



**STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
POLICY DIRECTIVE**

Policy No. DOC 1.3.13	Subject: STAFF MISCONDUCT INVESTIGATIONS
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 7 and Attachment
Section 3: Human Resource Bureau	Effective Date: Nov. 8, 2007
Signature: /s/ Mike Ferriter, Director	Revised: 12/15/08

I. POLICY

The Department of Corrections will investigate misconduct allegations and illegal conduct that may undermine public trust and confidence in the Department's mission and jeopardize staff, offender, and visitor safety and well being.

II. APPLICABILITY

All staff employed or under contract to provide services to the Department. Investigation and discipline of staff employed by private or governmental contractors, and investigations related to employee grievances or questions of acceptable job performance are outside the scope of this policy.

III. DEFINITIONS

Administrative Investigation – Any agency investigation that is not conducted for the purpose of law enforcement or criminal prosecution.

Approving Authority – A supervisor in the chain of command of multiple supervisors who will act as the facility/program investigative contact person and render a decision based on the facts established by the investigation after consultation with other supervisors in his or her chain of command and as further provided by this policy.

Complainant – The person(s) who makes the initial complaint, or files a formal charge, against an employee. The name of the individual requesting the investigation may not be used as a substitute for the name of the actual complainant.

Complaint – An allegation of violation of law or policy against staff.

Criminal Conduct – Alleged violation of a city, county, state or federal law including serious traffic violations, i.e., hit and run, driving under the influence (DUI), reckless driving, or other violations by staff that could result in the imposition of a jail sentence and/or suspension or revocation of the violator's driver license.

Criminal Investigation – A formal investigation to discover whether there is probable cause to believe that criminal conduct has occurred and investigated by a law enforcement agency having jurisdiction [herein, "LEA"] or by a criminal investigator from the IB, with consent of the LEA.

Criminal Investigator – An Investigations Bureau criminal investigator with sworn Peace Officer authority established through a Memorandum of Understanding with the Montana Department of Justice, Division of Criminal Investigation.

Subject: STAFF MISCONDUCT INVESTIGATIONS

Human Resource Bureau (HRB) Chief – The Department central reporting contact for staff misconduct and criminal conduct complaints or allegations from approving authorities, or as provided directly from staff. This position is responsible for supervising all aspects of Department-initiated administrative investigations and coordinates closely with the IB chief.

Initial Administrative Action – Immediate, temporary reassignment of an employee from current duties or placement on administrative leave with pay, pending completion of an investigation and determination of appropriate action by the approving authority.

Internal Investigation Warning– Formal notice given to a staff member by an assigned investigator or approving authority that the staff member’s refusal to cooperate and respond truthfully to questions in an administrative investigation is deemed insubordination and may result in disciplinary action up to and including discharge.

Inquiry – A preliminary review of an incident, complaint, or report of misconduct conducted by or at the direction of an approving authority to determine an appropriate course of action.

Investigations Bureau (IB) Chief – The staff person responsible for supervising all aspects of Department-initiated criminal investigations and coordinating with and acting as a liaison to criminal justice agencies.

Miranda Warning – Formal notice given to a staff member by an assigned criminal investigator of the staff member’s constitutional right to have legal representation in a criminal investigation.

Misconduct – Alleged violations of state, Department, or facility/program policies or procedures by staff.

Offender –Any individual in the custody or under the supervision of the Department of Corrections or its contracted service providers.

PREA Investigator – The PREA unit criminal investigator with sworn peace officer authority responsible for the criminal investigation of sexual misconduct allegations established through a memorandum of understanding with the Montana Department of Justice, Division of Criminal Investigation.

Staff – Department employees (temporary or permanent), volunteers, interns, contractors, on-site vendors, and persons from other agencies/organizations/businesses whose assignment is primarily on Department premises, i.e., facility or program offices.

IV. DEPARTMENT DIRECTIVES

A. Reporting and Handling Complaints

1. Staff who receive information or have personal knowledge regarding criminal conduct or misconduct will immediately report the details to their immediate supervisor, or the next supervisor in the chain of command not involved in the complaint. Staff may also report directly to the facility/program administrator or the HRB chief.
2. Staff are expected to submit complaints in writing. Supervisors who receive a verbal complaint will ask the complainant to submit it in writing, document receipt of the verbal complaint, and report it immediately as provided by this policy.

