

# Executive Directive



<b>Title:</b> <b>Sexual Harassment — Prohibited</b>	<b>Executive Directive Number:</b> <b>OEO.050.0024</b>
<b>Related MD Statute/Regulations:</b> Correctional Services Article, §2-103, Annotated Code of Maryland; Title VII, Civil Rights Act of 1964, 42, U.S.C. §2000e, <i>et seq.</i> , EEOC Guidelines on Discrimination Because of Sex, 29 U.S.C. §1604.11; Executive Order 01.01.2007.16; State Personnel and Pensions Article, §2-302, <i>et seq.</i> and §5-207, <i>et seq.</i> , Annotated Code of Maryland; and Department of Public Safety and Correctional Services Standards of Conduct and Internal Administrative Disciplinary Process; Maryland Commission on Human Relations, Title 20, Annotated Code of Maryland	<b>Supersedes:</b> DPSCS.050.0024 Dated February 23, 2009
<b>Related ACA Standards:</b> 4-4056; 2-CO-1C-11; 4-ALDF-7E-01	<b>Responsible Authority:</b>  <b>Director – Office of Equal Opportunity</b>
<b>Related MCCS Standards:</b> N/A	<b>Effective Date:</b> April 12, 2013 <b>Number of Pages: 10</b>

  
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**.01 Purpose.**

- A. This directive continues and updates policy and procedures for the Department of Public Safety and Correctional Services (Department) concerning incidents of sexual harassment and retaliation.
- B. This directive sets forth the process for filing a complaint of sexual harassment or retaliation, and assigns responsibilities for reporting and processing complaints of sexual harassment and retaliation.
- C. The Department recognizes and honors the value and dignity of each employee and the importance of providing employees with a fair opportunity to pursue a career in an environment free of discrimination sexual harassment or discrimination.

**.02 Scope.**

This directive applies to all units of the Department.

**.03 Policy.**

- A. The Department is committed to providing employees and service providers with a work environment free of sexual harassment and retaliation.
- B. The Department shall ensure that all complaints of sexual harassment or retaliation are thoroughly investigated and promptly resolved.

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- C. The Department does not tolerate any form of sexual harassment and shall take appropriate disciplinary or administrative action, up to and including termination, against an employee or service provider determined to have engaged in sexual harassment.
- D. The Department does not tolerate retaliation against an employee or service provider because that individual filed a charge of sexual harassment or retaliation, participated in a sexual harassment or retaliation investigation or proceeding, or otherwise opposed sexual harassment or retaliation, and the Department shall take appropriate disciplinary or administrative action, up to and including termination, against an employee or service provider determined to have engaged in retaliation.

**.04 Definitions.**

A. In this directive, the following terms have the meanings indicated.

B. Terms Defined.

- (1) “Complaint” means a written statement alleging sexual harassment or retaliation filed according to procedures established under this directive.
- (2) “Director” means the Director of the Department’s Office of Equal Opportunity (OEO).
- (3) “Employee” means an individual assigned to or employed by the Department in a full-time, part-time, temporary, or contractual position regardless of job title or classification.
- (4) “Equal Opportunity Designee” means a Department employee designated by the employee’s unit head, subject to the approval of the Director, who may receive allegations of sexual harassment or retaliation under this directive, and may conduct investigations authorized by the Director.
- (5) Retaliation.
  - (a) “Retaliation” means an adverse action taken against an individual because the individual filed a charge of sexual harassment or retaliation, participated in a sexual harassment or retaliation investigation or proceeding, or otherwise opposed sexual harassment or retaliation.
  - (b) “Retaliation” may include, but is not limited to:
    - (i) Unjustified discipline or denial of promotion;
    - (ii) Threats, unjustified negative evaluations, unjustified negative references, or increased surveillance; or
    - (iii) Unnecessary changes in work assignment or location, or unjustified denial of privileges, when such actions are materially adverse and would likely deter a reasonable person from pursuing a complaint of sexual harassment or retaliation.
  - (c) “Retaliation” does not include reasonable administrative, disciplinary, or other action intended to stop and prevent, protect the individuals involved in, or resolve a complaint of sexual harassment or retaliation.

(6) Service Provider.

- (a) “Service provider” means an individual working in any capacity, including a private citizen or a private or public organization authorized by contract, memorandum of understanding, or other agreement to provide a service to an inmate, detainee, offender, or the Department.
- (b) “Service provider” may include, but is not limited to:
  - (i) A volunteer;
  - (ii) An intern;
  - (iii) A chaplain;
  - (iv) An employee of a vendor under contract to the Department; and
  - (v) An employee of another unit of State government working in the Department.

(7) Sexual Harassment.

