

New York

WOMEN IN PRISON: 3,644 (12/99)ⁱ

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

Penal § 130.05 – Sex offenses; lack of consent¹

New York’s law is in the sex offenses section of the Penal code. It says an inmate is considered incapable of consent for the purposes of sexual acts. The law provides that sexual penetration is a felony, and contact is a misdemeanor.

Does the law impose a criminal penalty on the inmate?	No	The law does not penalize the inmate.
Does the statute cover all relevant forms of sexual abuse?	Yes	The law covers all sexual conduct.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	The law says an inmate cannot consent.
Does the statute cover all custodians and staff in contact with inmates?	No	The law does not cover service providers or contractors.
Does the statute cover all places where an inmate might be abused?	Yes	The law is not concerned with the location of the persons.
Is the penalty a felony?	Yes	Violation of penetration is a class E felony.

Custodial Sexual Misconduct – Allegations and Incidents

Indictments/Convictions (answer to AI letter requesting information) ⁱⁱ	Amnesty International received a letter acknowledging the request for information, however, no further response from the Attorney General’s Office received. ⁱⁱⁱ
Incidents reported in select media since 10/98	<ul style="list-style-type: none"> - Nassau County Police Department: A Nassau County police officer has been arrested and charged with forcing a woman to have oral sex with him while he was on duty. <i>The New York Times</i> 1/27/01 - Monroe County Sheriff’s Department: A 20-year-old woman alleged she was chained to a chair and raped by three sheriff’s deputies while in custody. Attorney Johnnie Cochran Jr. agreed to represent the woman. <i>The New York Times</i> 1/10/01 - Albion Correctional Facility: Andrew Lista, a city councilman working as a prison guard, was suspended for having sexual relations with a female inmate. Has not been charged with any criminal offense. <i>The Buffalo News</i> 08/19/00 - Albion Correctional Facility: Former officer sentenced to 3 years probation & fined \$1,000. For having sexual relations with a female inmate. <i>The Buffalo News</i> 08/19/00

¹ The text of the New York statute is reprinted at the end of this section.

<p><i>Incidents reported in select media continued</i></p>	<ul style="list-style-type: none"> - Westchester County Jail: Officer Aldorando was arrested and charged with raping and sodomizing an inmate. Officer Corona was charged with raping an inmate in supply closet. Officer Downey was charged with sexual abuse and official misconduct for forcing women inmates to strip. Officer Escalera was charged with making an inmate strip for Tylenol. All the officers were released on bail. Charges were dropped against Officer Corona; Officer Aldarondo pleaded guilty. Charges were pending against the others. Male officers banned from female living quarters. <i>The New York Times</i> 01/27/00 and 1/00 - Broome County Jail: Jail guard Marc Uvanno received conditional discharge and \$1,000 fine for having sex with female inmates while on duty. <i>AP</i> 01/6/00 - Rensselaer County Jail: Officer pleaded guilty to rape and sodomy. He was sentenced to two years in jail and five years probation. The female inmate was 16 years old at the time, and she sued the officer and the county. <i>The Times Union (Albany)</i> 12/09/99 - Bedford Hills Correctional Facility: Officer had an affair with inmate. The officer suspended, and no criminal charges were filed. <i>The New York Post</i> 09/16/99 - Metropolitan Correctional Facility in Manhattan: Wade L. Smith, former jail lieutenant, charged with engaging in sexual activity with a female inmate including touching her breasts, and having inmate touch his genitals. <i>New York Times on the Web</i> 07/7/99 - Albany County Corrections Facility: Four officers, including one sergeant, were arrested and charged with official misconduct including the exchange of cigarettes for oral sex with female inmates. <i>LRP Publications Corrections Professional</i> 12/11/98 - Albion Correctional Facility: Female inmates complain of officer's pat searches. <i>NBC News Transcripts</i> 11/01/98 - Rikers Island Jail in New York City: On July 2, 2000 a guard was arrested and charged with raping a 34 year old female jail inmate. <i>Prison Legal News, September 2000, Vol. II No. 9</i> - Attica: 2nd Circuit Court held a district court erred when it dismissed a NY state prisoners claim that guards at Attica sexually assaulted him in retaliation for lawsuits filed. He claims the guards also slammed his head into a cabinet, beat him, called him racial slurs and then denied him medical treatment for the beating. <i>Prison Legal News, December 2000</i> - Adirondack Correctional Facility: A former NY state prison guard Michael W. Roberts was sentenced in September 1998 to three years imprisonment after admitting he forced Al Waxter, a male prisoner, to perform oral sex. When Mr. Waxter filed complaints with the Corrections Department and state police, he was transferred to Clinton Correctional facility. He saved the semen in a small vial, which he turned over to the corrections department inspector generals office. Tests verified the DNA matched Michael Roberts. Faced with the strength of the DNA evidence, Roberts pleaded guilty to charged of felony sodomy. <i>Prison Legal News, February 1999</i>
<p>Other reported incidents</p>	<p><u>Department of Corrections</u> In a letter to Amnesty International activists, Glenn S. Goord, Commissioner of the New York Department of Correctional Services noted that 23 charges against employees have been brought under the statute since it was passed in 1996.</p> <p><u>Luz Betty Noguera v. Lt. Wade Smith et al</u>, 2000 U.S. Dist. LEXIS 11956 Metropolitan Correctional Center: Noguera alleges that Lt. Wade Smith, a high ranking officer at the Metropolitan Correctional Center, repeatedly</p>