Subject: STAFF MISCONDUCT INVESTIGATIONS

- a. the Department will investigate anonymous complaints to the degree possible considering the information provided and ability to discover corroborating information. Staff will not guarantee anonymity to any complainant;
 - b. staff members who report criminal conduct or misconduct directly to the HRB chief will not be subject to retaliation by anyone in their chain-of-command;
 - c. supervisors will take no corrective, disciplinary, or retaliatory action against a staff member making a complaint, unless the staff member knowingly provided false or erroneous information as determined by an administrative investigation;
 - d. staff who knowingly provide false information may be subject to disciplinary action under the provisions of *DOC Policy 1.3.2, Employee Performance and Conduct Guidelines*, and potentially criminal charges if the conduct arises to that level; and
 - e. complainants who ask to withdraw a complaint must submit their withdrawal request in writing. HRB and IB chiefs will consult with Legal Bureau staff to determine whether the complaint can be maintained without compelling cooperation from the complainant and if the complaint is withdrawn voluntarily, without coercion or distress.
3. Supervisors, in consultation with their chain of command up to the facility or division head, will determine whether they or another supervisor in the chain of command will act as the approving authority. The approving authority must then notify the HRB chief of the complaint as soon as practicable but in all cases by the end of the following work day.
 4. Staff with responsibilities set forth in this policy will ensure that a complaint involving mistreatment of offenders or sexual misconduct with offenders, as defined in *DOC Policy 1.3.12, Staff Association and Conduct With Offenders*, and *1.3.14, Prison Rape Elimination Act (PREA)*, is reported as required in *DOC Policy 1.1.6, Incident Reporting and Acting Director System*.

B. Designation of the Complaint as Facility or Department Level

1. The approving authority will consult with the HRB chief and determine whether to handle the matter at the facility/division level, or refer it to the HRB chief for handling at the Department level. This determination will be made as soon as practicable but in all cases by the end of the following work day, to facilitate a speedy investigation. At the conclusion of each administrative investigation handled at the facility or division level, the approving authority will report the disposition to the HRB chief. The Department director may authorize limited exceptions to this requirement based on the sensitivity of the information or the identity of the subject of the investigation.
2. If the approving authority and HRB chief determine to handle the matter at the Department level, the approving authority will immediately complete and submit to the HRB chief a written request for investigation and all documents related to the complaint. The preferred method for submission and forwarding of the request and supporting documents is by electronic mail.
3. The approving authority, after consulting with the HRB chief, may take initial administrative action in accordance with *MOM 3-0130* and the Department of Administration's Disciplinary Handling Guide.

C. Assignment of Investigations

1. Investigators from the Investigation Bureau, Human Resource Bureau, Legal Unit, PREA Unit and individual divisions will be used to conduct Department investigations. Investigators must complete basic investigation training and periodic updates as required by position responsibilities and supervisors. Investigators who conduct sexual assault or other specialty type investigations must complete specialized training.
2. Criminal complaints require special planning and coordination to allow for an uncompromised criminal investigation and a separate independent administrative investigation on which the Department may base an employment decision without the need to rely on the disposition of a criminal charge.
3. The HRB and IB chiefs will consult with the Legal Unit if the complaint involves a potential criminal investigation. The IB chief will thereafter supervise the criminal investigation, including assignment of investigator, ensure the completeness of investigative reports, and provide status reports as set forth herein.
4. The HRB chief will thereafter supervise the administrative investigation, including assignment of investigator, ensure the completeness of the written investigative report, and provide status updates as provided herein.
5. The Department director may require, based on individual circumstances, that an investigator external to the agency, division, or facility conduct any particular investigation.

D. Investigative Procedures

1. Department investigations, originating either by complaint or other administrative need are conducted under the authority of the Department director and may only be initiated and conducted as specified herein. Unless the integrity of the investigation dictates otherwise, the HRB chief will ensure the administrator is aware that an investigation will be conducted within his or her facility or program.
2. Staff will cooperate with any authorized administrative investigation or inquiry and will relate fully and truthfully their knowledge of all issues pertaining to the alleged conduct under investigation. Failure of any staff to cooperate and give truthful information may be cause for disciplinary action up to and including discharge.
3. The Department will conduct staff investigations and handle investigative information in a confidential manner. This confidentiality, however, is not absolute, and the Department may disclose confidential information as required by law, an official need to know, or state policy. Information on a staff investigation will not be revealed to the media unless authorized by the Department director or in conformance with *DOC Policy 1.1.8, Media Relations*.
4. Notices

Subject: STAFF MISCONDUCT INVESTIGATIONS

- a. criminal investigators will advise staff members who are the subject of a criminal investigation that the investigation is criminal in nature and will provide a Miranda Warning when applicable;
- b. investigators or approving authorities expressly authorized by the HRB chief may provide an [Internal Investigation Warning](#) (see Attachment). When a staff member is given the Internal Investigation Warning but not a Miranda Warning, the staff member must cooperate and answer all questions fully and truthfully. Staff member statements will be used as provided in the Internal Investigation Warning and as allowed by applicable statute. Providing notice will not be construed to mean the employee has broken any law or violated any policies.

