



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

Policy:	DOC 3.1.19 INVESTIGATIONS
Chapter 3:	FACILITY/PROGRAM OPERATIONS
Section 1:	Security Operations
Effective Date:	May 1, 1997 Page 1 of 6 and Attachments
Revised:	February 18, 2020; April 25, 2023
Signature:	/s/ Brian Gootkin

I. POLICY:

The Department of Corrections will provide the requirements for reporting and investigating criminal conduct involving Department employees, service providers, and/or offenders in accordance with Department policies, procedures, and state and federal law.

II. APPLICABILITY

All Department divisions, facilities, and programs.

III. DEFINITIONS:

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility, or program operation and management.

Complainant – The person(s) who makes the initial complaint or files a formal charge against a Department employee or offender.

Complaint – An allegation of violation of law.

Confidential – Information to be shared only by order of a court or with those whose official capacity dictates their absolute need to know.

Criminal Investigation – A formal investigation by a law enforcement agency having jurisdiction (LEAJ) or by a Department of Corrections criminal investigator to discover whether there is probable cause to believe that criminal conduct has occurred.

Criminal Investigator – A Department of Corrections investigator in the Office of Investigations with sworn Peace Officer authority established through a Memorandum of Understanding with the Montana Department of Justice, Division of Criminal Investigations.

Garrity Warning – Formal advisement given to an individual during an administrative investigation when potential for criminal charges may exist, and neither the individual's answers nor the fruits of those answers may be used against the individual in a subsequent or concurrent criminal prosecution.

Investigation – A formal fact-finding activity that meets minimum standards identified in investigational operational procedures for the specific purpose of addressing complaints or allegations. Investigations may include, but are not limited to: interviews, surveillance, review of

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electronic and paper records, correspondence, and other information storage devices of a Department employee or offender.

Investigations Bureau Chief– The contact responsible for delegating all Department-initiated criminal investigations, supervising all aspects of criminal investigations, and coordinating with and acting as a liaison to criminal justice agencies.

Investigator – The designated Department employee assigned to conduct an official investigation of a complaint, incident, or report affecting the safety and security of Department employees, offenders, or visitors.

Law Enforcement Agency of Jurisdiction (LEAJ) – The government agency, i.e. sheriff's office or local police department, operating within their defined area of responsibility.

Miranda Warning – Before interrogating a person who is in custody, a peace officer shall inform the person that the person has the right to remain silent, that anything the person says can be used against the person in a court of law, that the person has the right to speak to an attorney and to have an attorney present during any questioning, and that if the person cannot afford an attorney, one will be provided for the person at no cost to the person.

Offender – Any individual in the custody or under the supervision of the Department of Corrections or its contracted service providers. The term includes former offenders for whom less than one year has elapsed since discharge from Department custody or supervision.

Office of Investigations – The office that oversees all criminal investigations for the Department.

Sexual Abuse of an Offender by Another Offender – Sexual acts, sexual contact or any other intentional touching, either directly, through the clothing or with an object, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation, in which the victim does not consent, is coerced by overt or implied threats of violence, or is unable to consent or refuse.

Sexual Abuse of an Offender by a Staff Member or Service Provider – Sexual acts, sexual contact or any other intentional contact, either directly, through the clothing or with an object, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, any attempt, threat, or request by a staff member or service provider to engage in these activities, any display by a staff member or service provider of his or her uncovered genitalia, buttocks, or breast in the presence of an offender, or voyeurism by a staff member or service provider, when these acts are unrelated to official duties or where the staff member or service provider has the intent to abuse, arouse, or gratify sexual desire.

Sexual Harassment of an Offender by Another Offender – Repeated and unwelcomed sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one offender directed toward another offender.

Sexual Harassment of an Offender by an Employee or Service Provide – Repeated verbal comments or gestures of a sexual nature to an offender by an employee or service provider, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Racial Profiling – The detention, official restraint, or other disparate treatment of an individual solely on the basis of the racial or ethnic status of the individual. *44-2-117, MCA.*

IV. DEPARTMENT DIRECTIVES:

A. General Requirements

1. Department employees must:
 - a. report immediately, in writing, any received information or personal knowledge regarding sexual abuse or sexual harassment of an offender or any crime to their supervisor or the Office of Investigations;
 - b. ensure information regarding investigations is kept confidential and disclosed only with the approval of the Investigations Bureau Chief; and
 - c. cooperate with an investigation and may not provide erroneous and/or malicious information in a complaint or statement which they know or suspect to be false or the employee may be subject to disciplinary or corrective action in accordance with *DOC Policy 1.3.2 Employee Performance and Conduct* and criminal sanctions in accordance with *45-7-205, MCA.*
2. The Investigations Bureau Chief is responsible for:
 - a. delegating all Department criminal investigations and assigning investigators accordingly;
 - b. reviewing all requests for investigation (RFI) of allegations of sexual abuse and sexual harassment of an offender and assigning them for either criminal or administrative investigation;
 - c. upon receipt of criminal complaints involving Department property, employees, and offenders, notifying the Law Enforcement Agency of Jurisdiction (LEAJ); and
 - d. restricting access to any investigative material and pertinent resources to protect the integrity of the investigation and maintain confidentiality.
3. Investigators must:
 - a. conduct prompt, thorough, fair and objective criminal investigations and exercise professionalism during an investigation;
 - b. conduct investigations in such a manner that information is kept confidential and disclosed only with the approval of the Investigations Bureau Chief or designee;
 - c. administer warnings to employees who are the subject of an investigation or participating in an investigation;
 - d. employ sound investigative techniques in accordance with state and federal law, Department rules, policies and procedures;
 - e. when they have reason to believe that false allegations were made, or uncover new allegations, refer such issues to the Investigations Bureau Chief; and
 - f. complete specialized training prior to conducting sexual assault or other specialty type investigations.
4. Department employees are prohibited from engaging in racial profiling in accordance with *44-2-117, MCA.*