- (a) “Sexual harassment” means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:
  - (i) Submission to such conduct is made either explicitly or implicitly a term or condition of the individual’s employment;
  - (ii) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual; or
  - (iii) Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment.
- (b) “Sexual harassment” may include, but is not limited to:
  - (i) Unwelcome physical contact;
  - (ii) Sexually explicit or suggestive jokes;
  - (iii) Offensive language, lewd comments, or references to an individual’s anatomy;
  - (iv) Placement of sexually explicit material in the work environment;
  - (v) Unwelcome or unsolicited requests for dating;
  - (vi) Adverse employment action resulting from refusing sexual advances; and
  - (vii) Leering, sexually suggestive noises, whistling, or gestures.

**.05 Responsibility.**

**A. Sexual Harassment and Retaliation Prohibited.**

- (1) Sexual harassment or retaliation in the workplace is prohibited by law and is not tolerated within the Department.
- (2) A Department employee or service provider may not:
  - (a) Engage in, support, or otherwise condone sexual harassment or retaliation;
  - (b) Dissuade, advise, discourage or attempt to dissuade, advise, or discourage, an individual from reporting alleged sexual harassment or retaliation; or
  - (c) Intimidate, coerce, threaten, influence, or retaliate against an individual because the individual:
    - (i) Filed a complaint of alleged sexual harassment or retaliation;
    - (ii) Took action to stop, oppose, or prevent sexual harassment or retaliation; or
    - (iii) Testified, assisted, or participated in an investigation, proceeding, or hearing concerning alleged sexual harassment or retaliation.
- (3) Sexual harassment or retaliation:
  - (a) Does not require that the interaction be between individuals of different genders;
  - (b) May victimize:
    - (i) A specific individual or group of individuals; or
    - (ii) An individual or individuals otherwise offended by prohibited behavior directed toward others;
  - (c) May be reported by a victim or an individual with knowledge of the incident;
  - (d) May occur as a single act or pattern of conduct; and
  - (e) May be committed by employees supervisors, services providers or other individuals conducting business at the workplace.

**B. Sexual harassment is:**

- (1) Not based on the intent of the alleged harasser's actions, but on the impact of the alleged harasser's behavior on the victim; and
- (2) Decided on a case-by-case basis, considering the totality of the circumstances of the situation.

**C. Sexual harassment can manifest in two forms, quid pro quo and hostile work environment.**

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- (1) Quid pro quo (this for that) sexual harassment:
  - (a) Exists when an unwelcome sexual advance, request for sexual favor, and other unwelcome verbal, non-verbal or physical conduct of a sexual nature is:
    - (i) Made either explicitly or implicitly as a term or condition of an individual's employment;  
or
    - (ii) Used as the basis for an employment decision that affects the victim.
  - (b) Is imposed by a supervisor or someone who is perceived as having supervisory authority over employment actions such as hiring, firing, demotion, transfer, or promotion affecting the victim.
- (2) Hostile work environment sexual harassment:
  - (a) May take the form of gender-based, unwelcome conduct of supervisors, co-workers, customers, vendors, or others with whom the victim interacts as part of employment.
  - (b) Exists when the following prohibited behaviors occur and are sufficiently severe and pervasive to alter the conditions of the victim's employment environment, thereby creating a work environment that is reasonably perceived by the victim as hostile or abusive:
    - (i) Threatening to impose sexual quid pro quo;
    - (ii) Discussing sexual activity;
    - (iii) Telling inappropriate sexually charged jokes;
    - (iv) Commenting on physical attributes;
    - (v) Using crude language, demeaning or inappropriate terms;
    - (vi) Unwelcome or unsolicited requests for dating;
    - (vii) Leering (prolonged staring);
    - (viii) Making suggestive or insulting noises, such as "wolf" whistling;
    - (ix) Making obscene gestures;
    - (x) Unnecessary touching, such as intentionally brushing against an individual's body;
    - (xi) Pinching;
    - (xii) Assault;
    - (xiii) Other unwelcome physical contact of a sexual nature;
    - (xiv) Display of sexually suggestive pictures, drawings, or items;

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- (xv) Sabotaging work;
- (xvi) Engaging in hostile physical contact;
- (xvii) Granting work related favors to individuals participating in consensual sexual activity, or
- (xviii) Adverse employment action resulting from refusing sexual advances.

D. A charge of retaliation requires that all three (3) of the following conditions are met:

- (1) The victim has to have been engaged in a protected activity (filed a charge of sexual harassment or discrimination, participated in a sexual harassment or discrimination investigation or proceeding, or otherwise opposed sexual harassment or discrimination).
- (2) A materially adverse employment action occurred (an action taken by the employer against the employee who engaged in a protected activity that would have had the effect of dissuading a reasonable person from making or supporting a charge of sexual harassment or retaliation).
- (3) There must be a relationship between the protected activity under §.05D(1) of this directive and the materially adverse employment action under §.05D(2) of this directive.