	<p>raped, sodomized and otherwise sexually abused her from late 1995 to early 1997. Noguera states that Lt. Smith began touching her breasts and genitals from one to three times a week and engaging in sexual intercourse and oral sex in a small supply cupboard. From 1995 to 1997, Noguera was repeatedly forced to engage in oral sex with Lt. Smith and had sexual intercourse with him three times. All of these acts were non-consensual. Noguera felt “ I had to do it ... I’m the inmate, he’s the lieutenant. If I don’t do what he wants I’m going to pay for it ... He’s going to find a way to nail me.” Noguera also testified that she felt she would be placed in solitary confinement if she resisted. Early in 1997, after she had spoken to prison authorities, she attempted to take a condom Lt. Smith had used during intercourse. After that Lt. Smith grew suspicious and stopped having sexual contact with Noguera. She claims that after she disclosed that Lt. Smith was raping her, he retaliated against her by intimidating and harassing her, and telling other inmates that she was a “snitch”.^{iv}</p> <p><i>Zoraida Safadi v. Domingo Almanzar et al.</i> 2000 U.S. Dist. LEXIS 16968 Taconic Correctional Facility: On July 1, 1998, Corrections Officer Domingo Almanzar sexually assaulted Safadi while she was asleep in her cell. He entered her cell in the middle of the night, shined a flashlight in her face, demanded sex and when she refused, assaulted her. Almanzar pleaded guilty to assaulting Safadi and raping another prisoner. He was later sentenced to a term of probation.^v</p> <p><i>Joshua Liner v. Glenn Goord; Walter Kelly et al.</i> 196 F. 3d 132 (1999) Attica Correctional Facility: Joshua Liner alleges that he was sexually assaulted by correctional officers on three separate occasions in February and May 1998. He was granted the right to pursue an Eight Amendment or emotional distress claim concerning the three alleged sexual assaults.^{vi}</p>
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Custodial Sexual Misconduct –Policies, Procedures and Practices of Guarding Specific to Women

The following data is based on surveys performed by the National Institute of Corrections in 1996 and 2000, except in cases where further details have been available to AI from alternative sources.

Is the current Department of Corrections policy on custodial sexual misconduct language explicit?	No	The policy does not contain specific language about the nature of the sexual behaviors prohibited. ^{vii}
Allow cross-gender pat-down searches?	Yes	Cross-gender searches are routinely done (class action suit filed). ^{viii}
Restrictions on the duties of male guards?		Not known.
Was there staff training on sexual misconduct in 1996?	Yes	Correction officers received three hours of pre-service training. ^{ix}
Has staff training been developed 1996-2000?	Yes	No details of training were available. ^x
Were there special procedures for investigating allegations of sexual misconduct in 1996?	No	New York is not specifically mentioned in the National Institute of Corrections report. However, it is noted that most DOCs use standard investigatory procedures with no special considerations for the nature of the complaint. ^{xi}
Have new investigation procedures been introduced 1996-2000?	Yes	The Investigator General developed a new sex crime unit in September 1996 that investigates sexual misconduct allegations. The investigators are trained in how to conduct criminal investigations. ^{xii}

Were inmates informed of agency policies about sexual misconduct in 1996?	Yes	Policies are covered in the inmate handbook and available in the library. ^{xiii}
Have procedures on informing inmates about sexual misconduct been revised 1996-2000?	No	No new initiatives ^{xiv}

