, of his/her own freewill, provides a service to the Department or offenders without remuneration.

SIGNATURE ON FILE

s/Jon E. Ozmint, Director

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