



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION
THE HARRIMAN STATE CAMPUS – BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

BRIAN FISCHER
COMMISSIONER

MEMORANDUM

TO: All Employees, Contractors, Volunteers and Interns

FROM: Brian Fischer
Commissioner

DATE: October 3, 2011

SUBJECT: Policy on the Prevention of Sexual Abuse of Inmates (revised)

The New York State Department of Corrections and Community Supervision has zero tolerance for sexual abuse. It has long been the policy of the Department that staff-on-inmate, inmate-on-inmate and inmate-on-staff sexual abuse will not be tolerated – all sexual conduct, including sexual contact, is against the Department's rules.

The Department's policy is consistent with the goals of the Prison Rape Elimination Act of 2003 (PREA), and national efforts to address inmate-on-inmate and staff-on-inmate sexual abuse in all United States federal, state, and local correctional facilities.

What is Sexual Abuse?

Inmate-on-Inmate Sexual Abuse is when one or more inmates engage in sexual conduct, including sexual contact, with another inmate against his or her will or by use of threats, intimidation or other coercive actions.

Staff-on-Offender Sexual Abuse is when an employee, volunteer, intern or outside contractor engages in sexual conduct, including sexual contact, with an inmate or offender committed to the care and custody or supervision of the Department, including a person under parole or other community supervision.

New York Penal Law § 130.05

Under Section 130.05 of the Penal Law, as amended effective November 1, 2011, an offender is incapable of consent to any sexual act with an employee. This statute makes it a crime for an employee to engage in a sexual act with an inmate where that employee performs duties in a state correctional facility in which the victim is confined at the time of the offense consisting of providing custody, medical or mental health services, counseling services, educational programs, vocational training, institutional

parole services or direct supervision to inmates. In particular, the law criminalizing sexual acts with an inmate has been expanded to add any employee who performs duties in a correctional facility consisting of supervising one or more inmates. The law also applies to any contract employee or volunteer who regularly provides services to inmates. An employee who engages in sexual conduct or sexual contact with an inmate is guilty of a sex offense even if the inmate "willingly" participates.

The law has also been amended to make it a crime for an employee to engage in a sexual act with a person under community supervision where that employee performs duties of supervising persons released on community supervision and supervises the victim at the time of the offense. This law also extends to such employees who previously supervised the victim if the victim is still under community supervision at the time of the offense.

Any sexual abuse of an inmate or offender committed to the care and custody or supervision of the Department by a staff member, contractor or contract employee, intern or volunteer will result in appropriate disciplinary or administrative action and will be prosecuted to the fullest extent allowed by law.

Duty to Report

All employees, regardless of title, are under a duty to report (1) any coerced or forcible sexual act against an inmate; (2) any sexual conduct (sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact) between a staff member and an inmate or offender subject to the supervision of the Department; (3) any inappropriate relationship between an employee and an inmate or offender subject to the supervision of the Department; (4) any act of staff voyeurism; or (5) any allegation of retaliation for reporting an incident of sexual abuse or for participating in an investigation of an allegation of sexual abuse.

Any allegation of retaliation against an inmate or any other individual for reporting an incident of sexual abuse or for participating in an investigation of an allegation of sexual abuse must also be reported.

The reported information shall be kept confidential and only discussed with employees and law enforcement officials involved in the reporting, investigation, discipline and treatment process, or as otherwise required by law.

All allegations of sexual abuse, sexual threats, or staff voyeurism will be thoroughly investigated. Furthermore, any perpetrator of a sexual abuse incident will be dealt with severely through discipline and/or prosecution to the fullest extent permitted by law.

The Department's policy on the Prevention of Sexual Abuse of Inmates, including the duty to report, is set forth in Directive #4027A "Sexual Abuse Prevention & Intervention - Inmate-on-Inmate" and Directive #4028A "Sexual Abuse Prevention & Intervention - Staff-on-Inmate."



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CATHERINE JACOBSEN
ACTING DEPUTY COMMISSIONER
PROGRAM SERVICES

DIVISION OF MINISTERIAL, FAMILY, AND VOLUNTEER SERVICES

I hereby acknowledge receipt of Commissioner Brian Fischer's Policy on the Prevention of Sexual Abuse of Inmates (revised) dated October 3, 2011. I understand that I will be held accountable for, and act in accordance with, this policy as a registered volunteer in the New York State Department of Correctional Services.

Name of Volunteer (please print)

Signature of Volunteer

Date



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DIVISIÓN DE SERVICIOS RELIGIOSOS, LA FAMILIA Y VOLUNTARIOS

De esta manera, acuso recibo de la Política sobre la Prevención del Abuso Sexual de los Reclusos (revisado), fechada el 3º de octubre de 2011, del Comisionado Brian Fischer. Entiendo que se me encontrará responsable de y actuaré de acuerdo con, esta política como un voluntario registrado en el Departamento de Servicios Correccionales del Estado de Nueva York.

Nombre del Voluntario (en letra de molde)

Firma del Voluntario

Fecha