Custodial Sexual Misconduct –Legislative Proposals 2000-01

None

Parenting and Pregnancy in Custody

Pregnancy - Relevant Statutes/Administrative Rules

Legislation banning shackling in the third trimester or during labor	No	Legislative proposal introduced to prohibit shackling. (See below for details.)
Administrative rules concerning prenatal care	Yes	The inmate shall receive comprehensive prenatal care, delivered by qualified specialists, including: regular medical examinations, advice on appropriate levels of activity and safety precautions, nutritional guidance, and HIV education. ^{xv}
Administrative rules concerning post-partum issues	Yes	Facilities and services shall be provided for the housing and care of infants with their mothers. ^{xvi} In facilities where infants are housed, a nursery must be maintained with sufficient sanitary standards and equipment to deal with the infants cared for there. ^{xvii} Infants shall receive medical attention, including a complete physical examination within 30 days of admission, as well as programs of prescription and therapeutic nutrition if needed. ^{xviii} Children under two may remain with their mothers if the mother gives birth while incarcerated or if her child is under two at the time of her incarceration. ^{xix}

Pregnancy and Parenting - Policies, Procedures and Practices

Use of restraints in third trimester		Not known.
Restraints during transport	Yes	The New York DCS policy does not precisely define the acceptable use of restraints, but stipulates that considerations be taken including “medical contraindications, and circumstances at the medical provider or hospital.” ^{xx}
Restraints during labor		Not known. According to a written response from the New York DCS, this information is restricted. ^{xxi}
Officer in delivery room	Yes	According to a New York DCS official, procedure is to have a female correctional officer present. ^{xxii}
Parenting programs specific for women	No	New York DCS has no parenting programs specifically for women, but has a residential program for infants - see below. ^{xxiii}
Special visitation rights for women	No	New York DCS has no special visitation rights for women with children. ^{xxiv}
State Mother and Child Residency Program	Yes	New York DCS has a residential program for inmate mothers and their infants/children. Infants are allowed to stay with their mothers in nursery-like facilities within the prison. ^{xxv}

	<p>At Bedford Hills Correctional Facility, mothers with sentences of less than two years are allowed to have their children under age six live with them for up to 18 months. The mothers work and learn parenting skills and other responsibilities. The program houses around 28 women and their children. In 1999, Taconic Correctional Facility, a medium-security facility with about 500 inmates, installed a similar nursery program.^{xxvi}</p>
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Pregnancy - Legislative Proposals 2000-01

<p>2001 S.B. 80² <i>Sponsored by Senator Hoffman</i> 01/03/01 Senate introduced 01/03/01 Referred to the Senate Committee on Crime Victims, Crime and Correction</p> <p>2001 A3292 – <i>Sponsored by Assemblyman Perry</i> 1/30/01 Introduced 1/30/01 referred to Assembly Corrections Committee</p>	<p>An Act to amend the law, in relation to female prisoners. Prohibits the use of handcuffs, shackles or restraints during the transport of pregnant inmate to a medical facility for the purpose of delivering her baby. Prohibits, under any circumstances, the use of leg irons, shackles or waist shackles on any pregnant female prisoner who is in labor.</p> <p><i>The Assembly bill is an identicle companion bill to the Senate bill.</i></p>
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Amnesty International Actions

<p>9 August 2000. Regional Action Network New York: AI calls for the restriction of the role of male guards in female facilities AI believes there is a wide problem of sexual abuse by male guards – fueled by factors such as allowing unsupervised access of male staff to female facilities, insufficient disciplinary action against guards who engage in sexual misconduct, women prisoners not reporting sexual abuse for fear of retaliation and allowing practices which are inherently cruel and degrading or are open to abuse, such as male staff conducting pat down searches.^{xxvii}</p>

Contact information

NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES

<p>Commissioner Glenn S. Goord NYS Department of Correctional Services Building 2 1220 Washington Avenue Albany, New York 12226-2050 Telephone: (518) 457-9887 Fax: (518) 457-2940</p>	<p>Homepage: http://www.docs.state.ny.us/</p> <p>inmate information: http://nysdocs.docs.state.ny.us:84/kinqw00</p>
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² The text of this bill is reprinted at the end of this section

NEW YORK COMMISSION OF CORRECTIONS

<p>Alan J. Croce, Chairman of Commission 4 Tower Place Albany, NY 12203 Tel: (518) 485-2463 Fax: (518) 485-2467</p>	<p>Homepage: http://www.scoc.state.ny.us/manuals http://www.scoc.state.ny.us/nysscoc/manuals.htm email and contacts infoscoc@scoc.state.ny.us</p>
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NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES **FACILITIES FOR WOMEN**