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5. Administrators must provide investigators with unrestricted access to Department records including, but not limited to, documents; electronic recordings; and correspondence materials relevant to any criminal investigation.
6. Only authorized persons shall make reports of allegations or investigations to the news media in accordance with *DOC Policy 1.1.8 Media Relations*.

B. Reporting and Handling Complaints

1. When a supervisor receives information that alleges sexual abuse or sexual harassment of an offender or any crime, he or she must submit, or direct the complainant to submit a Request for Investigation (RFI) to the Investigations Bureau Chief.
2. The Investigations Bureau Chief may, on a case-by-case basis, authorize an investigation when a verbal complaint or written allegation other than an RFI is received.
3. Criminal investigations and administrative investigations are conducted separately. When it is unclear whether an incident is criminal or administrative in nature, Department employees will report the incident to the Office of Investigations. The Investigations Bureau Chief or designee will determine if a criminal investigation is warranted or will forward the information to Human Resources or the division or facility for administrative investigation.

C. Assignment of Investigations

1. The Investigations Bureau Chief will delegate all Department criminal investigations.
2. Only investigators from the Office of Investigations and the LEAJ may be used to conduct criminal investigations.

D. Rights of Employees

1. Department employees are guaranteed constitutional and administrative protections; within the boundaries of those protections, employees will cooperate with any authorized investigation or inquiry and will relate fully and truthfully their knowledge of all issues pertaining to any criminal investigation.
2. When applicable, investigators will consult with Human Resources to provide a [Garrity Warning](#) to employees. Employees will be advised that answers will not be used against them in a criminal proceeding. If the employee refuses to answer or testify they will be subject to Department discipline up to, and including, termination.
3. Information obtained during a criminal investigation may be jointly shared and utilized; however, a self-incriminating statement made in an administrative investigation may not be utilized in a criminal investigation against an individual that has been provided with a [Garrity Warning](#).
4. Individuals who report a crime will not be subjected to retaliation by anyone within or outside of their chain of command in accordance with *DOC Policy 1.3.2 Employee Performance and Conduct*.

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5. Before interrogating an employee, who is the subject of a criminal investigation and who is in custody, a criminal investigator will provide a Miranda warning as set forth in *46-6-107, MCA*.
6. The subject of a criminal investigation may not have a representative present during an interview other than an attorney as provided for in the Miranda warning.
7. Interviews will be conducted in a private setting, during normal business hours, and allow for periods of rest unless justifiable cause exists, or mutual agreement is met to change time and/or location.
8. Investigators will advise all Department employees who are the subject of a criminal investigation that the investigation is criminal in nature.

E. Conducting Investigations

1. Criminal investigations may be generated by receipt of an incident report, Request for Investigation (RFI) or other forms of communication.
2. Upon receipt of information pertaining to criminal matters, the Investigations Bureau Chief will deny or approve the initiation of the investigatory process and, if approved, appoint an investigator.
3. Once an investigation is initiated by the Investigations Bureau Chief, the investigation must be completed promptly and within the time frame required by the statute of limitations.
4. Investigative materials including, but not limited to incident reports, statements, and investigative reports will be stored in a designated investigative case file. Investigative case files must be submitted to the Investigations Bureau Chief or designee.
5. Confidential criminal justice information may only be shared with criminal justice agencies and those authorized by law or court order. Anyone receiving confidential criminal justice information assumes equal responsibility for the security of the information.

F. Notification Requirements

1. All criminal investigations will result in a written report to be reviewed by the Investigations Bureau Chief, or designee.
2. The Investigations Bureau Chief, or designee, will provide substantiated criminal investigations to the Assistant Attorney General assigned to Department cases or county attorney having jurisdiction for a determination of whether a case will be prosecuted.
3. Information obtained from criminal investigations of offender behavior will be forwarded to the appropriate division or facility for relevant follow-up and any appropriate disciplinary proceedings.
4. Information obtained from criminal investigations which will not result in prosecution but may result in administrative discipline will be forwarded to Human Resources.

V. CLOSING

Questions concerning this policy should be directed to the Investigations Bureau Chief.

VI. REFERENCES

- A. 44-2-117, 44-5-303, 53-1-203 MCA
- B. *Montana Operations Manual III, Policy on Discipline*
- C. *DOC Policies 1.1.6 Incident Reporting and Acting Director; 1.1.8 Media Relations; 1.1.17 Prison Rape Elimination Act (PREA); 1.3.2 Performance & Conduct; 1.3.12 Staff Association and Conduct with Offenders; 1.4.1 Staff Development and Training; 3.1.28 Crime Scene and Physical Evidence Preservation*
- 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. Commissioner of Sanitation of the City of New York, 392 U.S. 280 (1968)*
- E. *DOJ Memoranda of Understanding with DOC for Peace Officer Status and Crime Analyst Services*

VII. ATTACHMENTS

[Garrity Warning](#)