



BRIAN FISCHER
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS – BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

(518) 457-4951
FAX (518) 457-7555*
**Not for service of papers*

MEMORANDUM

TO: All Employees, Contractors, Volunteers and Interns

FROM: Brian Fischer, Commissioner

DATE: November 1, 2007

SUBJECT: Policy on the Prevention of Sexual Abuse of Inmates (revised)

The New York State Department of Correctional Services has a zero tolerance policy for sexual abuse. It has long been the policy of the Department that staff-on-inmate, inmate-on-inmate and inmate-on-staff sexual abuse will not be tolerated -- **all sexual conduct, including sexual contact, is against the Department's rules.**

In addition, the Prison Rape Elimination Act of 2003 (PREA) was signed into law on September 4, 2003, after it was unanimously passed by both houses of Congress. This law is intended to address inmate-on-inmate and staff-on-inmate sexual abuse in all United States federal, state, and local correctional facilities. The law is designed to have the prison systems work with the Federal Government to gather statistical information, improve staff training, and eventually develop appropriate policies to eliminate sexual misconduct in prison. Since the passage of the law, the Department has actively participated in these efforts which will lead to the development of national standards addressing these important issues.

With respect to inmate-on-inmate sexual abuse, Inmate Rule 101.10, Standards of Inmate Behavior, prohibits inmates from engaging in, or soliciting others to engage in sexual acts. Other sexual contact and conduct of a sexual nature are also prohibited by rules found in Rule Series 101.

Similarly, 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, and makes it a crime for any employee to engage in a "voluntary" sexual act with an inmate.

Furthermore, this law was amended, effective today, November 1, 2007, to criminalize 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 with the Department or, in the case of a volunteer, a written agreement with the Department. In addition, the statute makes such sexual conduct a crime whether it occurs inside a correctional facility, during transportation outside of the correctional facility, or while the inmate is a participant in a temporary release program.

Pursuant to Penal Law section 130.05, an employee, contract employee or volunteer who engages in sexual conduct, including sexual contact, is guilty of a sex offense even if the inmate "voluntarily" participates in the act. Any sexual abuse of an inmate by a staff member, contractor or contract employee, intern or volunteer will result in appropriate disciplinary or administrative action and will be prosecuted to the fullest extent allowed by law.

An employee, including any contractor or contract employee, intern or volunteer, 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/victim must be treated with due consideration to the effects of sexual abuse.

Any employee, including any contractor or contract employee, intern or volunteer, who receives such a report 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 immediately following the verbal notification. Otherwise, the reported information shall be kept confidential and only discussed with employees and law enforcement officials involved in the reporting, investigation, discipline and treatment process, or as otherwise required by law.

All allegations of sexual abuse, sexual threats, or staff voyeurism will be thoroughly investigated. Furthermore, any perpetrator of a sexual abuse incident will be dealt with severely through discipline and/or prosecution to the fullest extent permitted by law.

This policy is set forth in Directive #4027A "Sexual Abuse Prevention & Intervention - Inmate-on-Inmate" and Directive #4028A "Sexual Abuse Prevention & Intervention - Staff-on-Inmate." All employees receive initial training on the Sexual Abuse Prevention and Intervention policy as well as periodic updated training. In addition, all contractors, interns and volunteers will receive appropriate orientation or training on this policy.



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PROGRAM SERVICES

BRIAN FISCHER
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DIVISION OF MINISTERIAL, FAMILY, AND VOLUNTEER SERVICES

I hereby acknowledge receipt of Commissioner Brian Fischer’s Policy on the Prevention of Sexual Abuse of Inmates (revised) dated November 1, 2007. I understand that I will be held accountable for, and act in accordance with, this policy as a registered volunteer in the New York State Department of Correctional Services.

Name of Volunteer (please print)

Signature of Volunteer

Date

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De esta manera, acuso recibo de la Política sobre la Prevención del Abuso Sexual de los Reclusos (revisado), fechada el 1º de noviembre de 2007, del Comisionado Brian Fischer. Entiendo que se me encontrará responsable de y actuaré de acuerdo con, esta política como un voluntario registrado en el Departamento de Servicios Correccionales del Estado de Nueva York.

Nombre del Voluntario (en letra de molde)

Firma del Voluntario

Fecha