



**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

Testimony of  
Brian Fischer, Commissioner

New York State  
Department of Corrections and Community Supervision

Before The  
Review Panel on Prison Rape

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**Thank you for this opportunity to speak to you today about the Department of Corrections and Community Supervision's policies and our role as a leader in developing and implementing policies directed at significantly reducing sexual abuse in our prisons. I and my agency, like other practitioners in the field, like to use the term zero tolerance when discussing our policy regarding sexual abuse. The reality, however, is that while we do not willingly tolerate sexual abuse of our offenders, we may not be able to ever fully eradicate the occurrence. What we can and must do is continue to ensure that staff and offenders in our custody know that we have zero tolerance for unacceptable behavior and will do everything in our power to reduce, if not eliminate its occurrence. Our approach is to take proactive preventive measures, immediately respond to all allegations and seek criminal penalties where appropriate believing that such efforts have a deterrent effect within the system.**

**By way of background, I was appointed Acting Commissioner of the New York State Department of Correctional Services effective January 1, 2007, and confirmed as Commissioner by the New York State Senate on March 12, 2007. For the past four years, I have led the nation's fourth-largest state prison system with nearly 29,000 employees and housing approximately 57,000 inmates in 67 correctional facilities, plus a**

**916-bed Drug Treatment Campus. This month, we have begun a new chapter in our history, by merging with New York State Division of Parole. Our two agencies are now identified as the New York State Department of Corrections and Community Supervision (DOCCS). Together we are an agency of over 31,000 employees responsible for over 91,000 offenders.**

**Our agency has been involved in national efforts to address the issue of sexual misconduct in prison long before the passage of the Prison Rape Elimination Act. A number of members of my staff, including, but not limited to the current Executive Deputy Commissioner, the recently retired Deputy Commissioner/Inspector General and the Deputy Inspector General for the Sex Crimes Unit, the Director of our Training Academy, and the Assistant Counsel who serves as the agency's PREA Coordinator have all participated in various workshops through the National Institute of Corrections. The Department's participation in these workshops began in 1998 shortly after the American University, Washington College of Law entered into its cooperative agreement with the National Institute of Corrections and first began providing training to corrections policy makers on issues faced by corrections administrators in responding to staff sexual misconduct.**

**Our participation in such programs continued after the Prison Rape Elimination Act was passed. The information acquired in each of these programs has played a significant role in the development of the Department's policies and training programs.**

**The Department 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. In 1996, the New York State Department of Correctional Services was instrumental in amending New York State Penal Law § 130.05. In essence, section 130.05(3)(e) states that any person under custody in a New York State correctional facility cannot consent to any sex act with an employee who performs professional duties in a state correctional facility consisting of providing custody, medical or mental health services, counseling services, educational programs,**

or vocational training. In 2007, legislation was enacted that expanded the definition of employee to cover a volunteer or contract employee, providing direct services to offenders in a state correctional facility. The Legislature is currently considering our request for legislation that will further clarify that it is a crime for any state employee working in one of our correctional facilities to engage in any form of sexual contact or conduct with an offender, regardless of the nature of their position.

In 1996, on the heels of the enactment of Penal Law § 130.05(3)(e), the Department formed within our Office of the Inspector General one of the only correctional Sex Crimes Units in the nation. Our Sex Crimes Unit (SCU) specializes in investigating allegations of sexual misconduct between Departmental staff and offenders, as well as offender-on-offender sexual abuse. The Sex Crimes Unit investigates such cases regardless of how or when the allegation is received.

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 some other individual. This unit now consists of a Deputy Inspector General, an Assistant Deputy Inspector General, five Senior Investigators and eight Investigators. Our sex crimes investigators participate in various training programs including, but not limited to, the week-long New York State Police Sex Offense Seminar, which is designed for Investigators of the Bureau of Criminal Investigation, other law enforcement officers and prosecutors. New investigators participate in both formal training programs through various resources, as well as extensive on-the-job training with a seasoned investigator as a mentor.

