



POLICY DIRECTIVE

Policy:	DOC 3.1.19 INVESTIGATIONS
Effective Date:	05/01/1997 Page 1 of 4
Revision Date(s):	02/18/2020; 04/25/2023; 04/24/2026
Signature/Title:	/s/ Eric Strauss, Director

I. POLICY

This policy provides 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

IV. REQUIREMENTS

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 Investigations;
 - b. ensure information regarding investigations is kept confidential and disclosed only with the approval of the Investigations Chief; and
 - c. cooperate with an investigation and not provide erroneous and/or malicious information in a complaint or statement which they know or suspect to be false; such employees may be subject to:
 - 1) disciplinary or corrective action in accordance with *DOC 1.3.2 Performance and Conduct*; and
 - 2) criminal sanctions in accordance with 45-7-205, MCA.
2. The Investigations 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. notifying the Law Enforcement Agency of Jurisdiction (LEAJ) upon receipt of criminal complaints involving Department property, employees, and offenders; 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. keep information confidential and disclose it only with the approval of the Investigations Chief;
 - 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 Chief; and
 - f. complete specialized training prior to conducting sexual assault investigations or other specialty-type investigations.
4. Department employees are prohibited from engaging in racial profiling in accordance with 44-2-117, MCA.
 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 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, the supervisor must submit or direct the complainant to submit a *Request for Investigation (RFI)* to the Investigations Chief.
2. The Investigations 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.
 - a. When it is unclear whether an incident is criminal or administrative in nature, Department employees will report the incident to the Investigations Chief, who will:
 - 1) determine if a criminal investigation is warranted; or
 - 2) forward the information to Human Resources or the division or facility for administrative investigation.

C. Assignment of Investigations

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

D. Rights of Employees

1. Department employees are guaranteed constitutional and administrative protections.
 - a. Within the boundaries of those protections, employees will:
 - 1) cooperate with any authorized investigation or inquiry; and
 - 2) 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.
 - a. Employees will be advised that answers will not be used against them in a criminal proceeding.
 - b. 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.
 - a. However, a self-incriminating statement made in an administrative investigation may not be utilized in a criminal investigation against an individual who has been provided with a Garrity Warning.

4. In accordance with *DOC 1.3.2 Employee Performance and Conduct*, individuals who report a crime will not be subjected to retaliation by anyone within or outside of their chain of command.
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 made 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 the above information, the Investigations Chief will deny or approve the initiation of the investigatory process and, if approved, appoint an investigator.
3. An investigation initiated by the Investigations Chief must be completed promptly and at all times 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.
 - a. Investigative case files must be submitted to the Investigations Chief.
5. Confidential criminal justice information may only be shared with criminal justice agencies and those authorized by law or court order.
 - a. 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 Chief.
2. The Investigations Chief will provide substantiated criminal investigations to the 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 that does not result in prosecution but may result in administrative discipline will be forwarded to Human Resources.

V. CLOSING

Questions about this policy should be directed to the Investigations Chief.

VI. REFERENCES

- A. *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)
- B. §§ 44-2-117; 44-5-303; 53-1-203, MCA
- C. *Montana Operations Manual*
- D. *DOJ Memorandum of Understanding with DOC for Peace Officer Status and Crime Analyst Services*
- E. *DOC 1.1.6 Priority Incident Reporting; DOC 1.1.8 Media Relations ; DOC 1.1.17 Prison Rape Elimination Act (PREA); DOC 1.3.2 Performance and Conduct ; DOC 1.3.12 Staff Association and Conduct with Offenders; DOC 1.4.1 Staff Development and Training ; DOC 3.1.28 Crime Scene and Physical Evidence Preservation*