
 NEW YORK STATE Corrections and Community Supervision DIRECTIVE	TITLE Sexual Abuse Prevention & Intervention - Inmate-on-Inmate		NO. 4027A
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SUPERSEDES DIR #4027A Dtd. 8/16/2011	DISTRIBUTION A B	PAGES PAGE 1 OF 5	DATE LAST REVISED
REFERENCES (Include but are not limited to) Penal Law § 130, "Standards of Inmate Behavior" Rule Series 101, Prison Rape Elimination Act of 2003 (PREA) 42, U.S.C. 15601 <i>et seq.</i>	APPROVING AUTHORITY 		

I. DESCRIPTION: This Directive provides information concerning:

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

II. POLICY: The New York State Department of Corrections and Community Supervision has zero tolerance for sexual abuse. 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 threats and retaliation concerning an incident of sexual abuse 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 means Inmate-on-Inmate Sexual Abuse, as set forth herein, or Staff-on-Inmate Sexual Abuse, as covered in Directive #4028A "Sexual Abuse Prevention & Intervention – Staff-on-Inmate."
1. 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 Sexual Abuse is when an employee, volunteer, intern or outside contractor engages in sexual conduct, including sexual contact, with an inmate. 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.

IV. PROCEDURE

A. Training

1. All employees shall receive, during initial training and as in-service training at least every three years, instruction that relates to the prevention, detection, response and investigation of inmate-on-inmate sexual abuse in a correctional environment.
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.
3. All inmates shall receive during orientation at reception and at facility orientation after transfer, information which addresses sexual abuse. The information shall be communicated orally and in writing (in English and Spanish), in a language clearly understood by the inmates. This information will address prevention, self protection (situation avoidance), reporting sexual abuse and the availability of treatment and counseling.

B. Assessment and Classification

1. An initial assessment will be conducted of all inmates arriving at a Reception Center. This assessment is intended to identify a number of classification concerns including a determination of an inmate's vulnerability or tendencies of acting out with sexually aggressive behavior. Inmates identified as high risk with a history of sexually assaultive behavior or vulnerability 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. Counseling services will be available to address concerns associated with a history of sexual victimization and/or a history of violent 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. An inmate's vulnerability or tendency of acting out with sexually aggressive behavior shall be monitored and any specific occurrence or information shall be noted and considered in connection with any transfer. The sending facility correction counselor shall screen the inmate's record prior to transfer for any history of sexual vulnerability or sexually aggressive behavior. The sending facility senior correction counselor shall advise the receiving facility, and each in-transit facility, via electronic mail to the watch commander, of any such history. Upon each transfer, any inmate so identified will be screened by a security supervisor within 24 hours of arrival at the facility for any indication of current sexual vulnerability or sexually aggressive behavior. Information from the screening process, the initial assessment, quarterly reviews, and inmate disciplinary history, will be reviewed and considered for purposes of classification, housing assignments and programming, etc.
- C. Reporting and Investigation of Inmate-on-Inmate Sexual Abuse or Sexual Threats: An inmate may report an incident of inmate-on-inmate sexual abuse, sexual threats or any act of retaliation against an inmate for reporting an incident of sexual abuse or for participating in an investigation of an allegation of sexual abuse to any employee. The initial inmate 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 is the victim of an incident of sexual abuse or sexual threats must be aware of the sensitive nature of the situation. The inmate must be treated with due consideration for the effects of sexual abuse.
 2. Any employee who receives a report of sexual abuse, sexual threats, or any act of retaliation against an inmate for reporting an incident of sexual abuse or for participating in an investigation of an allegation of sexual abuse shall immediately notify his or her immediate supervisor who shall immediately notify the Watch Commander. In the event the immediate supervisor is not available, the employee shall immediately notify the Watch Commander directly. The employee shall report the specific details, in writing, to the Watch Commander before the end of the shift. 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 1.60 of the Department of Corrections and Community Supervision' Health Services Policy Manual.
 3. The Watch Commander shall initiate the sexual abuse protocols, including securing the crime scene, where appropriate.
 4. Reports of sexual abuse are confidential and information, including but not limited to the identity of the victim, the identity of the person reporting the sexual abuse, 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 reprisals of any kind shall be taken against an inmate or employee for good faith reporting of sexual abuse or sexual threats.

Note: Allegations of inmate-on-inmate sexual abuse may be reported to appropriate law enforcement officials in accordance with Department policy. 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 an 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 District Attorney, through the Department's Office of the Inspector General, for consideration of criminal charges against the aggressor.
2. Whenever an employee ascertains facts that an inmate made a sexual threat, it is the Department's policy to report such incidents on an Inmate Misbehavior Report and to seek discipline of the aggressor in accordance with the standards of behavior.
3. A victim of inmate-on-inmate sexual abuse, including an inmate 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 the Inspector General.

V. **STAFF DUTY TO REPORT**

- A. An inmate may report an incident of inmate-on-inmate sexual abuse or an allegation of retaliation concerning an incident of sexual abuse to any employee. The employee shall immediately notify his or her supervisor or the Watch Commander pursuant to section IV, above. The initial inmate report may be verbal or in writing.
- B. All employees, regardless of title, are under a duty to report any inmate-on-inmate sexual abuse or threat (see Section III, DEFINITIONS), or any act of retaliation against an inmate for reporting an incident of sexual abuse or for participating in an investigation of an allegation of sexual abuse. Such duty to report shall include any knowledge or a reasonable belief that the employee has of any sexual conduct taking place or that has taken place between any inmates in the custody of the Department. Any employee having either knowledge or a reasonable belief of any inmate-on-inmate sexual abuse or threat has a duty to report such information to their immediate supervisor, who shall immediately notify the Watch Commander of the correctional facility where such sexual conduct is taking place or has taken place. In the event the immediate supervisor is not available, the employee shall immediately notify the Watch Commander directly.

- C. Any employee who receives a report of any inmate-on-inmate sexual abuse or threat (see Section III, DEFINITIONS), or any act of retaliation against an inmate for reporting an incident of sexual abuse or for participating in an investigation of an allegation of sexual abuse, involving an offender who is being supervised in the community has a duty to report such information to their immediate supervisor, who shall immediately notify the Office of the Inspector General. In the event the immediate supervisor is not available, the employee shall immediately notify the Office of the Inspector General directly.
- D. Any employee who receives a report of sexual abuse or has either knowledge or a reasonable belief that an incident or threat of inmate-on-inmate sexual abuse, or any act of retaliation against an inmate for reporting an incident of sexual abuse or for participating in an investigation of an allegation of sexual abuse has occurred and who fails to report such information is subject to disciplinary action.