

 NEW YORK STATE Corrections and Community Supervision DIRECTIVE	TITLE Sexual Abuse Prevention & Intervention - Staff-on-Inmate		NO. 4028A
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SUPERSEDES DIR #4028A Dtd. 8/17/2011	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 STAFF-ON-INMATE sexual abuse, sexual threats and staff voyeurism;
- The prevention of, detection of and response to allegations of STAFF-ON-INMATE sexual abuse, sexual threats and staff voyeurism, 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 or the existence of an inappropriate relationship between a staff member and an inmate;
- 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, staff voyeurism 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 staff-on-inmate sexual conduct is sexual abuse and is not to be tolerated. Every incident of staff sexual conduct with an inmate presents a threat to the security of the facility and the Department. All allegations of sexual abuse, sexual threats, staff voyeurism or retaliation concerning an incident of sexual abuse will be thoroughly investigated.

Section 130.05 of the Penal Law removes any legal ability on the part of the inmate to consent to sexual conduct, including sexual contact, with an employee, unless they are married. Sexual conduct with an inmate, including sexual contact, by any person providing direct services to inmates in a state correctional facility pursuant to a contractual arrangement or, in the case of a volunteer, a written agreement with the Department, is also prohibited under Penal Law § 130.05. An employee, contractor, contract employee or volunteer who engages in sexual conduct, including sexual contact, with an inmate is guilty of a sex offense even if the inmate "willingly" participates in the act. Sexual conduct with a person committed to the custody of the Department is a crime whether it occurs inside a correctional facility, during transportation outside a correctional facility, or while the inmate is a participant in a temporary release program. Any sexual abuse of an inmate by a staff member will be prosecuted to the fullest extent of the law.

Note: Any incident of sexual assault on staff by an inmate will be immediately reported to the Office of the Inspector General and handled in accordance with established Department policy for investigation and criminal prosecution of inmates (see Directive #6910 "Criminal Prosecution of Inmates").

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.

NOTE: "Sexual Contact" does not include touching of the intimate parts of another person during the performance of a personal search in accordance with Department procedures as outlined in Directive #4910, "Control of and Search for Contraband," or during a medical examination by health care staff for a proper medical purpose.

- C. Sexual Abuse means Inmate-on-Inmate Sexual Abuse as covered in Directive #4027A "Sexual Abuse Prevention & Intervention – Inmate-on-Inmate" or Staff-on-Inmate Sexual Abuse, as set forth herein.
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.
- F. Staff Voyeurism means the intentional or surreptitious viewing, broadcast or recording of an inmate dressing or undressing or of the sexual or other intimate parts of such inmate for the purpose of sexual arousal or sexual gratification, amusement, entertainment, or profit, or for the purpose of degrading or abusing a person.
- NOTE: "Staff Voyeurism" does not include the viewing of the sexual or other intimate parts of another person during a personal search in accordance with Department procedures as outlined in Directive #4910; or inadvertently or accidentally during rounds, while assigned to monitor Department security camera systems, during the performance of other official duties; or during a medical examination by health care staff for a proper medical purpose.
- G. Inappropriate relationship means any association with criminals or persons engaged in unlawful activities or any conversation, communication, dealing, transaction, association, or relationship with any inmate, former inmate, parolee or former parolee, or any visitor, friend, or relative of same in any manner or form which is not necessary or proper for the discharge of the employee's duties and that has not been authorized in accordance with applicable policy.

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- IV. PURPOSE:** The purpose of this Directive is to provide guidelines for the prevention, detection, response and investigation of sexual abuse or 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, including prompt and effective intervention to address the safety and treatment needs of an inmate victim of sexual abuse, and the investigation, discipline and prosecution of the aggressor(s).
- V. 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 staff-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 staff-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. Reporting and Investigation of Staff-on-Inmate Sexual Abuse or Sexual Threats: An inmate may report an incident of staff-on-inmate sexual abuse, sexual threats, staff voyeurism 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, sexual threats or staff voyeurism 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, staff voyeurism, 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: All allegations of staff-on-inmate sexual abuse are reported to appropriate law enforcement officials by the Department's Office of the Inspector General. 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.

- C. Discipline and Prosecution: When investigation substantiates an allegation of staff-on-inmate sexual abuse, it is the Department's policy to refer such incident to the appropriate law enforcement agency or District Attorney, through the Department's Office of the Inspector General, for consideration of criminal charges. Any conduct constituting staff-on-inmate sexual abuse, staff voyeurism, 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 may be the basis for disciplinary action whether or not prosecution or a conviction results.

VI. STAFF DUTY TO REPORT

- A. An inmate may report an incident of staff-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 V, above. The initial inmate report may be verbal or in writing.
- B. All employees, regardless of title, are under a duty to report:
 1. Any sexual conduct (sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact) between another employee and an inmate;
 2. Any inappropriate relationship between another employee and an inmate;
 3. Any act of staff voyeurism; or
 4. Any allegation of retaliation for reporting an incident of sexual abuse or for participating in an investigation of an allegation of sexual abuse.

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- C. 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 employee and any inmate. Any employee having either knowledge or a reasonable belief of any sexual conduct, including sexual contact, taking place or having taken place between any employee and an inmate, any inappropriate relationship between any employee and an inmate, or any act of staff voyeurism 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.
- D. Any employee who receives a report of a sexual abuse incident as outlined in IV-B, above, 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.
- E. Any employee who receives a report of sexual abuse or has either knowledge or a reasonable belief of any sexual conduct, sexual contact, inappropriate relationship or staff voyeurism between an employee and an inmate, 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, and who fails to report such information is subject to disciplinary action.