<p>Albion Correctional Facility* Anginell Andrews, Superintendent Albion Correctional Facility 3595 State School Road Albion, New York 14411 (716) 589-5511</p>	<p>Bayview Correctional Facility Alexandreena Dixon, Superintendent Bayview Correctional Facility 550 West 20th Street New York, New York 10011-2878 (212) 255-7590</p>	<p>Beacon Correctional Facility Susan Schultz, Superintendent Bayview Correctional Facility P.O. Box 780 Beacon, New York 12508-0780 (914) 831-4200</p>
<p>Bedford Hills Correctional Facility Elaine Lord, Superintendent Bedford Hills Correctional Facility 247 Harris Road Bedford Hills, New York 10507-2499 (914) 241-3100</p>	<p>Parkside Correctional Facility Goldie Pitchford, Superintendent Parkside Correctional Facility 10 Mt. Morris Park West New York, New York 10027-6395 (212) 860-6835</p>	<p>Taconic Correctional Facility Bridget Gladwin, Superintendent Taconic Correctional Facility 250 Harris Road Bedford Hills, New York 10507-2498 (914) 241-3010</p>

NEW YORK EXECUTIVE

<p>Governor George Pataki [R] State Capitol Albany, NY 12224 Phone: (518) 474-8390 Fax: (518) 474-3767</p>	<p>Homepage: http://www.state.ny.us/governor/ Email: gov.pataki@chamber.state.ny.us</p>
<p>Attorney General Eliot Spitzer [D] Room 221 Executive Chamber State Capitol Albany, NY 12224 Tel: (518) 474-7333; (518) 474-7330</p>	<p>email: http://www.oag.state.ny.us/emailag/</p>

NEW YORK LEGISLATIVE INFORMATION

<p>Legislative Information 61 Senators; 150 Assemblymen</p> <p>Legislative Session: Meets annually from the first Wednesday after the first Monday in January. The session is for an unspecified length of time. Bills may carry over.</p>	<p>Bill information http://assembly.state.ny.us/leg/</p> <p>Bill information phone number: Assembly: (518) 455-5165 Senate: (518) 455-4218</p>
<p>Senate State Capitol, Albany 12247</p>	<p>Senate homepage: http://www.senate.state.ny.us/</p>
<p>Assembly Capitol, Albany 12248</p>	<p>Assembly homepage http://assembly.state.ny.us/</p>

WOMEN IN PRISON - NGO RESOURCES

The organizations listed are not endorsed by or affiliated with Amnesty International

<p>CURE New York P.O. Box 102 Katonah, NY 10536-0102</p>
<p>The Children's Center Bedford Hills Correctional Facility 247 Harris Road Bedford Hills NY 10507 Phone: (914) 241-3100 ext.4050 <i>Offers a wide range of services to inmate mothers and their children</i></p>
<p>Women's Prison Association and Hopper Home Inc 110 Second Avenue New York NY 10003 Hone: (212) 674-1163 <i>Assists women in transition from incarceration to independent living. Aims to increase awareness of and support for community based responses to crime</i></p>
<p>Taconic Teen Program (Serving the Children of Incarcerated Women) 36-11A 12th Street Long Island City, NY 11106 Phone: (718) 433-4724 <i>Starting a volunteer program to connect adolescents with their mothers in prison.</i></p>
<p>New York Civil Liberties Union 125 Broad Street, 17th Floor New York, NY 10004 Phone: (212) 344-3005 Web site: www.nyclu.org</p>
<p>National Child Rights Alliance / YLA P.O. Box 422 Ellenville NY 12428 Phone: (919) 682-5509 Fax: (919) 683-3194 <i>Categories: Prisoners' Rights, Youth</i></p>

Community Justice Center
103 E 125th. St. Rm 604
New York NY 10035
Phone: 212-427-4545
Fax: 212-427-3132

Categories: Prisoner Support, Prisoners' Rights, Research/Analysis

New York's Custodial Sexual Misconduct Statute

Penal § 130.05. Sex offenses; lack of consent

1. Whether or not specifically stated, it is an element of every offense defined in this article, except the offense of consensual sodomy, that the sexual act was committed without consent of the victim.
2. Lack of consent results from:
 - (a) Forcible compulsion; or
 - (b) Incapacity to consent; or
 - (c) Where the offense charged is sexual abuse, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
3. A person is deemed incapable of consent when he or she is:
 - (a) less than seventeen years old; or
 - (b) mentally defective; or
 - (c) mentally incapacitated; or
 - (d) physically helpless; or
 - (e) (Added, L 1996) committed to the care and custody of the state department of correctional services or a hospital, as such term is defined in subdivision two of section four hundred of the correction law, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such department or hospital. For purposes of this paragraph, "employee" means
 - (i) an employee of the state department of correctional services 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 for inmates;
 - (ii) an employee of the division of parole who performs professional duties in a state correctional facility and who provides institutional parole services pursuant to section two hundred fifty-nine-e of the executive law; or
 - (iii) an employee of the office of mental health who performs professional duties in a state correctional facility or hospital, as such term is defined in subdivision two of section four hundred of the correction law, consisting of providing custody, or medical or mental health services for such inmates; or
 - (f) (Added, L 1996) committed to the care and custody of a local correctional facility, as such term is defined in subdivision two of section forty of the correction law, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such facility. For purposes of this paragraph, "employee" means an employee of the local correctional facility where the person is committed who performs professional duties consisting of providing custody, medical or mental health services, counseling services, educational services, or vocational training for inmates.

