
 <p><b>NEW YORK STATE</b> <b>Corrections and Community Supervision</b></p> <p><b>DIRECTIVE</b></p>	TITLE <b>Sexual Abuse Prevention &amp; Intervention - Inmate-on-Inmate</b>		NO. 4027A
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SUPERSEDES DIR# 4027A Dtd. 03/04/2016	DISTRIBUTION A B	PAGES PAGE 1 OF 6	DATE LAST REVISED
REFERENCES (Include but are not limited to) Penal Law §240.50, §130, "Standards of Inmate Behavior" Rule Series 101; Prison Rape Elimination Act of 2003 (PREA) 42, U.S.C. 15601 <i>et seq.</i> ; Directive #0700, 4027B, 4028A; DOCCS Training Manual	APPROVING AUTHORITY 		

**I. DESCRIPTION:** This Directive provides information concerning:

- The prevention of **inmate-on-inmate** sexual abuse, sexual harassment, and sexual threats;
- The prevention of, detection of, and response to allegations of **inmate-on-inmate** sexual abuse, sexual harassment and sexual threats, including prompt and effective intervention to address the safety and treatment needs of an inmate victim;
- The duty of all staff to report any allegation of sexual abuse or sexual harassment of an inmate, and to report any actual knowledge or reasonable belief concerning any incident of sexual abuse or sexual harassment;
- The duty of staff to report any allegation of retaliation for reporting an incident of sexual abuse or sexual harassment, or for participating in an investigation of an incident of sexual abuse or sexual harassment;
- The prevention of, detection of, and response to allegations of retaliation for reporting an incident of sexual abuse or sexual harassment, or participating in an investigation of an incident of sexual abuse or sexual harassment; and
- The discipline and/or prosecution of those who commit such acts of sexual abuse, sexual harassment, sexual threats, or retaliation.

**II. POLICY:** The New York State Department of Corrections and Community Supervision has zero tolerance for sexual abuse and sexual harassment. Inmates and parolees have the right to be free from sexual abuse and sexual harassment. Sexual abuse and sexual harassment violate Department rules and threaten security. All allegations of sexual abuse, sexual harassment, or retaliation against staff, an inmate, or a parolee for reporting such an incident or participating in an investigation will be thoroughly investigated. Furthermore, any perpetrator of a sexual abuse or sexual harassment incident will be dealt with severely through discipline or prosecution to the fullest extent permitted by law.

It is the policy of the Department that coercive inmate-on-inmate sexual conduct is sexual abuse and is not to be tolerated. All allegations of sexual abuse, sexual harassment, sexual threats, and retaliation concerning such an incident will be thoroughly investigated. Inmate Rule 101.10, "Standards of Inmate Behavior," prohibits inmates from engaging in, or soliciting others to engage in sexual acts. No victim of inmate-on-inmate sexual abuse shall be subject to discipline for engaging in sexual acts as a result of threats, intimidation, or other coercive actions. Other sexual contact and conduct of a sexual nature are also prohibited by rules found in Rule Series 101.

### III. DEFINITIONS

- A. Sexual Conduct means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact, and shall have the same meaning as set forth in Penal Law § 130.00.
- B. Sexual Contact means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party, and shall have the same meaning as set forth in Penal Law § 130.00.
- C. Sexual Abuse includes:
1. Inmate-on-Inmate 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. Inmate-on-Inmate Sexual Abuse is a form of "Prison Rape" under the Prison Rape Elimination Act of 2003, (PREA), 42 U.S.C. § 15609.
  2. Staff-on-Inmate/Staff-on-Parolee Sexual Abuse: Staff-on-Inmate/Staff-on-Parolee Sexual Abuse is when an employee, volunteer, intern, or outside contractor engages in sexual conduct, including sexual contact, with an inmate or parolee. Staff-on-Inmate Sexual Abuse is a form of "Prison Rape" under PREA.
- D. Attempt to Commit Sexual Abuse is when a person engages in conduct that tends to effect the commission of sexual conduct, including sexual contact.
- E. Sexual Threat means any spoken, written or other threat to engage in sexual conduct forcibly or against a person's will. A sexual threat is a type of sexual harassment.
- F. Sexual Harassment includes:
1. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and
  2. Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, parolee, or resident 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.