In addition to the Sex Crimes Unit, the Office of the Inspector General has five regionally based certified evidence technicians. The Inspector General's evidence technicians participated in the same month-long training as their New York State Police counterparts. These evidence technicians are available to assist in sex crimes or other investigations being conduct by the Office of the Inspector General.

**The members of our Office of the Inspector are all designated Peace Officers under New York State law, with the power to make warrantless arrests when there is probable cause to believe that a person has committed a crime. In every case involving allegations of potentially criminal conduct, our investigators partner with the New York State Police Bureau of Criminal Investigations (BCI) for joint investigations with a focus on the potential for criminal action.**

**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. Because these cases are very involved, the investigators in this unit typically have a smaller caseload than other members of our Office of the Inspector General. Also, members of the unit are assigned to four different office locations across the State (Albany, Buffalo, Utica and Long Island City) enabling a Sex Crimes Unit investigator to be immediately dispatched when an allegation of recent sexual conduct is received. In this way, we have a specialized investigator who is able to meet the alleged victim either at the community hospital's emergency department or in the facility, collect evidence at the correctional facility before it may be lost, and to take other steps as may be dictated by the circumstances.**

**In 1998, the Department initiated a training curriculum called "Avoiding Inappropriate Behavior Between Staff and Inmates." This training program was developed with technical assistance from the Department of Justice, National Institute of Corrections. During the Department's 1998 to 1999 training cycle, this training was provided to all current employees as part of the Commissioner's Initiative for in-service training. The training was also made a component of our training academy curriculum for all new correction officer trainees and a part of the periodic in-service training library for all staff.**

**In 1994, the Department adopted a policy providing that a female officer shall not perform a non-emergency pat frisk of any male Muslim offender over his objection if a male officer is present at the location where the pat frisk is to be conducted and available to perform the pat frisk. In 2000 the Department implemented new procedures limiting the use of cross-gender pat frisks of female offenders. Under this policy, a non-emergency cross-gender pat frisk exemption is available to a female offender diagnosed by mental health staff as currently suffering from an Axis I Post Traumatic Stress Disorder (PTSD). In addition, when a male officer does conduct a pat frisk of a female offender, the officer is required to use the back and side of his hand when frisking the clothed breast area of the offender. He is also required to use care not to pat the clothed nipples and genital area of the offender.**

**Following the enactment of the Prison Rape Elimination Act in 2003, Department staff undertook a review of existing Departmental and facility policies concerning the prevention of sexual abuse. In June 2005, we adopted a series of directives and orientation materials for offenders committed to our custody. Additionally, we promulgated notices to both staff and offenders concerning our policy showing zero tolerance for instances of sexual abuse. Specifically, we posted a notice in every housing unit and various locations throughout the facilities. Further, a memorandum was distributed to all employees with their paychecks, ensuring that every employee got a copy of it.**

**In October 2005, we initiated a new, additional training program addressing the “Prevention of Sexual Abuse of Inmates.” Again, this program, along with training in “Ethics Awareness,” was required of all employees as a part of the Commissioner’s Initiative for the 2005 to 2006 training cycle. This lesson plan was also added to the Training Academy curriculum for all new Correction Officer Trainees. In addition, since March 2006, supervisory level training based on this lesson plan has been provided to the Department’s new sergeants and lieutenants, as part of their supervisor schools.**

**The Department has continued its efforts to enhance the information provided to the offender population through an initial orientation process at reception and with the issuance of a pamphlet entitled “The Prevention of Sexual Abuse in Prison: An Overview for Inmates” in January 2006. This pamphlet, which has been updated several times since its introduction, was distributed to every offender in early 2006 and is provided to each inmate within 24 hours of arrival at every correctional facility upon reception or transfer.**

**In July 2010, the Department issued new posters to supplement our ongoing efforts to eliminate all forms of sexual abuse within our prisons. These posters remind the offenders in our custody that they have the right to be safe from sexual abuse. They are encouraged to tell a staff member if they are being sexually abused. Posters were placed throughout all of our correctional facilities in all housing units and program areas, the law libraries, general libraries, mess halls and the visiting rooms. In addition, posters were placed in each facility’s grievance office and Inmate Liaison Committee office.**

