Attachment 22

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION
THE HARRIMAN STATE CAMPUS – BUILDING 2
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MEMORANDUM

TO: All Employees, Contractors, Volunteers and Interns

FROM: Anthony J. Annucci, Acting Commissioner

SUBJ: Policy on the Prevention of Sexual Abuse of Offenders (revised)

DATE: September 4, 2013

The New York State Department of Corrections and Community Supervision has zero tolerance for sexual abuse and sexual harassment. Today marks the 10 year anniversary of the Prison Rape Elimination Act (PREA) passing into law, and just over one year since the adoption of the National PREA Standards. Accordingly, this is the opportune time to remind all employees, contractors, volunteers and interns of DOCCS policy with respect to the prevention of sexual abuse and harassment, and response to reports of sexual abuse and harassment.

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 coercive sexual conduct, including sexual contact, with another inmate against his or her will or by use of threats, intimidation or other coercive actions. A sexual act committed by an offender under community supervision who is placed in a community residential program (a "resident") against another resident of that program is also sexual abuse when the sexual act is against the victim's will by use of force, 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 with any 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, 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. 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 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 sexual harassment; or (5) any allegation of retaliation against an inmate or staff member for reporting an incident of sexual abuse or for participating in an investigation of an allegation of sexual abuse. The duty to report includes third-party and anonymous reports.

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 harassment, or staff voyeurism will be thoroughly investigated. Furthermore, any perpetrator of a sexual abuse or harassment 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."