E. Responsibilities — Department.

- (1) The Department shall ensure that a complaint of sexual harassment or retaliation is thoroughly investigated and promptly resolved.
- (2) The Department shall ensure that appropriate administrative or disciplinary action, or both, up to and including termination of employment, is taken if a complaint of sexual harassment or retaliation against an employee is substantiated.
- (3) The Department shall ensure that appropriate administrative action is taken if a complaint of sexual harassment or retaliation against a service provider is substantiated.

F. Responsibilities — Unit Head. A unit head shall:

- (1) Ensure that each supervisor, manager, shift commander, and service provider who reports to the unit head is familiar with Department policy prohibiting sexual harassment and retaliation, specifically that:
  - (a) The Department has a zero tolerance policy for any form of sexual harassment or retaliation; and
  - (b) A substantiated complaint of sexual harassment or retaliation shall result in administrative or disciplinary action, or both, up to and including termination of employment;
- (2) Ensure that an employee attends required sexual harassment and retaliation training;
- (3) Post a copy of this directive or other information concerning Department policy concerning sexual harassment and retaliation at a location, or locations readily accessible to unit employees and service providers at the unit; and

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- (4) Ensure that a complaint of alleged sexual harassment or retaliation is reported according to procedures established and on forms approved by the Director.

**G. Responsibilities — Supervisor, Manager, or Shift Commander.** A supervisor, manager, or shift commander shall:

- (1) Ensure that each employee and service provider reporting to the supervisor, manager, or shift commander is familiar with Department policy prohibiting sexual harassment and retaliation;
- (2) Take reasonable actions to eliminate circumstances that may result in incidents of sexual harassment or retaliation; and
- (3) Ensure that a complaint of sexual harassment or retaliation is reported according to procedures established by and on forms approved by the Director.

**H. Responsibilities — Employee and Service Provider.**

- (1) An employee or service provider who has personal knowledge of, or a reasonable belief that sexual harassment or retaliation is occurring or has occurred shall:
  - (a) If the circumstances are such that the alleged harasser may have reason to believe that the behavior may be welcome, inform the alleged harasser that the individual's conduct is unwelcome and needs to immediately cease (A victim is not required to confront an alleged harasser as long as the victim's conduct clearly demonstrates that the alleged harasser's behavior is unwelcome).
  - (b) If the conditions under §.05H(1)(a) of this directive are met and the alleged sexual harassment continues, report the circumstances immediately as established under §.05K of this directive.
- (2) An employee or service provider shall cooperate fully with an investigation into an allegation of sexual harassment or retaliation.

**I. Responsibilities — OEO.** The Director, or a designee, is responsible for the following related to complaints of alleged sexual harassment or retaliation:

- (1) Coordinating administrative and operational activities related to filing, reporting, processing, investigating, and resolving a complaint;
- (2) Approving forms used to document actions taken in response to a complaint;
- (3) Receiving, logging, and tracking a complaint;
- (4) Investigating or assigning an investigation of a complaint;
- (5) Ensuring appropriate resolution of a substantiated complaint;
- (6) Ensuring consistent application of discipline related to a substantiated complaint;
- (7) Filing and maintaining documents related to an alleged and substantiated complaint;

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- (8) Maintaining, as confidential, records and documents related to a complaint; and
- (9) Maintaining and reporting (annually and semi-annually) complaint data.

**J. Responsibilities —Maryland Police and Correctional Training Commissions (MPCTC).**

- (1) The Director, or a designee, in cooperation with the Executive Director MPCTC, or a designee, shall develop and provide training and education intended to communicate OEO administrative and operational procedures related to sexual harassment and retaliation.
- (2) Training and education shall, at a minimum, include the following areas:
  - (a) Filing a complaint;
  - (b) Employee requirements for reporting and documenting a complaint;
  - (c) Processing a complaint;
  - (d) Investigating a complaint; and
  - (e) Resolving a complaint.