E. Disposition of Investigations

1. All investigations will result in a written report. The IB chief, or designee, will forward all criminal investigations to the county attorney having jurisdiction for a determination of whether the county will prosecute. The IB chief will notify the HRB chief in writing of that determination immediately after it is made.
2. Following staff notice that an administrative investigation has been completed; the approving authority will make a written determination on one of the following:
 - Substantiated: The event was investigated and determined to have occurred.
 - Unsubstantiated: Evidence was insufficient to make a final determination that the event occurred.
 - Unfounded: The event was determined NOT to have occurred.
 - Investigation ongoing: A final determination has not yet been made as to whether the event occurred.
3. Once the above determination is made by the approving authority and after consultation with HRB and Legal Bureau staff, the approving authority will set forth a final written report, giving the decision, reasons and rationale for disciplinary action in accordance with Departmental and contractual disciplinary guidelines.
4. The approving authority will forward a copy of the final disciplinary report to the HRB and IB chiefs when it has been completed. The HRB chief will notify the PREA coordinator of the disposition of an investigation involving a staff member accused of a sexual assault on an offender.
5. The custodian and repository of all administrative investigative reports, including grievances and other dispositions that occur as a result of personnel actions, will be the HRB. The custodian and repository of all criminal investigative reports will be the IB. All investigative records are confidential and will be handled as such in accordance with applicable statute and policy.
6. Staff disciplinary documents related to investigations will be maintained in Department personnel files.

7. Investigative staff that have reason to believe that staff made false allegations or uncover a new allegation will refer such issues to the investigative supervisor for direction on further processing.

F. Reporting & Notification Requirements

1. The HRB chief will document receipt of *all* staff misconduct and criminal conduct complaints and track and record the progress of investigations through final disposition.
2. The HRB chief will work closely and communicate regularly with the Department director, IB chief, Legal Bureau staff and approving authorities on investigation status.
3. The HRB chief will provide the HR division administrator and Department director with a monthly investigative case status report that summarizes the status of current investigations and disposition of closed investigations. The HRB chief will conduct a regular meeting with pertinent staff to review the case status report.
4. The Department director, or designee, must immediately notify both the attorney general and the legislative auditor in writing upon the discovery of any theft, actual or suspected, involving state moneys or property under his control or for which the director is responsible.
5. Approving authorities will, at the conclusion of an investigation, notify the subject staff member or members that a decision will be forthcoming. The approving authority will then, as soon as practicable, issue a written disposition to the subject staff as set forth herein. When applicable, the approving authority will also provide a written disposition to a complainant, without elaboration or violating the confidentiality of any person having a right of privacy in the information.

G. After Action Review

1. The Department director may order an "After Action Review" (AAR) of the circumstances surrounding all investigations. A qualified staff member will facilitate the AAR and include a review of incident dispositions, investigative reports, and processes. AAR processes may be directed based on the unique circumstances involved in an incident such as:
 - a. criminal and administrative actions involved;
 - b. lawsuits or tort actions are involved or may be anticipated;
 - c. serious personal injury or potential occurred;
 - d. security and/or public safety issues; or
 - e. other unique personnel or operational issues involved.

H. Responsibility

1. HRB and IB chiefs will maintain current procedural manuals specific to the operation of each of their respective areas. HRB and IB chiefs, Legal and PREA Unit and division supervisors will assure that staffs who are assigned to conduct investigations meet the training requirements established in *DOC Policy 1.4.1, Staff Development and Training*.

V. CLOSING

This policy will be followed unless it conflicts with the specific provisions of a collective bargaining agreement, which will prevail.

Questions about the policy should be directed to the Human Resource Bureau Chief.

VI. REFERENCES

- A. *5-13-309, MCA (2007) Information from State Agencies*
- B. *Montana Operations Manual III, Policy 3-0130, Discipline*
- C. *DOC Policies 1.1.8, Media Relations; 1.3.2, Employee Performance & Conduct Guidelines; 1.3.12, Staff Association and Conduct With Offenders; 1.4.1, Staff Development and Training; 3.1.19, Investigations*
- D. *Garrity v. State of New Jersey, 385 U.S. 493 (1967); Gardner v. Broderick, 392 U.S. 273, 1968; Uniformed Sanitation Men Assoc., Inc. v. comm'r of Sanitation of the City of New York, 392 U.S. 280 (1968)*

VII. ATTACHMENT

[DOC Internal Investigation Warning \(Garrity\)](#)