SHACKLING BILL – 2001 NY S.B. 80

SYNOPSIS: AN ACT to amend the correction law, in relation to pregnant female prisoners

NOTICE:

[A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]

[D> Text within these symbols is deleted <D]

TEXT: THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 1 of section 611 of the correction law, as amended by chapter 758 of the laws of 1968, is amended to read as follows:

1. If a woman confined in any institution under the control of the state department of [D> correction <D] [A> CORRECTIONAL SERVICES, <A] or in any penitentiary or jail be pregnant and about to give birth to a child the officer in charge of such institution, a reasonable time before the anticipated birth of such child, shall cause such woman to be removed from such institution and provided with comfortable accommodations, maintenance and medical care elsewhere, under such supervision and safeguards to prevent her escape from custody as he may determine, [D> and <D] [A> PROVIDED, HOWEVER, THAT NO HANDCUFFS, SHACKLES, OR RESTRAINTS OF ANY KIND SHALL BE USED DURING HER TRANSPORT TO A MEDICAL FACILITY FOR THE PURPOSE OF DELIVERING HER BABY. UNDER NO CIRCUMSTANCES SHALL LEG IRONS OR SHACKLES OR WAIST SHACKLES BE USED ON ANY PREGNANT FEMALE PRISONER WHO IS IN LABOR. SUCH PERSONNEL AS MAY BE NECESSARY TO MONITOR THE PRISONER DURING HER TRANSPORT TO AND FROM THE HOSPITAL AND DURING HER STAY AT THE HOSPITAL SHALL BE PROVIDED BY THE

APPROPRIATE LAW ENFORCEMENT OFFICE. THE OFFICER IN CHARGE OF ANY INSTITUTION UNDER THE CONTROL OF THE STATE DEPARTMENT OF CORRECTIONAL SERVICES, OR IN ANY PENITENTIARY OR JAIL SHALL CAUSE SUCH WOMAN TO BE <A] subject to her return to such institution as soon after the birth of her child as the state of her health will permit. If such woman is confined in a penitentiary or jail, the expense of such accommodation, maintenance and medical care shall be paid by such woman or her relatives or from any available funds of the penitentiary or jail and if not available from such sources, shall be a charge upon the county, city or town in which is located the court from which such inmate was committed to such penitentiary or jail. If such woman is confined in any institution under the control of the state department of [D> correction <D] [A> CORRECTIONAL SERVICES, <A] the expense of such accommodation, maintenance and medical care shall be paid by such woman or her relatives and if not available from such sources, such maintenance and medical care shall be paid by the state. In cases where payment of such accommodations, maintenance and medical care is assumed by the county, city or town from which such inmate was committed the payor shall make payment by issuing payment instrument in favor of the agency or individual that provided such accommodations and services, after certification has been made by the head of the institution to which the inmate was legally confined, that the charges for such accommodations, maintenance and medical care were necessary and are just, and that the institution has no available funds for such purpose.

Section 2. This act shall take effect immediately.

SPONSOR: Hoffmann

Cross-Gender Pat-down seaches – Settlement

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STACEY HAMILTON, et al.,
on behalf of themselves and all
other similarly situated women
inmates of New York State

Plaintiffs,

-against-

GLENN S. GOORD, in his capacity
as Commissioner of the New York
State Department of Correctional
Services,

Defendant.

