

# NEBRASKA COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE

OPERATING INSTRUCTION  
NUMBER 42

May 10, 2019

## **DISCRIMINATION AND HARASSMENT POLICY AND COMPLAINT PROCEDURES FOR THE NEBRASKA CRIME COMMISSION AND SUB-GRANT RECIPIENTS**

**PURPOSE:** It is imperative that managers, supervisors, employees of the Commission, and employees of subrecipient organizations comply with federal and state laws and regulations governing harassment and discrimination. There is a need to insure that the agency and sub-grant recipient work environment, at all levels, as well as conduct by sub-grant recipients in providing services is free from sexual or any other form of harassment or discrimination. In order to insure this purpose, this policy will provide guidance by defining harassment and/or discrimination and by outlining reporting procedures that should be followed when confronted with harassment and discrimination.

**1. SCOPE:** Applicable to all Crime Commission members, staff members, employees of sub-grant recipients, individuals doing business with the Commission, students and guest instructors of the Training Center.

**2. POLICY:** It is the policy of the Nebraska Commission on Law Enforcement and Criminal Justice (Nebraska Crime Commission) that all women and men are to be treated fairly and equally, with dignity and respect. Any form of work place harassment or discrimination is contrary to this policy as it relates to allegations on the basis of race, color, religion, age, sex, disability, or national origin, or (if a recipient of funds under the Violence Against Women Act) sexual orientation or gender identity, and may be treated as violations of applicable state and federal laws. See Addendum. It will be considered a violation of this policy for any employee of the Nebraska Crime Commission, individual doing business with Nebraska Crime Commission, including sub-grant recipients, or a student or guest instructor of the Training Center to engage in harassment or discrimination as specified in this Operating Instruction, or for any supervisory personnel to knowingly permit harassment or discrimination as specified in this Operating Instruction.

### **3. DEFINITIONS:**

#### **A. Discrimination:**

For the purpose of this policy, discrimination is defined as a less favorable treatment towards an individual or a group of individuals at work or through the provision of services, usually based on their protected class, including, but not limited to, race, color, national origin, sex, religion, sexual orientation, gender identity, and disability, contrary to law.

**B. Harassment:**

For the purpose of this policy, "harassment" is defined as sexual harassment, retaliatory harassment or any inflammatory comments, jokes, printed material, and/or innuendo based in whole or in part on gender, race, color, religion, age, disability, national origin, sexual orientation, or gender identity, when such conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment, and/or such conduct interferes unreasonably with a person's work performance or employment opportunities or with the receipts of services. This may include third-party situations where one individual is offended by the interaction, conduct or communications between others. Normal, courteous, mutually respectful, non-coercive interactions which are acceptable to both individuals are not considered to be harassment.

**C. Sexual Harassment:**

For the purpose of this policy, "sexual harassment" is defined as any unwelcome sexual advances, requests for sexual favors, and either verbal or physical conduct of a sexual nature, when: (1) Submission to such conduct is made, either explicitly or implicitly, a term of an individual's employment, or a condition to receipt of services by a recipient of the agency's services, or submission to, or rejection of, such conduct by an individual is used as the basis for employment or agency decisions affecting an employee or a recipient of the agency's services, or (2) Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or the receipt of services by a recipient of the agency's services, or of creating an intimidating, hostile, or offensive environment.

Examples of sexual harassment may include, but is not limited to, such actions as any form of inflammatory comments, jokes, kidding, printed material, and/or innuendo; subtle pressure for sexual activity; physical contact such as patting, pinching, or brushing against another's body; and demands for sexual favors.

Requests for sexual activity accompanied by implied or overt promises or preferential treatment or threats concerning an individual's employment status may also be considered sexual harassment.

**D. Retaliatory Harassment:**

For the purposes of this policy, "retaliatory harassment" is defined as any harmful action taken against a person for making, assisting and/or being a witness in a complaint of harassment or discrimination. Harmful action includes any action that would dissuade a reasonable person from making or supporting a charge of harassment or discrimination.

**E. Disability Discrimination:**

For purposes of this policy, “disability discrimination” is defined as less favorable treatment of any person by an employee or representative of the Nebraska Commission on Law Enforcement and Criminal Justice or the Nebraska Law Enforcement Training Center on the basis of a disability or less than favorable treatment by an employee or representative of a sub-grant recipient.

