

Chapter 137-79 WAC

SEXUAL MISCONDUCT BY STATE EMPLOYEES, CONTRACTORS

WAC

137-79-010	Purpose.
137-79-020	Definitions.
137-79-030	Sexual contact prohibited.
137-79-040	Sanctions.
137-79-050	Release of records.
137-79-060	Hearing procedure.

WAC 137-79-010 Purpose. The purpose of this chapter is to specify penalties for contractors and employees of the department who engage in sexual intercourse or sexual contact with inmates.

[Statutory Authority: RCW 72.01.090 and 72.09.225. WSR 07-21-142, § 137-79-010, filed 10/24/07, effective 11/24/07.]

WAC 137-79-020 Definitions. As used in this chapter, the following items shall have the following meanings:

(1) "Secretary" shall mean the secretary of the department of corrections.

(2) "Department" shall mean the department of corrections.

(3) "Inmate" shall mean a person committed to the custody or under the supervision of the department, including but not limited to persons residing in a correctional institution or facility and persons released on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

(4) "Sexual intercourse":

(a) Has its ordinary meaning and occurs upon any penetration, however slight; and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes; and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(5) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

(6) "Contractor" includes all subcontractors of a contractor.

(7) "Suspend" shall mean placing the employee on home assignment with pay.

[Statutory Authority: RCW 72.01.090 and 72.09.225. WSR 07-21-142, § 137-79-020, filed 10/24/07, effective 11/24/07.]

WAC 137-79-030 Sexual contact prohibited. Sexual intercourse or sexual contact between an employee of the department or an employee of a department contractor and an inmate is strictly prohibited, provided that the termination

(10/24/07)

provisions of this chapter shall not be invoked if the sexual intercourse or sexual contact is against the employed person's will.

[Statutory Authority: RCW 72.01.090 and 72.09.225. WSR 07-21-142, § 137-79-030, filed 10/24/07, effective 11/24/07.]

WAC 137-79-040 Sanctions. (1) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between an employee and an inmate has occurred, notwithstanding any rule adopted under chapter 41.06 RCW the secretary shall immediately suspend the employee.

(2) The secretary shall immediately institute proceedings to terminate the employment of any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(3) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between the employee of a contractor and an inmate has occurred, the secretary shall require the employee of a contractor to be immediately removed from any employment position which would permit the employee to have any access to any inmate.

(4) The secretary shall disqualify for employment with a contractor in any position with access to an inmate, any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(5) The secretary, when considering the renewal of a contract with a contractor with whom the secretary has taken action under subsection (3) or (4) of this section, shall require the contractor to demonstrate that there has been significant progress made in reducing the likelihood that any of its employees will have sexual intercourse or sexual contact with an inmate. The secretary shall examine whether the contractor has taken steps to improve hiring, training, and monitoring practices and whether the employee remains with the contractor. The secretary shall not renew a contract unless he or she determines that significant progress has been made.

(6) For the purposes of RCW 50.20.060, a person terminated under this section shall be considered discharged for misconduct.

[Statutory Authority: RCW 72.01.090 and 72.09.225. WSR 07-21-142, § 137-79-040, filed 10/24/07, effective 11/24/07.]

WAC 137-79-050 Release of records. (1) The department may, within its discretion or upon request of any mem-

[Ch. 137-79 WAC p. 1]

ber of the public, release information to an individual or to the public regarding any person or contract terminated under this section.

(2) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the public.

(3) Except as provided in chapter 42.56 RCW, or elsewhere, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section. Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as may otherwise be provided by law.

[Statutory Authority: RCW 72.01.090 and 72.09.225. WSR 07-21-142, § 137-79-050, filed 10/24/07, effective 11/24/07.]

WAC 137-79-060 Hearing procedure. Hearings under this chapter shall follow the disciplinary hearing processes referenced in the collective bargaining agreement (CBA) applicable to the employee or in Title 357 WAC if the employee is not represented.

[Statutory Authority: RCW 72.01.090 and 72.09.225. WSR 07-21-142, § 137-79-060, filed 10/24/07, effective 11/24/07.]