VOLUNTARY
STIPULATION
FOR A STAY WITH
CONDITIONS

97-CV-1363 (AGS)

The parties, by their attorneys, hereby stipulate and agree as follows:

WHEREAS, Plaintiffs filed this action on November 9, 1998, alleging that cross gender pat frisks of female inmates at correctional facilities of the New York State Department of Correctional Services violate female inmates' constitutional rights;

WHEREAS, the Defendant has answered the complaint, and said answer denies that cross gender pat frisks of female inmates at correctional facilities of the New York State Department of Correctional Services violate Plaintiffs' constitutional rights; and

WHEREAS, the Court has certified a class of all present and future female inmates of the Department of Correctional Services¹; and

WHEREAS, attorneys for the Plaintiffs and Defendant, without conceding any infirmity in their claims or defenses, have subsequently engaged in negotiations to attempt to resolve Plaintiffs' claims:

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the parties as follows:

I. **STAY OF LITIGATION**

A. This action shall be stayed for a period of twelve (12) months from the date of the signing of this Stipulation (the "Stay Period") and placed on the Court's Suspende Calendar. During the Stay Period, neither party may seek judicial relief in this action, except to terminate the Stay Period and proceed with the litigation in accordance with the terms, conditions and procedures set forth in Section IV of this stipulation.

B. During the Stay Period, the Court will stay the rendering of any decision on Defendant's motion to decertify the class and further stay submission of the joint pretrial order by the parties. The parties shall complete all outstanding depositions of expert witnesses by June 15, 2000, after which no further discovery may be undertaken during the Stay Period except as to the discovery disputes regarding the production of inspector general files and harassment grievances for 1998.

C. During the Stay Period, the Department of Correctional Services (the "Department") will

undertake actions relating to pat frisk practices in Department facilities housing female inmates, as set forth in Sections II and III of this Stipulation. The actions set forth in Sections II and III of this Stipulation are being voluntarily undertaken by the Defendant and the Department and constitute policy goals not legally enforceable. The parties agree that none of the terms of this Stipulation contained in Sections II and III of this Stipulation shall constitute "So Ordered" prospective relief adherence to which are enforceable in any court, nor do such terms constitute contractual obligations of the Defendant or of the Department that are enforceable as binding provisions of a stipulation or settlement agreement. During the Stay Period, the sole remedy of Plaintiffs in the event Plaintiffs believe the Department is not substantially implementing and observing the provisions of Sections II and III of this Stipulation shall be a motion by Plaintiffs to terminate the Stay Period and seek reinstatement of the case to the Court's Active Calendar in accordance with the provisions of Section IV of this Stipulation.

II ACTIONS UNDERTAKEN DURING THE STAY

During the Stay Period, the Department shall undertake the following actions:

A. Make it the policy of the Department to use female correction officers to conduct pat frisks of female inmates whenever possible as determined by the Department;

B. Revise Department Directive #4910, "Control of & Search for Contraband," by adding new provisions regarding the pat frisking of female inmates by male officers (#4910[III][B][3][b]). A copy of those provisions is attached to this Stipulation as Exhibit 1. Included in the new provisions is reference to a new form entitled "Report of Cross Gender Pat Frisk - Female Inmate." A copy of the form is attached as Exhibit 2;

C. Issue a memorandum from the Commissioner to the Superintendents of the Department's female correctional facilities informing them that it is the policy of the Department to perform same gender pat frisks of female inmates whenever possible as determined by the Department. The memorandum shall further inform the Superintendents that they are to make every reasonable effort to effectuate this policy. The Commissioner shall also individually inform the Superintendents of the female facilities of this policy orally;

D. Increase efforts aggressively to recruit females for positions as correction officers. The recruitment program will include the following some of which may already be in place:

1. A statement by the Commissioner to all appropriate departmental managers, including but not limited to, Assistant Commissioner for Human Resources, Director of Personnel, Director of Diversity Management, Hub Superintendents, Superintendents, and Executive Teams at female facilities, that recruitment of females as correction officers is a priority;

2. The Department's high-ranking female employees will advise on strategies and participate in efforts to recruit more females as correction officers;

3. The Department will consider consulting a professional to advise on strategies to increase its percentage of female officers;

4. The Department's recruitment posters and videos for correction officer recruitment will include both females and males;

5. Male and female correction officer teams will recruit at schools, particularly vocational and technical high schools in and near Buffalo, Rochester and New York City; and

6. Correction officer recruitment materials will be provided to women's organizations in New York State. Plaintiffs will submit a list of women's organizations for the Department's consideration.