**An essential part of our zero tolerance approach is to ensure an appropriate and coordinated response when an allegation of sexual abuse is made. Our Office of the Inspector General, the facility security staff, medical staff and our partners from the Office of Mental Health and the State Police work together toward achieving the best possible outcome whenever such an unfortunate event occurs. Our Office of the Inspector General’s Sex Crimes Unit and the State Police BCI work with the facility security staff to ensure that the allegations are properly investigated and that the victim is kept safe. Our medical staff work with the investigative staff and the local community hospital emergency department to ensure that the victim receives proper medical care and a forensic medical examination in accordance with the New York State Department of Health “Protocol for the Acute Care of the Adult Patient Reporting Sexual Assault” and community standards. Our medical staff also work with our Office of Mental Health treatment providers to alert them of the victim’s situation and potential need for services. 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. 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. In September 2007, we issued a revised Employees' Manual that added three sections specifically addressing issues concerning sexual abuse and staff's duty to report information concerning instances of sexual abuse. In November 2007, I re-issued a policy statement to all employees, contractors and volunteers reiterating that I have zero tolerance for instances of sexual abuse and notifying them of the expansion of Penal Law § 130.05. This memorandum was distributed to all employees with their paycheck. Most recently, in February 2011, I reissued the sexual abuse prevention pamphlet and included revisions to directly address concerns about retaliation.

Ultimately, when allegations of sexual abuse are proven, it is the Department's goal to have the case prosecuted to the fullest extent permitted by law and to effectuate the termination from service of the offending employee. The Department's Office of the Inspector General works closely with the New York State Police and the appropriate Office of the District Attorney to secure a criminal prosecution whenever the evidence supports such an outcome.

We have put a great deal of time and effort into educating incarcerated offenders and staff. I am confident that the vast majority of our employees and offenders understand our policy. We have fostered an environment where both offenders and staff feel safe reporting any incident of sexual abuse or misconduct. They are confident that allegations will be properly investigated by well trained and professional staff. Of course, we know that there is always room to improve and we constantly strive to do so.

Turning to the results of the National Inmate Survey at Elmira Correctional Facility, we are quite concerned that Elmira and two other New York State prisons were rated as having high rates of staff sexual misconduct. We have begun an analysis to better understand the survey results. Our analysis must also consider that Elmira Correctional Facility was sampled in back-to-back surveys with significantly different results. After NIS-1, Elmira was found to have a reported rate of staff-on-inmate victimization of 3.3%, less than half of the 7.7% reported rate of staff-on-inmate sexual victimization from NIS-2. Although our analysis is not yet complete, we have reviewed reported incidents at Elmira and held discussions with offenders, including offenders currently serving as elected representatives of the population and a number selected at random.

We know that during the relevant time period, some of our offenders were subjected to unwanted touching by a specific contract medical provider. Appropriate action was taken to terminate our contractual relationship with that individual. He was also prosecuted for his misconduct, although he was ultimately found not guilty.

Our belief is that the vast majority of the concerns directly relate to necessary and thorough pat frisks. Anecdotally, when asked about the results of the NIS-2, offenders housed at Elmira expressed shock that their facility would be rated as a facility with high incidence of staff-on-inmate sexual abuse. They reported never having experienced any such abuse, nor even knowing of any staff-on-inmate sexual contact at the facility. What is relevant is that a number of these same offenders, when asked about pat-frisks, responded that they felt they were being conducted inappropriately by a small number of employees. Those offenders stated that they consider a thorough pat frisk to constitute a sexual assault. We believe that the perception that a good pat frisk constitutes a sexual assault is the major factor influencing the results of NIS-2.

Whatever the reason for Elmira's results on the National Inmate Survey, DCCS is committed to the goals of the Prison Rape Elimination Act. While we may never



**completely eradicate instances of sexual abuse in our prison, we do not willingly tolerate it and we will continue to improve our policies and practices to protect those offenders placed in our care.**

**Thank you for your attention.**