
 Department of Corrections and Community Supervision DIRECTIVE	TITLE Whistleblower Policy		NO. 0710
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SUPERSEDES	DISTRIBUTION A B	PAGES PAGE 1 OF 6	DATE LAST REVISED
REFERENCES (Include but are not limited to) Executive Order 187; Directives #0700 and #0702; Employees' Manual	APPROVING AUTHORITY 		

I. POLICY

The Department of Corrections and Community Supervision (DOCCS) is committed to maintaining the highest standards of ethics and integrity. All staff, incarcerated individuals, and releasees are encouraged to speak honestly and openly, encouraged to ask questions and report potential wrongdoing (Employees' Manual Section 2.45; Directive #0700, "Office of Special Investigations [OSI]"). The DOCCS Whistleblower Policy is intended to encourage anyone to raise issues when they see something that they believe may violate a law or DOCCS policies. Employees do not need to be certain that a violation has occurred, but rather they should raise a concern when they have a good faith belief that something improper has occurred. DOCCS strictly prohibits retaliation against a person who reports misconduct, raises a concern, or cooperates in an investigation. New York State has strong whistleblower protections to foster a culture of ethical behavior, and staff may safely report wrongdoing without fear of retaliation. By providing safe and secure channels for reporting misconduct, these laws encourage individuals to speak up.

II. DEFINITIONS

- A. **Whistleblower:** A whistleblower is an employee who alleges wrongdoing by their employer that violates law or policy. Whistleblowers expose information or activities within an organization that may be illegal or unethical. They may report these issues internally or to external regulatory bodies, law enforcement agencies, or the media. Whistleblowers often relay information to law enforcement and other government agencies and are protected by laws designed to prevent retaliation against them for their disclosures.
- B. **Employee:** For the purposes of this directive, "employee" includes any current or former employee, contractor, contract employee, volunteer, or intern of the Department or any employee, contractor, or contract employee assigned to work in a Department correctional facility by any other State agency.
- C. **Reasonable Belief:** For a disclosure to be protected, the whistleblower must have a reasonable, good faith belief that the reported conduct is truthful. In contrast, knowingly filing a false complaint or accusation is not having a reasonable, good faith basis to report the conduct.
- D. **Inappropriate or Illegal Conduct:** For purposes of the Department's Whistleblower Policy, there is no comprehensive list of everything that can be reported as inappropriate or illegal conduct. However, inappropriate or illegal conduct includes any behavior that you believe to be unethical, illegal, dishonest, or in opposition to DOCCS' values.

- E. **Investigation:** An investigation is the collection of information for the purposes of determining if any violation, whether ethical, policy, or legal, occurred. An investigation may include, but is not limited to, interviews with persons associated with the alleged behavior, such as victims and witnesses, and a review of documents, videos, and other tangible evidence.
- F. **Retaliation:** Retaliation occurs when an employer (through a manager, supervisor, administrator, or directly) fires an employee or takes any other type of adverse action against an employee for engaging in protected activity including but not limited to reporting misconduct under the whistleblower directive. An adverse action is an action which would dissuade a reasonable employee from raising a concern about a possible violation or engaging in other related protected activity. Retaliation can have a negative impact on overall employee morale.
- G. **Need to Know:** "Need to know" is defined as the group of people for whom the information is relevant to their official job duties and/or who can actively contribute to the ongoing investigation.

III. GOVERNING POLICIES AND RULES: The following Employees' Manual sections are relevant to the Department's Whistleblower Policy. Even if not specifically referenced herein, employees are reminded that other provisions of the Employees' Manual may be applicable.

