



STATE OF NEW YORK

**DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION**

THE HARRIMAN STATE CAMPUS – BUILDING 2

1220 WASHINGTON AVENUE

ALBANY, N.Y. 12226-2050

ANTHONY J. ANNUCCI
ACTING COMMISSIONER

JASON D. EFFMAN
ASSOCIATE COMMISSIONER

May 2, 2014

Joseph A. D'Amico
Superintendent
New York State Police
Building # 22
1120 Washington Avenue
Albany, NY 12226-2252

Re: Implementation of the Prison Rape Elimination Act Standards

Dear Superintendent D'Amico:

This will serve to confirm that the New York State Department of Corrections and Community Supervision (DOCCS), Office of the Inspector General (IG), Sex Crimes Unit (SCU) and the New York State Police (NYSP), Bureau of Criminal Investigation (BCI) shall continue to work cooperatively in the investigation of reported incidents of staff-on-inmate and inmate-on-inmate sexual abuse that may involve criminal conduct. Both agencies will endeavor to meet the relevant National Standards adopted under the Prison Rape Elimination Act (PREA) governing the conduct of such investigations. Although the DOCCS IG SCU and NYSP BCI have collaborated on such investigations for many years, this letter serves to memorialize that relationship to assist DOCCS in meeting its requirements under the PREA Standards and audits.

DOCCS acknowledges that the NYSP BCI maintains discretion to determine the appropriate response of its investigators in each case. Many determinations will be made based upon conditions in the field, the facts and circumstances of an individual case, and the availability of investigative staff to respond.

As a general matter, DOCCS is responsible for ensuring that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment within the agency. When DOCCS IG receives a report of staff-on-inmate or inmate-on-inmate sexual abuse that involves potentially criminal behavior, DOCCS' practice is to contact the NYSP Barracks and brief the BCI Investigator. The BCI Investigator will determine the NYSP response.

Attached hereto are the relevant PREA Standards, Title 28 United States Code sections 115.21/221 (evidence protocol and forensic medical examinations), 115.22/222 (policies to ensure referrals of allegations for investigations), 115.34/234 (specialized training;

investigations), and 115.71/271 (criminal and administrative agency investigations). The following summarizes DOCCS policy and requirements under the relevant PREA Standards:

Evidence

- In accordance with DOCCS policy, reported victims of sexual abuse are afforded access to forensic medical examinations at an outside facility where evidentiarily or medically appropriate. Such examinations are performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs), whenever possible. The NYS Department of Health protocol is followed to maximize the potential for obtaining usable physical evidence.
- The reported victim is afforded the opportunity to have the services of a victim advocate from the local rape crisis program. As requested by the victim, the victim advocate shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.
- Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- DOCCS IG, including Certified Evidence Technicians, will work cooperatively with NYSP with respect to the gathering of physical evidence from the crime scene.

Interviews

- DOCCS IG SCU Investigators and NYSP BCI Investigators may individually or jointly interview the reported victim and possible witnesses.
- The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
- NSYP BCI Investigators may conduct interviews of alleged staff perpetrators off facility grounds as they deem appropriate. The DOCCS IG Investigator shall not be present in the interview room, but may discuss the evidence collected to date with the NYSP BCI Investigator before, during or after the interview.
- Prior to DOCCS IG SCU investigative staff conducting any interrogation of a staff member alleged to have engaged in sexual abuse, the DOCCS IG SCU Investigator

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shall evaluate the quality of the evidence and consult with the NYSP BCI Investigator as appropriate to determine whether a criminal prosecution may be warranted. When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

Investigative Findings

- Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.
- The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.
- Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

The Department greatly appreciates the New York State Police's willingness to work cooperatively on these complicated and very serious matters. In addition, we appreciate your willingness to familiarize yourselves with the relevant PREA Standards. DOCCS also acknowledges the efforts the NYSP has undertaken to have over 450 BCI Investigators participate in the National Institute of Corrections on-line training "Investigating Sexual Abuse in a Confinement Setting." This will ensure that New York State meets the requirement that where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34/234.

I request that you acknowledge receipt of this correspondence and that it accurately sets forth the understanding between our agencies.

Sincerely,



Jason D. Effman
Associate Commissioner

Enclosure (28 C.F.R. §§ 115.21/221, 115.22/222, 115.34/234 and 115.71/271)

cc: Colonel Patricia M. Grober, Field Commander
Lt. Colonel Frank H. Koehler, BCI
Vernon N. Fonda, Inspector General