### IV. PROCEDURE

- A. Training
1. In accordance with the Department of Corrections and Community Supervision Training Manual, all employees shall receive, during initial training and as in-service training, instruction that relates to the prevention, detection, response, and investigation of sexual abuse and sexual harassment in a correctional environment. Training includes: initial training, refresher training at least every two years, orientation training upon reassignment to another correctional facility, and annual refresher information.
  2. All contractors and contract employees, volunteers, and interns shall receive orientation and periodic in-service training consistent with their level of inmate contact relating to the prevention, detection, and response to inmate-on-inmate sexual abuse and sexual harassment.

3. All inmates shall receive during orientation at reception and at facility orientation after transfer, information which addresses sexual abuse and sexual harassment. The information shall be communicated orally and in writing, in a language clearly understood by the inmates. This information will address prevention, self-protection (situation avoidance), reporting sexual abuse, and sexual harassment, and the availability of treatment and counseling.
- B. Assessment and Classification
1. Reception: An initial assessment will be conducted of all inmates arriving at a Reception Center.
    - a. This assessment is intended to identify a number of classification concerns including a determination of an inmate's risk of being sexually abused by other inmates or sexually abusive toward other inmates. Inmates identified as being at high risk of sexual victimization or of being sexually abusive will be identified, such concerns shall be noted upon the inmate's security classification in accordance with the "Manual for Security Classification Guidelines," and appropriate measures will be taken to ensure that they are monitored.
    - b. A PREA Risk Screening ([Form #115.41M](#) or [Form #115.41F](#) consistent with the gender classification of the facility) will be conducted pursuant to facility-specific procedures adopted in accordance with the Facility Operations Manual (FOM) Template implemented by the Associate Commissioner for Prison Rape Elimination Act (PREA) Compliance.
    - c. Counseling services will be available to address concerns associated with a history of sexual victimization and/or a history of sexually aggressive behavior, as appropriate. This assessment will also be considered in assigning an inmate's location. The initial assessment must include a preliminary review by Security, Health Services and Classification staff within 24 hours of an inmate's arrival at the reception facility.
  2. Transfer: An inmate's risk of being sexually abused by other inmates or sexually abusive toward other inmates shall be monitored and any specific occurrence or information shall be noted and considered in connection with any transfer.
    - a. Upon arrival, each inmate will be screened using PREA Risk Screening [Form #115.41M](#) or [Form #115.41F](#) for any indication of current risk of being sexually abused by other inmates or sexually abusive toward other inmates.
    - b. Such screening shall be conducted pursuant to facility-specific procedures adopted in accordance with the Facility Operations Manual (FOM) Template implemented by the Associate Commissioner for Prison Rape Elimination Act (PREA) Compliance.
- C. Reporting and Investigation of Inmate-on-Inmate Sexual Abuse, Sexual Harassment, or Sexual Threats: An inmate or parolee may report an incident of sexual abuse, sexual harassment, sexual threats, or any act of retaliation for reporting such an incident or for participating in an investigation of such an allegation to any employee. The initial inmate or parolee report may be verbal or in writing. For reporting purposes under this Directive, "employee" includes 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.

1. An employee who receives a report that an inmate or parolee, is the victim of an incident of sexual abuse, sexual harassment, or sexual threats must be aware of the sensitive nature of the situation. The victim must be treated with due consideration for the effects of sexual abuse and sexual harassment.
2. Any employee who receives a report of sexual abuse, sexual harassment, sexual threats, or any act of retaliation for reporting such an incident, or for participating in an investigation of such an allegation, shall immediately notify his or her immediate supervisor as outlined below:
  - a. Any facility-based employee shall report the information immediately to their supervisor, who shall notify the Watch Commander. In the event the supervisor is not available, the employee shall immediately notify the Watch Commander directly.
  - b. Any community-based employee who receives a report involving an inmate or parolee, who is being supervised in the community has a duty to report such information to the Supervising Parole Officer (Bureau Chief) who shall immediately notify the Regional Director. In the event the Supervising Parole Officer (Bureau Chief) is not available, the employee shall immediately notify the Regional Director. In the event the Regional Director is not immediately available, the Assistant Regional Director shall be notified to avoid any delay.
  - c. The employee shall report the specific details, in writing, to the Watch Commander or Supervising Parole Officer (Bureau Chief) immediately, or as soon as possible after verbal notification, and no later than the end of the shift.
  - d. A medical practitioner who receives such information in the course of providing medical treatment to an inmate is required to report the minimum information necessary as set forth in the Department of Corrections and Community Supervision Health Services Policy Manual (HSPM) 1.60.
  - e. Immediate notification shall be made to the Office of Special Investigations in accordance with Directive #4027B, "Sexual Abuse Reporting & Investigation-Inmate-on-Inmate.
3. The Watch Commander shall initiate the sexual abuse protocols in accordance with the facility's Coordinated Response Plan to an Incident of Inmate Sexual Abuse, including securing the crime scene, where appropriate.
4. Reports of sexual abuse and sexual harassment are confidential and information, including but not limited to the identity of the victim, the identity of the person reporting the sexual abuse or sexual harassment, the identity of witnesses and the identity of the alleged perpetrator, is only to be shared with essential employees involved in the reporting, investigation, discipline and treatment process, or as otherwise required by law.
5. No retaliation of any kind shall be taken against an inmate, parolee, or employee for good faith reporting of sexual abuse, sexual harassment, or sexual threats.