- A. Section 2.45 requires employees to report any information concerning corruption, fraud, criminal activity, conflicts of interest, misconduct, or abuse by an employee or supervisory staff.
- B. Section 2.9 prohibits discrimination against or harassment of any person on the basis of their protected class category including: race, creed, color, religion, national origin, age, sex, sexual orientation, gender identity, etc. Retaliatory action against a complainant or any person that cooperates with an investigation into an allegation of discriminatory behavior, may be subject to disciplinary action.
- C. Section 2.15 prohibits unauthorized relationships including, but not limited to, engaging in any conversation, communication, dealing, transaction, association, or relationship with any incarcerated individual, formerly incarcerated individual, releasee, or former releasee, which is not necessary or proper for the discharge of the employee's duties. See Directive #0702, "Notification and Request to Associate with Incarcerated Individuals and Releasees."
- D. Section 2.16 prohibits the acceptance of gifts and gratuities.
- E. Section 2.19 prohibits an employee from engaging in sexual abuse, sexual harassment, or related retaliation. Every staff person, including any employee, contractor or contract employee, volunteer or intern of the Department, or any employee, contractor or contract employee assigned to work in a Department correctional facility by any other State agency, is prohibited from engaging in any type of sexual conduct or sexual contact with any incarcerated individual or releasee.
- F. Section 2.20 establishes the duty to report sexual abuse, sexual harassment, and retaliation; and provides for confidentiality apart from disclosures that are required by policy and as necessary for treatment, investigation, and other security and management decisions.

IV. TYPES OF CONDUCT TO REPORT: While there is no comprehensive list of everything that can be reported, any situation or behavior that you believe to be unethical, illegal, dishonest, or in opposition to DOCCS' values, may be reported.

This includes, but is not limited to:

- A. Violations of laws, rules, or regulations: This can include any violation of State or federal laws, such as fraud, financial misconduct, environmental violations, or labor law violations.
- B. Gross mismanagement: This refers to significant and wasteful or inefficient practices within an organization, such as gross waste of funds or abuse of authority.
- C. Fraudulent or dishonest activities: This includes behaviors like falsifying financial records, embezzlement, theft, or any other form of fraudulent activity.
- D. Corruption and abuse of authority: This can involve bribery, misuse of assets, or manipulating decisions for personal gain.
- E. Violence and unnecessary or excessive use of force.
- F. Unauthorized relationships, sexual harassment, sexual abuse, or sexual assault.
- G. Harassment and discrimination: This includes any unwelcome conduct based on protected characteristics like race, gender, religion, or sexual orientation, such as offensive jokes, insults, or unfair treatment.
- H. Bullying and intimidation: This involves repeated actions meant to demean, embarrass, or harm another employee, or using fear or pressure to control others.
- I. Workplace violence or threats: This includes any form of physical aggression, threatening behavior, or intimidation.
- J. False reports or covering up misconduct.
- K. Violations of workplace safety regulations: This may involve inadequate safety protocols, exposure to hazardous materials, or unsafe working conditions.
- L. Other criminal offenses.

V. HOW TO RAISE A CONCERN: If an individual would like to make a report, they have different channels available. A report can be made to the following internal and external agencies and entities: DOCCS OSI (on-the-record, confidentially, or anonymously), DOCCS Counsel, DOCCS Human Resources leadership, New York State Inspector General, New York State Attorney General, and the United States Department of Justice.

NOTE: For Title 7, Anti-Discrimination Investigations Division (ADID) per Executive Order (EO) 187, the relevant contact details for each of these entities can be found in Section IX.

- A. You Can Remain Anonymous: DOCCS respects and protects your identity if you choose to make an anonymous report. You can choose to remain anonymous while making a report, interacting with the Department's OSI during an investigation of your report, as well as after your case is closed. At any given time, you can identify yourself, but this is your choice and at no point do you need to do this, or will you be asked to provide your identity.

Your identity (or information likely to lead to your identity becoming known) will be kept confidential, except in the following circumstances:

1. You consent in writing to this information being disclosed.
2. The information is given to a legal practitioner for the purposes of obtaining legal advice or representation.
3. Disclosure is permitted by law or is necessary to prevent a serious and imminent threat to life, health, or property.

VI. HOW CONCERNS ARE INVESTIGATED: To the extent concerns are raised internally, the Commissioner has designated OSI with broad investigative authority under Directive #0700. Based on the facts and circumstances of any allegation or investigation, OSI may, in their discretion, refer a matter to external law enforcement or regulatory entities. To the extent concerns are raised with external investigative bodies, the investigative steps taken will be determined by the relevant investigative entity.

