



Corrections and Community Supervision

KATHY HOCHUL
Governor

DANIEL F. MARTUSCELLO III
Acting Commissioner

MEMORANDUM

TO: All Employees, Contractors, Volunteers and Interns

FROM: Daniel F. Martuscello III, Acting Commissioner

SUBJECT: Policy on the Prevention of Sexual Victimization (Revised)

DATE: September 5, 2023

Today marks the 20th anniversary of the signing of the Prison Rape Elimination Act (PREA). It is also more than ten years since the National Standards to Prevent, Detect, and Respond to Prison Rape (the National PREA Standards) were adopted. These important laws stand for a basic principle: each of us has the right to be free from sexual victimization. As staff, you have the right to perform your work without being subjected to sexual abuse or sexual harassment. Similarly, the population we serve has the right to be protected from sexual victimization by other incarcerated individuals, by staff, or by releasees housed with them in community confinement facilities.

It is the Department's mission to uphold this landmark federal law that affirmed our duty to end custodial sexual victimization. Above and beyond what is required by PREA, DOCCS seeks to promote sexual safety for everyone working for us, sentenced to our custody, or subject to our supervision. This will serve as a reminder for all employees, contractors, volunteers, and interns of DOCCS policy with respect to the prevention of sexual abuse, sexual harassment, and unauthorized relationships.

As specified in Department policies including Directive #4027, "Sexual Victimization Prevention & Response," **the New York State Department of Corrections and Community Supervision has zero tolerance for sexual abuse, sexual harassment, and unauthorized relationships.** Incarcerated individuals and releasees have the right to be free from sexual victimization. Sexual abuse, sexual harassment, and unauthorized relationships violate Department rules, may violate criminal statutes, are a serious breach of the public trust, and represent a serious threat to safety and security.

All allegations of sexual abuse, sexual harassment, unauthorized relationships, or retaliation against staff, an incarcerated individual, or a releasee for reporting such an incident or participating in an investigation, will be thoroughly investigated. Furthermore, any perpetrator of sexual abuse, sexual harassment, an unauthorized relationship, or retaliation, will be dealt with severely through discipline or prosecution to the fullest extent permitted by law.

It has long been the policy of the Department that staff-on-incarcerated individual and incarcerated individual-on-incarcerated individual sexual abuse and sexual harassment will not be tolerated -- **all sexual conduct, including sexual contact, is against the Department's rules.** Compliance with PREA furthers safe and secure facility operations, making our facilities safer for all, and requires a level

of professionalism that we must all strive for. To meet our mission, we must be committed to keeping every staff member, incarcerated individual, and releasee safe from all forms of sexual victimization.

What is sexual abuse?

Under PREA, sexual abuse is when an incarcerated individual or releasee is subjected to unwanted sexual contact with another incarcerated individual/resident or any sexual contact with a staff member. Similarly, pursuant to Section 130.05 of NYS Penal Law, an incarcerated individual or releasee cannot legally consent to any sexual act with an employee, contract employee or volunteer (i.e., “staff”). It is a crime for staff to engage in a sexual act with an incarcerated individual or releasee. A staff person who engages in such an act is guilty of a sex offense even if the incarcerated individual or releasee “willingly” participates or manipulates the staff member.

What is sexual harassment?

Sexual harassment includes sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one person directed toward another. Staff-on-Incarcerated Individual /Staff-on-Releasee Sexual Harassment also includes repeated verbal comments or gestures of a sexual nature to an incarcerated individual or releasee by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

What is sexual victimization?

Sexual victimization is a term that includes all forms of sexual abuse and sexual harassment. It is critically important to stress that any incident of sexual assault on staff by an incarcerated individual or releasee will be immediately reported to the Office of Special Investigations and handled in accordance with established Department policy for investigation and criminal prosecution of incarcerated individuals. Incarcerated individuals and releasees who commit such heinous acts will be prosecuted and held accountable for their crimes.

Duty to Report

Staff are required to report any allegation of sexual abuse, sexual harassment, unauthorized relationship, or retaliation as reported by an incarcerated individual or releasee. In addition, all employees, regardless of title, are under a duty to report: 1) any knowledge, suspicion, or information regarding an incident of sexual victimization that occurred in a facility, whether or not the facility is part of the Agency (e.g., a CBRP or a county jail), and any unauthorized relationship; 2) any retaliation against an incarcerated individual, releasee, or staff for reporting such an incident or participating in an investigation; and 3) any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

Through internal reviews and PREA Audits, the Department continues to recognize the great work staff are doing to implement the National PREA Standards and Department policy. By working together to implement our zero-tolerance approach to sexual victimization, we can make our facilities and offices safer for all Department staff, incarcerated individuals, and releasees.