E. Whenever, on any tour of duty at a female correctional facility, at least fifty (50) percent of the officers who report for duty are female on that tour, all non-emergency pat frisks of female inmates during that tour shall be conducted by female officers, except when the pat frisk is based upon an articulable basis to suspect that the female inmate may be in possession of contraband and a female officer is not present at the location where the pat frisk is to be conducted and available to perform the pat frisk;

F. Revise the training video covering the subject of cross gender pat frisks of female inmates. The new video will incorporate the changes in Department Directive #4910, attached to this Stipulation as Exhibit 1, including the provision that it is the Department's policy to use female officers to pat frisk female inmates whenever possible as determined by the Department, and will be produced and used in training at the Department's Training Academy and female correctional facilities. The video and the training materials used by the Department's trainers will also include training developed in consultation with one or more of Defendant's experts on the abuse histories of some female inmates, the possible psychological reactions of some female inmates to cross gender pat frisks, and on what to do in the event that a female inmate exhibits behavior during or as a result of a cross gender pat frisk that indicates the need for an assessment of the inmate by the Office of Mental Health; and

G. Create a distinct grievance code number for female inmates grievances regarding pat frisks.

III RECORD PRODUCTION AND MEETINGS

A. Each month during the Stay Period, a captain at each female correctional facility will be responsible for preparing a report, for transmission to the Department's Deputy Commissioner of Facility Operations, regarding pat frisks at the facility and the implementation of the provisions of Section II of this Stipulation.

B. Prior to writing his report, the captain shall review the biweekly reports to be made by those sergeants who are assigned to areas where pat frisks are routinely conducted and shall include in his report a summary of their observations and assessments. The sergeants who are assigned to areas where pat frisks are routinely conducted shall make their biweekly reports on the form attached to this Stipulation as Exhibit 3.

C. Each month during the Stay Period, copies of the following documents will be forwarded to Plaintiffs' attorneys:

1. Copies of the captains' reports transmitted to the Deputy Commissioner of Facility Operations in the prior month;
2. Copies of the biweekly reports of all sergeants assigned to areas where pat frisks are routinely conducted;
3. All "Report of Cross Gender Pat Frisk - Female Inmate" forms received in the prior month;
4. Formal grievances in the prior month from female inmates regarding cross gender pat frisks;
5. Correspondence from female inmates and any replies thereto, regarding cross gender pat frisks received by the Superintendents of female facilities, their Executive Team and the Commissioner of the Department and the following executive team members: Executive Deputy Commissioner, Deputy Commissioner of Facility Operations, Deputy Commissioner of Health Services, and Deputy Commissioner and Counsel;
6. Information regarding the number of female inmates who request and who obtain a cross gender pat frisk exemption; and
7. Documents reflecting the dates and times of all tours of duty at female facilities that were more than fifty per cent female.

D. No more than once every three months during the term of the stay, plaintiffs' counsel may request and the Department shall provide, a list of the names and Department Identification Numbers of all female inmates housed in Special Housing Units (SHU's) as well as all inmates who are assigned to work in mess halls, commissaries, outside work crews and vocational programs in each female correctional facility. The list shall be a snapshot of the female inmates in the SHU's and specified program assignments on the date the list is generated.

E. Upon completion, a copy of the revised training video and training materials covering the subject of cross gender pat frisks of female inmates and the abuse histories of some female inmates will be provided to Plaintiffs' attorneys;

G. In June 2000 and thereafter every three months during the Stay Period, attorneys for the parties, the Superintendents of Bedford Hills and Albion Correctional Facilities and the Deputy Commissioner of Facility Operations or his designee, and, at Plaintiffs' request, the Superintendents of other female facilities, will meet for up to five hours in person. The purpose of this meeting will be to discuss the Department's performance with regard to Sections II and III of this Stipulation. The representatives of the Department will also report to Plaintiffs' attorneys on the specific efforts made to recruit female correction officers. These meetings shall be for settlement purposes only, and nothing said during any such meeting may be referred to, or used in any way, in this or any other litigation.

H. Materials produced under this Section will be used by Plaintiffs solely for the purposes of this litigation, and shall not be disclosed to any person except as necessary to the conduct of the litigation.

IV

VACATUR OF THE STAY DURING THE STAY PERIOD

A. In the event Plaintiffs believe the Department is not acting in a manner substantially consistent with the provisions of Sections II or III of this Stipulation, Plaintiffs' attorneys may, subject to the terms and conditions of Section IV(B) of the Stipulation, move this Court for an order lifting the stay and returning the case to the Court's Active Calendar. This motion shall be Plaintiffs' sole and exclusive remedy and recourse for actions, or inaction, of the Department or Defendant that Plaintiffs perceive to be not in conformity with the provisions of Sections II and III of this Stipulation. As set forth in Section I(C) of this Stipulation, above, the parties agree that the terms of this Stipulation set forth in Sections II or III of this Stipulation are voluntarily being undertaken by the Department and do not constitute legally binding obligations of the defendant or Department. Plaintiffs may not commence any action or proceeding, or make any application or motion in any existing action or proceeding, seeking an award of damages, injunctive relief or a finding of contempt, based on the alleged non-performance by the Department or Defendant with any provision or term contained in Sections II or III of the Stipulation.

