



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

Policy No.: DOC 1.3.13	Subject: ADMINISTRATIVE INVESTIGATIONS
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 4 and Attachment
Section 3: Human Resources	Effective Date: 03/11/2015
Signature: /s/ Mike Batista, Director	Revision Date:

I. POLICY:

The Department of Corrections will investigate allegations of misconduct involving Department employees that may impact the Department's ability to provide services, maintain safe and orderly operations, undermine public trust and confidence in the Department's mission or jeopardize staff, offender, and visitor safety.

II. APPLICABILITY

All divisions, facilities, and programs Department-owned.

III. DEFINITIONS:

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

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.

Complaint – An allegation of violation of law or policy.

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

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

Human Resources Director – The contact responsible for coordinating all assignments of Department-initiated administrative investigations.

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

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.

Investigator – The designated Department employee assigned to conduct an official investigation of a complaint, incident, or report of misconduct.

Misconduct – May be defined as major or minor within Department policies or facility procedures; involves violation of Department rules, policies, or procedures including, but not limited to: *DOC Policy 1.3.2 Employee Performance and Conduct*, and *DOC Policy 1.1.17 Prison Rape Elimination Act of 2003 (PREA)*, and/or state or federal law.

Substantiated – An event was investigated and determined to have occurred.

Unfounded – An event was determined not to have occurred.

Unsubstantiated – Evidence was insufficient to make a final determination that the event occurred.

IV. DEPARTMENT DIRECTIVES:

A. General Requirements

1. Department employees must:
 - a. report immediately, in writing, any received information or personal knowledge regarding misconduct;
 - b. ensure information regarding investigations is kept confidential and disclosed only with the approval of the Human Resources director; 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*](#).
2. Investigators must:
 - a. conduct fair and objective investigations and exercise professionalism during the course of an investigation;
 - b. conduct investigations in such a manner that information is kept confidential and disclosed only with the approval of the Human Resources director or designee; and
 - c. follow procedures outlined within the Office of Human Resources for Administrative Investigations including the administration of warnings to employees who are the subject of an investigation or participating in an investigation.
3. Administrators must provide investigators with unrestricted access to Department records including, but not limited to, documents; electronic recordings; and correspondence materials relevant to the investigation.
4. Administrative investigations may begin only after a criminal investigation has progressed sufficiently that the administrative investigation will not interfere with the criminal investigation.

B. Conducting Administrative Investigations

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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 Human Resources director will ensure the administrator is aware that an investigation will be conducted within his or her division, facility or program.
2. Supervisors will consult with the Human Resources director and determine whether to handle the matter at the facility or division level, or refer it to the Human Resources director for handling at the Department level. At the conclusion of each administrative investigation handled at the facility or division level, the supervisor will report the disposition to the Human Resources director.
3. Information obtained during either a criminal or an administrative investigation may be jointly shared and utilized; however, a self-incriminating statement may not be utilized in a criminal investigation against an individual that has been provided with a [Garrity Warning](#).
4. 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 the alleged conduct under investigation.
5. Individuals who report misconduct 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](#).
6. Upon completion of an administrative investigation, a final report will be provided to the supervisor which will contain investigation information and a determination as to whether the alleged misconduct is substantiated, unsubstantiated or unfounded. The final report will make disciplinary recommendations to the supervisor in accordance with Department disciplinary guidelines. A final written disposition may be issued to the subject employee.

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 Resources director.

VI. REFERENCES

- A. *53-1-203, MCA*
- B. *Montana Operations Manual III, Policy 3-0130, Discipline*
- C. *DOC Policies 1.3.2 Employee Performance & Conduct; 1.3.12 Staff Association and Conduct with Offenders; 1.1.17 Prison Rape Elimination Act (PREA); 1.4.1 Staff Development and Training*
- 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*

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New York, 392 U.S. 280 (1968)

VII. ATTACHMENT

[Garrity Warning](#)