**F. Complaint Coordinator:** the individual working for Nebraska Department of Administrative Services, Human Resources Division, who is responsible for receiving and coordinating complaints filed regarding harassment or discrimination as found in this operating instruction.

**G. Executive Director** is the Executive Director of the Nebraska Commission on Law Enforcement and Criminal Justice (Commission).

**4. NOTIFICATIONS:**

All Commission members, employees, sub-grant applicants, sub-grant employees, and students and guest instructors at the Training Center will be notified of the Nebraska Crime Commission’s policy on harassment and discrimination and will be provided with a copy of the policy. The Nebraska Crime Commission policy will also be accessible on Commission’s website. Additionally, all employees and students will be provided with an explanation of their rights in making complaints pursuant to this policy.

**5. INDIVIDUAL RESPONSIBILITIES:**

Individuals covered under the scope of this operating instruction are responsible for:

- A. Complying with the spirit and letter of this operating instruction.
- B. If comfortable, promptly telling any offending party that the conduct is unwelcome and asking them to stop.
- C. If receiving a request to stop his or her conduct, immediately comply with it and do not retaliate against the employee for rejecting the conduct.
- D. Follow the reporting procedures as outlined in this operating instruction.
- E. Report any incident of harassment or discrimination that is observed or witnessed, even if incident is in another department.
- F. Keep the information on a “need to know” basis in order for the agency to complete a fair investigation.

## **6. SUPERVISOR RESPONSIBILITIES:**

- A. Supervisors are to assure that all employees under his or her supervision are informed of the policy.
- B. Training Center personnel are to assure that all students under their supervision are informed of the policy.
- C. Any supervisor who receives a complaint alleging work place harassment or discrimination, or who is otherwise aware of a situation involving work place harassment or discrimination, will submit to the Complaint Coordinator within 10 business days of receipt of the complaint. The Complaint Coordinator will supply receipt of the complaint to the Commission employee who filed the complaint within 10 business days.
- D. Any supervisor receiving a complaint alleging work place harassment or discrimination will immediately notify the complainant of the Commission's operating instruction concerning work place harassment and discrimination, and of the complainant's rights concerning the pursuit of such allegations. This notification will be achieved by giving the complainant a copy of this operating instruction.
- E. Unless otherwise required by this OI or by law, any supervisor receiving a complaint or report of work place harassment or discrimination will take proper care to protect the identity of the complainant(s) and of the accused party or parties and will hold the allegations in confidence pending appropriate action by the executive director or his or her designee.
- F. Any supervisor should cooperate fully with any ongoing investigation regarding a harassment incident.

## **7. PROCEDURES FOR RESPONDING TO HARASSMENT OR DISCRIMINATION AT THE NEBRASKA CRIME COMMISSION:**

### **A. COMPLAINTS**

Individuals who feel they are being harassed or discriminated against are strongly encouraged to report all such situations to his or her supervisor. If the supervisor is unavailable or the employee believes that it would be inappropriate to contact that person, the employee should immediately contact the Complaint Coordinator. If the individual who feels they have been discriminated against is not an employee of the Commission, they are strongly encouraged to report all such situations to the Complaint Coordinator at the Department of Administrative

Services (DAS). Email contact for this office is [DAS.humanresources@nebraska.gov](mailto:DAS.humanresources@nebraska.gov).

All complaints will be promptly and thoroughly investigated by a member of DAS in accordance with Nebraska policies and procedures, Nebraska State law, and federal law. Results of the investigation will be provided to the Executive Director for appropriate action.

Anyone who is a witness to any incident they feel constitutes harassment or discrimination of any kind is strongly encouraged to report the incident to the Complaint Coordinator at DAS.

For complaints occurring within the Training Center that involve students or guest instructors, the Deputy Director of training should be contacted. All complaints will be promptly and thoroughly investigated by the designated Training Center personnel. Results of the investigation will be provided to the Director of the Training Center for appropriate action if necessary.