- A. The steps taken by DOCCS to ensure a thorough investigation of all whistleblower allegations may include all or some of the following:
1. Report (anonymous or otherwise) is received.
 2. An investigator is assigned to the report to assess it and confirm its receipt.
 3. The investigator conducts an initial assessment to confirm it is a valid report and to request approval to investigate.
 4. The investigator will begin their investigation. This can include corresponding with the whistleblower, if there is a channel to do this.
 5. The investigator will investigate and update management and the whistleblower per policy guidelines. Any information that could potentially identify an anonymous informant will be held in the strictest confidence and will not be shared within the bounds of applicable laws.
 6. Once the investigator has finalized their investigation and report, management (to the extent practicable given the issues) and the whistleblower may be updated.
 7. At this point, the investigation team will make an assessment on subsequent action to take place.

VII. PROCESS OF UPDATING WHISTLEBLOWER: DOCCS is committed to updating any whistleblower as regularly as practicable. Throughout the investigation, unless it is of short duration, you are anonymous, or you have filed a concern with an external entity, the OSI investigator may keep the individual whistleblower generally informed and is available to answer your inquiries. The investigator will not share what witnesses said or predict the outcome of the case but will let the individual know generally how things are progressing and when to expect the investigation to conclude. These updates can include the following:

- A. Confirming the receipt of a report from the whistleblower.
- B. Beginning the investigative process.
- C. The investigation is currently ongoing.
- D. The investigation has been closed.

At the end of the investigation, you may hear back from the investigator if you didn't elect to remain anonymous. Even if you did report your concern anonymously, arrangements can be made so you can contact OSI to receive feedback. Just as the investigator will respect your confidentiality, they will also show respect to others, such as witnesses or a person accused of wrongdoing. So, if a corrective action involves discipline, you will likely not be told who is being disciplined or in what way, since that is a private matter between the employee and management, but you will hear as much at the end of the case as is appropriate to share with you.

VIII. HOW EMPLOYEES ARE PROTECTED – CONFIDENTIALITY AND NO RETALIATION

- A. DOCCS is committed to confidentiality in the whistleblower process in order to maintain employee trust in the program. DOCCS keeps concerns and related parties strictly confidential, to the extent possible, consistent with a full and fair investigation. Investigators will release details only on a "need to know" basis.
- B. DOCCS strictly prohibits retaliation against those who raise or help to resolve an integrity concern. Employees who believe that someone is retaliating against them for raising a concern or participating in an investigation should notify leadership, legal, or investigative channels. Any confirmed retaliation, whether direct or indirect, is grounds for discipline up to and including termination. Retaliation for raising a whistleblower concern may include, but is not limited to, the following:
 - 1. Being terminated or having their employment ceased.
 - 2. Performance management, warnings, or disciplinary actions.
 - 3. Alteration of an employee's position or duties to their disadvantage.
 - 4. Harassment/intimidation on the job or workplace bullying.
 - 5. Harm or injury to a person, including psychological harm.
 - 6. Damage to an informant's property or reputation.
 - 7. Damage to an informant's business or financial position.
 - 8. Discrimination.
 - 9. Any other action that can be perceived as victimization for making a report.

IX. APPENDIX A: CHANNELS FOR REPORTING: DOCCS provides multiple channels for employees to raise concerns. Below is a list of the primary internal and external reporting channels and relevant contact information.

A. Internal Reporting Channels

1. DOCCS OSI
 - a. Anonymous OSI online complaint form - <https://publicapps.doccs.ny.gov/DOCCSWebOSIComplaintForm.aspx>.
 - b. Email OSI directly - OSIComplaint@doccs.ny.gov.
 - c. Speak with OSI directly.
 - d. Anonymous call to OSI – Phone 1-844-OSI-4NYS; 1-844-674-4697.
 - e. Mail: Office of Special Investigations - Intake Unit
New York State Department of Corrections and Community Supervision
Harriman State Office Campus
1220 Washington Avenue, Building 4
Albany, New York 12226-2050
2. Non-OSI Central Office Channels
 - a. DOCCS Counsel - 518-391-4565
 - b. Human Resources - 518-457-9887

B. External Reporting Channels

1. Office of the New York State Inspector General (IG)
 - a. Phone Hotline-1-800-367-4448 (1-800-DO Right)
 - b. Online- <https://ig.ny.gov/form/complaint-form-long> (box check- "I am requesting confidentiality")
2. Office of the New York State Attorney General (OAG)
 - a. Online- <https://ag.ny.gov/i-want/use-whistleblower-portal>
3. U.S. Department of Justice
 - a. Submit a Complaint - https://oig.justice.gov/hotline/submit_complaint