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- Stopping Sex Abuse In Prison

Zero Tolerance: NY Prison System Committed To Preventing Sex Abuse

The commissioner of the state prison system responds to our investigation of sex abuse involving male staff and female inmates.

By Brian Fischer

Monday, May 16, 2011

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Zero tolerance. These two words, very simple and clear, define the New York State Department of Corrections and Community Supervision's (DOCCS) position on prison sexual abuse or assault, whether it is offender-on-offender or staff-on-offender.

DOCCS has made it clear to staff and offenders alike that it is a fundamental right of all incarcerated persons to be free of the threat of physical violence and abuse of any type, including sexual abuse.

On April 27, 2011, I had the opportunity to submit testimony to the U.S. Department of Justice (DOJ) Review Panel on Prison Rape. The Review Panel was evaluating the results of the Bureau of Justice Statistics' (BJS) report on Sexual Victimization in Prisons and Jail Reported by Inmates, 2008-09, which was issued in August of 2010.

As I stated in my written testimony, the Department's approach to this critically important issue is to take proactive preventive measures, immediately respond to all allegations and

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seek criminal penalties where appropriate believing that such efforts have a deterrent effect on the potential for sexual assault within our system.

Understandably, sexual assault in prison facilities is an issue that generates strong reactions and universal condemnation. For those reasons, the history of preventing sexual assault and prosecuting perpetrators in New York State's prisons is characterized by our Department's progressive and groundbreaking efforts to eliminate this unacceptable behavior.

In September 1996, the Department created what many consider the first formal Sex Crimes Unit (SCU) within any state correctional system in the country. Housed within the Department's Inspector General's division, the SCU investigates - in conjunction with New York State Police and other outside law enforcement agencies whenever appropriate - all allegations of sexual abuse. The formation of this specialized sex crimes unit pre-dates by seven years the federal Prison Rape Elimination Act of 2003 (PREA).

The investigators assigned to the Sex Crimes Unit are specifically trained to investigate allegations of sexual abuse and other related allegations of sexual misconduct, whether the alleged perpetrator is an employee, offender committed to our custody or anyone working inside a prison. Due to the specialized and complex nature of sexual abuse and misconduct investigations, we believe that it is important to have a group of specially trained and dedicated professionals to investigate these allegations and allegations of other unauthorized relationships.

Also in 1996, we strongly supported legislation amending New York State Penal Law to criminalize sexual conduct between our employees and the offenders they supervise. In 2007, legislation was enacted that expanded the definition of an employee to cover a volunteer or contract employee providing direct services to offenders in a state correctional facility. And last year we began the process of seeking legislation that will further clarify that it is a crime for any employee working in any of our correctional facilities to engage in any form of sexual contact or conduct with an offender, regardless of the nature of the employee's position.

All new staff and incoming offenders are immediately informed of our zero tolerance policy.

Inmates, at the time of their reception in our facilities and afterward, receive written materials and an orientation about how to avoid sexual abuse, how to protect themselves from it, how to report it and the availability of counseling and treatment.

We train all of our employees in the prevention of sexual abuse, and we developed and maintain detailed directives on how to report and investigate suspected sexual abuse, both inmate-on-inmate and staff-on-inmate. In 1998, DOCCS initiated a training curriculum called "Avoiding Inappropriate Behavior Between Staff and Inmates." In 2005, we added a training program addressing the "Prevention of Sexual Abuse of Inmates." Both the Avoiding Inappropriate Behavior and Prevention of Sexual Abuse training programs were incorporated into our training academy curriculum for all new correction officer trainees and were made part of the periodic in-service training library for all staff. We provide additional training to our Sergeants and Lieutenants at all of our supervisor schools.

And yet, with all of these policies and procedures, we cannot 100% guarantee that sexual abuse will not occur at some point in any one of our 67 facilities. What we can guarantee is that when such an action has been brought to our attention, we will aggressively investigate the allegation and pursue the criminal prosecution of any perpetrator.

Last month's publication of City Limits reported that "prison officials never forward many inmates complaints to the prison system's inspector general," yet the fact is that we have a system of capturing at the facility level all complaints that could potentially relate to PREA. Many of these are complaints about the way in which staff conduct pat frisks. Facility staff will frequently contact the DOCCS Inspector General (IG) to obtain direction on whether the complaint should be investigated by the facility or turned over to IG. Such complaints often do not rise to the level of "sexual abuse" and thus are appropriate for investigation at the facility. If the preliminary investigation at the facility reveals that the complaint alleges more serious misconduct, the case is then turned over to the IG.

Also, DOCCS often substantiates "unauthorized relationships" such as letter writing, telephone calls and personal conversations between staff and offenders (or their families). In 2007, we did report all 47 referenced cases to the DOJ's Bureau of Justice Statistics (BJS). DOCCS did not withdraw any of them. Rather, BJS rejected them as not meeting the criteria for reporting. Although BJS told us that they were going to remove these cases from the substantiated category (i.e., because we did not find evidence of sexual contact), we did not know until after the Bureau of Justice Statistics' Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09 report was published that they had even removed them from the total number of allegations received.

I also want to point out that the lead story in the City Limits April edition, which asserted that DOCCS' Bayview Correctional Facility "...has the highest rate of inmate-alleged staff sexual abuse in the country," is misleading because there were only 167 prisons included in the Bureau of Justice Statistics' survey. Thus, the survey was just a sampling of the nation's prison facilities, not a comprehensive review of all of the nation's prisons.

Regarding the very sensitive, but important issue of necessary pat frisks, and how they may be misperceived by offenders in our facilities, the Chair of the U.S. Department of Justice Review Panel on Prison Rape stated at last month's hearing that "The prison (Elmira

Correctional Facility) is between a rock and a hard place by having pat frisks that are less efficient and having ones that are more efficient and not having the prisoners like it. Prisoners can be very creative in terms of how they can introduce contraband or weapons.

The Chair went on to state that in an early April 2011 tour of the Elmira Correctional Facility, "...he was impressed by the number of prisoner programs and 'due diligence by prison staff.'"

Pat frisks, while often intrusive, are essential to maintain a safe environment for both staff and offenders alike.

An essential part of our approach is to ensure an appropriate and coordinated response when an allegation of sexual abuse is made. We believe that having such a coordinated response in place makes it more likely that our investigations will have an appropriate outcome and that the victim's needs will be met. This approach also contributes to an atmosphere where offenders are comfortable that reports of abuse will be taken seriously.

We continually evaluate our policies and procedures to make modifications as the circumstances warrant or new information or techniques are developed. As the national standards for the prevention of prison rape have evolved, we have remained in the forefront by implementing and periodically updating our policies and procedures. Our directives addressing Sexual Abuse Prevention are again in the process of being revised to clarify our reporting procedures, to specifically address issues of retaliation associated with reporting an incident of sexual abuse or for participating in an investigation of an incident of sexual abuse, and to further enhance our response protocols when a report is received. Most recently, in February 2011, I reissued a sexual abuse prevention pamphlet specifically designed to inform offenders and included revisions to directly address concerns about retaliation.

As I stated earlier in this column, it is our Department's firm commitment that all of our employees and offenders are always reminded that it is a fundamental right of all incarcerated persons to be free of the threat of physical violence and abuse of any type, including sexual abuse. This is a standard we will uphold in all of our facilities without exception.

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