1. All complaints must be in writing, and electronic submission is preferred. Complaints forwarded by a supervisor must be in written or electronic form. All complaints must be filed within 180 days or a full year depending upon the applicable law. State employees may also file a complaint with HR at DAS as set out in Neb. Rev. Stat. §81-1395.

2. In reporting allegations of work place harassment or discrimination, complainants should state specific facts including, where practical, the identity of the person(s) who committed such work place harassment and/or discrimination; the date, time, and place of the alleged conduct; what was done or said; and, the identity of any witnesses who were present. The complainant will be provided written or electronic notice acknowledging receipt of the complaint.

#### B. DISCIPLINARY ACTION:

If the allegations of the complaint are substantiated, the Executive Director, or where appropriate, the Director of the Training Center, will take prompt corrective action to end the complained behavior and appropriate discipline will be administered as necessary. The complainant and the accused individual will be provided with letters of the findings from the investigation and disposition of the case. The individual who makes a complaint of harassment or discrimination will, at all times, be protected from any form of employee, student, or management retaliatory discrimination and all information will be kept as confidential as necessary and appropriate.

### C. RIGHTS OF COMPLAINANT:

1. In the event that an individual covered by this operating instruction believes that he/she has been, or is being subjected to, work place harassment or discrimination, that party has the right to report alleged work place harassment or discrimination to his/her supervisor, manager, or the Complaint Coordinator for purposes of prompt investigation and appropriate action. The individual who believes he/she is being subjected to workplace harassment or discrimination is encouraged to directly inform the offending person(s) that such conduct is offensive and must stop.
2. If the aggrieved person does not wish to communicate directly with the offending person(s), or if direct communication has been ineffective, then the aggrieved person is encouraged to immediately report the alleged work place harassment or discrimination as set out in section 7.
3. After the investigation is completed, the Deputy Director of the training center or the Executive Director or designee will consult with the complainant regarding the results of the investigation. If the complainant is dissatisfied with either the Training Center's or the Crime Commission's action in response to a complaint of work place harassment or discrimination, the complainant may contact outside agencies for the purpose of requesting an independent investigation of the allegations.
4. While the Crime Commission encourages all individuals covered under this OI to avail themselves of the procedures outlined herein, it is not intended to impair or limit the rights of anyone to seek assistance or available remedies provided under state or federal law through an appropriate state or federal agency. Such organizations may include:
  - a. Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531;
  - b. Equal Employment Opportunity Commission, 303 E. 17th Ave, Suite 510, Denver, Colorado 80203; or
  - c. Nebraska Equal Opportunity Commission, Nebraska State Office Building, 301 Centennial Mall South, 5th Floor, PO Box 94934, Lincoln, NE 68509-4934 (402)471-2024.

## 8. PROCEDURES FOR RESPONDING TO SUBRECIPIENT DISCRIMINATION COMPLAINTS

- A. Any person who believes he or she has been harassed or been subject to discriminatory treatment in employment decisions or in provision of services by a DOJ funded sub-grantee because of race, color, national origin, sex, age, religion, disability, or, (if a recipient of funds under VAWA) sexual orientation or gender identity have been retaliated against for engaging in a protected activity, may file a complaint.
- B. The Complaint Coordinator is responsible for coordinating any complaints filed regarding harassment or discrimination as found in this operating instruction. The Complaint Coordinator is located within the Nebraska Department of Administrative Services, Human Resources Department (DAS, HR). The Complaint Coordinator may be reached in the following manner:

Email: [DAS.humanresources@nebraska.gov](mailto:DAS.humanresources@nebraska.gov)  
Mail: Complaint Coordinator,  
Nebraska Department of Administrative Services, Human Resources,  
1526 K Street, Lincoln, Nebraska 68508  
Telephone: (402) 471-4124

- C. Allegations of violations of federal and/or state civil rights laws may also be made directly to the appropriate grant administrator at the Commission in lieu of filing with the Complaint Coordinator. Complaints may be sent to:

Mail: COMPLAINT; Nebraska Crime Commission,  
301 Centennial Mall South, P.O. Box 94946,  
Lincoln, Nebraska 68509-9496  
Telephone: (402) 471-2194

While the Crime Commission encourages all individuals covered under Section 8 of this OI to avail themselves of the procedures outlined herein, it is not intended to impair or limit the rights of anyone to seek assistance or available remedies provided under state or federal law through an appropriate state or federal agency as identified in Section 7(C)4.