**K. Complaint Procedures — Alleged Sexual Harassment or Retaliation.**

- (1) Filing of a complaint of alleged sexual harassment or retaliation is right entitling an individual to due process and interference with this right is prohibited.
- (2) The OEO accepts complaints of discrimination, sexual harassment and retaliation, from:
  - (a) Employees and service providers; and
  - (b) Individual's applying for employment with the Department who believe discrimination has occurred.
- (3) A complaint of discrimination, sexual harassment or retaliation cannot be filed on behalf of another party.
  - (a) In the case where a complainant is temporarily unavailable to file a complaint and a manager needs to immediately address a sexual harassment, or retaliation incident, the manager may report the incident using a Manager's On Behalf of Complaint form available from the OEO to serve as interim complaint documentation until the complainant is available to complete the appropriate EEO Complaint form.
  - (b) The compliant should complete the appropriate EEO Complaint form as soon as possible after the incident to avoid potential complications regarding the complaint.
- (4) A complaint under this directive may be filed with any or all of the following:
  - (a) OEO.

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- (i) Pursuant to State Personnel and Pensions Article, §5-211(b), Annotated Code of Maryland, filing a complaint of discrimination, sexual harassment or retaliation with the OEO is required to be submitted within 30 days after the complainant first knew, or reasonably should have known of the alleged violation that is the basis for the complaint.
  - (ii) The complainant shall file a complaint with OEO using a form approved by the OEO.
  - (iii) The completed complaint form may be faxed, hand-delivered, mailed (U.S.), or submitted on line to OEO at 6776 Reisterstown Road, Room 216 Baltimore, MD 21215.
- (b) Maryland Commission on Civil Rights (MCCR).
- (i) Filing a complaint of discrimination, sexual harassment or retaliation with the MCCR is required to be submitted within 6 months after the complainant first knew, or reasonably should have known of the alleged violation that is the basis for the complaint.
  - (ii) The complainant shall file a complaint with MCCR using a form approved by the MCCR.
  - (iii) The completed complaint form may be faxed, hand-delivered, or mailed (U.S.) to MCCR at 6 Saint Paul Street, 9<sup>th</sup> Floor, Baltimore MD 21202.
- (c) U.S. Equal Employment Opportunity Commission (EEOC).
- (i) Filing a complaint of discrimination, sexual harassment or retaliation with the EEOC is required to be submitted within 300 days after the complainant first knew, or reasonably should have known of the alleged violation that is the basis for the complaint.
  - (ii) The complainant shall file a complaint with EEOC using a form approved by the EEOC.
  - (iii) The completed complaint form may be faxed, hand-delivered, or mailed (U.S.) to EEOC at 10 S. Howard Street, 3<sup>rd</sup> Floor Baltimore, MD 21201
- (d) Maryland Department of Budget and Management — Office of the Statewide Equal Employment Opportunity Coordinator.
- (e) A unit Equal Opportunity Designee.
- (f) A unit head.
- (5) OEO complaint forms are available:
- (a) Directly from the OEO;
  - (b) Using the Department’s intranet system (available only to employees) at <http://eeodiv.dpscs.ad.icj.mdstate/eocomplaintform/> .”
  - (c) Using the Department’s public website:
    - (i) <http://www.dpscs.state.md.us/employment/eo.shtml> ;

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(ii) Click on “EEO Complaint Form.”

(6) Complainants are encouraged to report incidents of discrimination, sexual harassment, or retaliation immediately, or as soon as possible after the incident occurred or the individual should have known that the incident occurred.

(7) OEO shall ensure that each complaint received is promptly investigated.

(a) When an investigation of a complaint is completed, the Director, or a designee, shall advise the complainant, in writing, of the finding and, if appropriate, additional rights concerning the complaint.

(b) To the extent possible, the Department shall maintain as confidential information concerning the identity of the victim, employee, service provider, witness, and the alleged harasser.

L. The Executive Director of Human Resources Services Division, or a designee, shall ensure that at the time an individual is hired by the Department the new employee is provided with:

(1) A copy of the Department’s sexual harassment and retaliation policy; and

(2) The contact information for the Director and the new employee unit’s Equal Opportunity Designee.

M. Sanctions.

(1) The OEO shall strive to make appropriate recommendations for resolving complaints and consistent application of disciplinary or other remedial action related to substantiated complaints of sexual harassment and retaliation.

(2) Sexual harassment or retaliation is a violation of Department policy and the Standards of Conduct and Internal Administrative Disciplinary Process and, an employee determined to have committed sexual harassment or retaliation, is subject to disciplinary action, up to and including termination of employment with the Department.

(2) An employee, a supervisor, a manager, a shift commander, or a unit head who does not perform responsibilities required under this directive is subject to disciplinary action, up to and including termination of employment with the Department.

**.06 Attachment(s).**

There are no attachments to this directive.

**.07 History.**

A. This directive resends DPSCS.050.0024, dated February 23, 2009 by updating style and format and other changes necessitated by Department re-organization and changes to statute and regulation.

B. This directive supersedes provisions of any other prior existing Department communication with which it may be in conflict.