



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

Policy:	<b>DOC 3.3.20 OFFENDER NONDISCRIMINATION</b>
Chapter 3:	FACILITY/PROGRAM OPERATIONS
Section 3:	Rights and Privileges
Effective Date:	March 20, 2020 <span style="float: right;">Page 1 of 3</span>
Revised:	
Signature:	/s/ Reginald D. Michael

## **I. POLICY**

The Department does not tolerate employees committing any forms of discrimination, harassment or retaliation against offenders based upon the offender's race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin, or in retaliation against an offender because the offender has opposed any discriminatory practices or because the offender has filed a complaint, testified, assisted, or participated in any manner in a discrimination investigation or proceeding. The Department is committed to resolving discrimination and harassment complaints in a fair and timely manner.

## **II. APPLICABILITY**

All Department divisions, facilities, and programs.

## **III. DEFINITIONS**

Discrimination – Unfair treatment including statements, decisions or acts based upon the offender's race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

Harassment – Harassment, including sexual harassment, is offensive and unwelcome conduct including, but not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, and offensive objects or pictures, based upon the offender's race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin, or in retaliation against an offender because the offender has opposed any discriminatory practices or because the offender has filed a complaint, testified, assisted, or participated in any manner in a discrimination investigation or proceeding.

Incarcerated Offender – Any individual detained in a Department-owned, operated, or contracted facility that is sentenced or committed to the custody of the Department of Corrections.

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

Human Resources (HR) – includes all Department employees in positions within the Human Resources Bureau.

Retaliation – A significant adverse act taken against an offender because the offender has opposed any forbidden discriminatory practices or because the offender has filed a complaint, testified,

assisted, or participated in any manner in a discrimination investigation or proceeding. As set forth in *ARM 24.9.603*, significant adverse acts are those that would dissuade a reasonable person from engaging in protected activity.

#### **IV. DEPARTMENT DIRECTIVES**

##### **A. General Requirements**

1. All administrators, supervisors, and Department employees must make every reasonable effort to ensure that offenders are not subject to discrimination, harassment or retaliation within the context of the delivery of Department services or programs. Any form of discrimination, harassment or retaliation must not be tolerated.

##### **B. Reporting and Investigation**

1. When an offender believes he or she has been subjected to discrimination, harassment or retaliation, he or she must report the allegation to the Department for prompt investigation and any appropriate actions.
2. Complaints may be made orally to appropriate DOC staff or in writing; however, offenders are encouraged to put their complaint in writing.
3. Incarcerated offenders reporting a complaint of discrimination, harassment or retaliation may file a formal grievance in accordance with *DOC Policy 3.3.3 Offender Grievance Program*, and applicable facility or program offender grievance procedures.
4. In the case of a complaint of sexual harassment involving an incarcerated offender, the complaint will be handled in accordance with *DOC Policy 1.1.17 Prison Rape Elimination Act of 2003*, and applicable facility or program procedures.
5. Offenders who are not incarcerated may report a complaint of discrimination, harassment or retaliation by filing an *Offender Complaint Form* in accordance with *PPD Procedure 6.3.405 Offender Complaints*.
6. Any employee who believes an offender has been subjected to discrimination, harassment or retaliation must report the incident(s) or action(s) to an administrator, supervisor or HR as soon as possible after the alleged discrimination occurs.
7. Any administrator or supervisor who receives a complaint or becomes aware of offender discrimination, harassment, or retaliation will promptly relay the complaint to HR staff.
8. The Department will commence investigations regarding the circumstances and sufficiency of the complaint upon receiving the notice of allegations in accordance with *ARM 2.21.4020*.
9. Upon receipt of a report alleging discrimination, harassment, or retaliation, the Department will take all appropriate steps to prevent the alleged conduct from continuing, pending completion of the investigation. The Department will determine the

- steps to be taken by balancing the rights of the alleged victim, including the severity of the alleged conduct, and the rights of the alleged perpetrator.
10. Neither Department administrators nor any employee will retaliate against any offender for filing a discrimination complaint or for participating in any way in the discrimination or harassment complaint procedure.
  11. Upon receipt of the investigator's report, the appropriate manager will disclose, in writing, the results of the investigation to the offender, the accused, immediate supervisors, and the facility or program EEO officer or ADA coordinator. The specifics of disciplinary action taken against any Department employee will not be included in the report unless Department legal counsel advises to do so.
  12. In the case of a cause finding, the appropriate agency manager will:
    - a. initiate the appropriate disciplinary actions in accordance with *ARM Title 2, chapter 21, subchapter 65, Discipline Policy*;
    - b. inform the offender in writing that corrective action has been taken;
    - c. reemphasize that retaliation is illegal to the involved parties; and
    - d. contact the offender within 30 days to ensure the behavior has stopped and no retaliation has occurred.
  13. In the case of a no-cause finding, the supervisor or manager will contact the offender within 30 days to ensure the offender has not experienced retaliation.
  14. Nothing in this policy prohibits an offender from concurrently filing a complaint of unlawful discrimination or retaliation with the Montana Human Rights Bureau.

## V. CLOSING

Questions regarding this policy should be directed to Human Resources Bureau.

## VI. REFERENCES

- A. *ARM 2.21.6505, et seq., and ARM 2.21.4001, et seq.*
- B. *Montana Human Rights Act, M.C.A. §§ 49-3-205 and 49-3-209*
- C. *4-4056; ACA Standards for Adult Correctional Institutions, 4<sup>th</sup> Edition*
- D. *DOC Policies 1.3.12 Staff Association and Conduct with Offenders; 1.1.17 Prison Rape Elimination Act of 2003; and, 3.3.3 Offender Grievance Program*
- E. *PPD Procedure 6.3.405 Offender Complaints*

## VII. ATTACHMENTS

None