- D. If an employee of the Commission receives a complaint from a client, customer, program participant, applicant, consumer of a DOJ-funded sub-grantee, or an employee of a DOJ-funded sub-grantee, the complaint will be submitted to the Complaint Coordinator within 10 business days of receipt of the complaint. The Complaint Coordinator will supply receipt of the complaint to the Commission employee who filed the complaint within 10 business days.

#### E. Complaints

1. All complaints filed must be in writing or electronic form.
2. Complaints must be filed within either 180 days or a full year, depending on the applicable law.
3. Complaints must contain specific dates the harassment or discrimination took place, the names of any individuals engaging in alleged harassment or discrimination, the location of the alleged harassment or discrimination, and a detailed account of the discrimination or harassment being alleged, along with any other relevant information regarding the alleged harassment or discrimination.

#### F. Complaint Evaluation, Investigation and Resolution Process

1. Complaints made to the Complaint Coordinator or to the Commission will be handled in accordance with Nebraska DAS, HR policies and procedures, Nebraska State law, and federal law.
2. If appropriate, the Complaint Coordinator may elect to refer a complaint to an external agency, such as those listed above, for investigation and resolution. The Commission will notify the external agency of any referral within 30 calendar days of receipt of the complaint.
3. The Commission will notify the complaint(s) of the outcome of any investigation conducted and will notify the complaint(s) of any referrals of the complaint to any external agencies.

#### **9. Policy Dissemination:**

1. The Commission policy will be made available to all employees, clients, customers, program participants, applicants, DOJ-funded sub-grantees, and consumers. This policy will be included with information materials given to all new employees, posted in common areas of the Commission's office space, and available on the Commission's website. All sub-grantees of the Commission are required to acknowledge reviewing the policy before receipt of their grant award.
2. The Commission will provide an annual overview of complaint procedures for Commission employees.





Don Arp, Jr.  
Executive Director

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Distribution: Commission staff  
Replaces O.I. #42, Dated January 25, 2013

### **Addendum**

- A. Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in the delivery of services (42 U.S.C. § 2000d), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart C; see also Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002);
- B. The Omnibus Crime Control and Safe Streets Act of 1968, which prohibits discrimination on the basis of race, color, national origin, religion, or sex in the delivery of services and employment practices (34 U.S.C. §§10228(c) and 10221(a)), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart D;
- C. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in the delivery of services and employment practices (29 U.S.C. § 794), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart G;
- D. Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability in the delivery of services and employment practices (42 U.S.C. § 12132), and the DOJ implementing regulations at 28 C.F.R. Part 35;
- E. Title IX of the Education Amendments of 1972, which prohibit discrimination on the basis of sex in educational programs (20 U.S.C. § 1681), and the DOJ implementing regulations at 28 C.F.R. Part 54;
- F. The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services (42 U.S.C. § 6102), and the implementing regulations at 28 C.F.R. Part 42, Subpart I;
- G. Executive Order 13,559 and the DOJ implementing regulation, Partnerships with Faith-Based and Other Neighborhood Organizations, 28 C.F.R. pt. 38 (prohibiting

discrimination in federally assisted social service programs based on religion in the delivery of services or benefits).

H. Victims of Crime Act (VOCA) of 1984, as amended, 34 U.S.C. §20110(e) and the regulation implementing the Victim of Crime Act Victim Assistance Program, and 28 C.F.R. §94.114 (prohibiting discrimination in programs funded under the statute, both in employment and in the delivery of services or benefits, based on race, color, national origin, sex, religion, and disability); and

I. Violence Against Women Act (VAWA) of 1994, as amended, 34 U.S.C. §12291(b)(13) (prohibiting discrimination in programs either funded under the statute or administered by the Office on Violence Against Women, both in employment and in the delivery of services or benefits, based on actual or perceived race, color, national origin, sex, religion, disability, sexual orientation, and gender identity) (referring to the Safe Streets Act for enforcement).

J. Nebraska Fair Employment Practices Act, Neb. Rev. Stat. §48-1101 et seq.

K. Nebraska State Personnel Rules