6. A prompt, thorough, and objective investigation shall be conducted in all instances of reported sexual abuse, sexual harassment or retaliation concerning such an incident. As directed herein, and in accordance with Directive #0700, "Office of Special Investigations (OSI)," and other applicable department policies, this investigation shall be initiated promptly and shall be the responsibility of the Office of Special Investigations who shall determine the appropriate investigative response.

NOTE: Allegations of inmate-on-inmate sexual abuse may be reported to appropriate law enforcement officials and/or prosecutors by the Department's Office of Special Investigations. A person is guilty of falsely reporting an incident if it is proven beyond a reasonable doubt that, knowing the information reported, conveyed, or circulated to be false or baseless, he or she reports to a law enforcement officer or agency the alleged occurrence of an offense or incident which did not in fact occur (Penal Law § 240.50). A report made in good faith based upon a reasonable belief that the alleged conduct did occur does not constitute falsely reporting an incident or lying for the purpose of disciplinary action even if investigation does not establish evidence sufficient to substantiate the allegation.

D. Discipline and Prosecution

1. Whenever an employee ascertains facts that an inmate perpetrated an act of inmate-on-inmate sexual abuse, it is the Department's policy to report such incidents on [Form #2171](#), "Inmate Misbehavior Report," and to seek discipline of the aggressor in accordance with the standards of behavior. Furthermore, whenever investigation substantiates an allegation of inmate-on-inmate sexual abuse, the matter shall be referred to the appropriate law enforcement agency and/or prosecutor, through the Department's Office of Special Investigations, for consideration of criminal charges against the aggressor.
2. Whenever an employee ascertains facts that an inmate engaged in sexual harassment or made a sexual threat, it is the Department's policy to report such incidents on [Form #2171](#), "Inmate Misbehavior Report," and to seek discipline of the aggressor in accordance with the standards of behavior.
3. A victim of sexual abuse, including an inmate or parolee who engages in a sexual act as a result of threats, intimidation, or other coercive actions, is not subject to discipline absent proof of false reporting following a full investigation of the incident and after consultation with the Department's Office of Special Investigations.

V. **STAFF DUTY TO REPORT**

- A. An inmate or parolee may report an incident of sexual abuse, sexual harassment or an allegation of retaliation concerning such an incident to any employee. The employee shall immediately notify his or her supervisor pursuant to Section IV above. The initial inmate or parolee report may be verbal or in writing.
- B. In addition to reporting an allegation of sexual abuse, sexual harassment, sexual threats, or retaliation as reported by an inmate or parolee, all employees, regardless of title, are under a duty to report:
  1. Any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not the facility is part of the Agency;
  2. Retaliation against inmates, parolees, or staff who reported such an incident; and

3. Any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
- C. Any employee having either knowledge or a reasonable belief of any sexual abuse, sexual harassment, or threat has a duty to report such information.
1. Any facility-based employee shall report such information immediately to their supervisor, who shall immediately notify the Watch Commander. In the event the supervisor is not available, the employee shall immediately notify the Watch Commander directly.
  2. Any community-based employee shall report such information to the Supervising Parole Officer (Bureau Chief) who shall immediately notify the Regional Director. In the event the Supervising Parole Officer (Bureau Chief) is not available, the employee shall immediately notify the Regional Director. In the event the Regional Director is not immediately available, the Assistant Regional Director shall be notified to avoid any delay.
- D. Any employee who receives a report of sexual abuse or sexual harassment, or has either knowledge or a reasonable belief of any sexual abuse, sexual conduct, sexual contact, sexual harassment, or any act of retaliation against an inmate, parolee, or employee for reporting an incident of sexual abuse or sexual harassment, or for participating in an investigation involving any of those acts, and who fails to report such information, may be subject to disciplinary action.