B. Plaintiffs' attorneys may make a motion to lift the stay and reinstate the action prior to the expiration of the Stay Period only under the following circumstances:

1. At least five (5) months have passed since the date this Stipulation was so-ordered;
2. Plaintiffs' attorneys have provided Defendant's attorneys with a written notice setting forth with specificity the facts that support Plaintiffs' belief that the Department is not acting in substantial conformity with the terms of Sections II or III of the Stipulation and, thereafter, afford the Department thirty (30) days to respond to and/or remedy the alleged non-conforming actions.

C. Following such thirty day period for the Department to respond and/or remedy the alleged non-conforming actions, in the event Plaintiffs' attorneys believe that substantial non-performance exists and/or persists, Plaintiffs' attorneys may thereafter move the Court, upon twenty days written notice of motion, for an order lifting the stay and returning the case to the Court's Active Calendar for trial.

D. For purposes of determining the merits of such motion, the Department shall be deemed to be acting substantially consistent with Sections II or III of this Stipulation unless Plaintiffs' attorneys make a showing to the Court that (i) the Department has failed to satisfy the terms of Sections II and III of this Stipulation in question and (ii) such failures or omissions are not minimal or isolated but substantial in nature, and are sufficiently frequent and widespread to be systemic.

E. If during the Stay Period the Department is enjoined by a court from implementing the provisions of this Stipulation, then the one year duration of this Stipulation shall be extended for the amount of time that implementation is so enjoined up to a maximum of three additional months; however, plaintiffs'

attorneys shall, at their option, have the right to proceed under paragraphs IV. B.2 and IV. C above in the event the implementation is enjoined for a period of three months or more.

F. This Stipulation does not constitute (a) an admission by the Defendant of any violation of law or wrongdoing; (b) an admission by the Defendant that any standard policy, practice or procedure challenged in this action violates or fails to comply with any applicable law, rule or regulation; (c) an admission by the Defendant that his position in this litigation was not substantially justified; or (d) an admission by Plaintiffs that the practices challenged in this action are not unconstitutional.

V. AT THE CONCLUSION OF THE PERIOD OF THE STAY

At the end of the one year stay, the litigation may:

A. At the request of either attorneys for Plaintiffs or Defendant, be removed from the Court's Suspend Calendar and returned to active litigation status, in which case the parties shall be afforded a reasonable period of no less than four months to prepare for the trial of this action; or

B. Upon agreement of the parties, be settled pursuant to a private settlement agreement between the parties which will embody the substantive provisions of this Stipulation; or

C. Upon agreement of the parties, be further stayed for an additional term; or

D. Upon agreement of the parties, be dismissed with prejudice.

VI. ATTORNEYS FEES AND COSTS

A. Within 120 days of the execution of this Stipulation, the State will pay Plaintiffs' Attorneys One Hundred and Sixty Thousand Dollars (\$160,000) in full satisfaction of all claims for attorney fees, costs and disbursements incurred by plaintiffs and their counsel up to and including the date this Stipulation is "so-ordered." Said payment shall be subject to and paid in accordance with Section 17 of the Public Officers Law of the State of New York and other applicable State and Federal Laws.

B. During the Stay Period, the Plaintiffs agree that Plaintiffs' attorney fees, costs and disbursements will be limited to what is reasonably incurred in gauging the Department's performance with regard to the terms of the Stipulation and in resolving the outstanding discovery disputes referred to in ¶ I.B, but in no event shall such fees, costs and disbursements incurred by the Plaintiffs exceed a combined total of Fifty Thousand Dollars (\$50,000). If at or within sixty days of the conclusion of the Stay Period, the parties agree to enter a private settlement agreement and/or to dismiss the action with prejudice, Defendant agrees to pay and Plaintiffs agree to accept the aforesaid fees, costs and disbursements, in an amount not to exceed \$50,000, in full satisfaction of all claims for Plaintiffs' attorney fees, costs and disbursement incurred during the Stay Period. If the litigation is returned to active status and is later resolved in favor of the plaintiffs, the plaintiffs may include in their application for attorney fees, disbursements and costs the aforesaid fees, costs and disbursements incurred during the Stay Period, not to exceed \$50,000. In all cases said funds shall be paid within the later of (a) 120 days of the end of the Stay Period; or (b) 120 days from the date plaintiffs supply documentation of the fees and costs incurred. The funds will be paid to Plaintiffs' attorneys pursuant to and in accordance with Section 17 of the Public Officers Law and other applicable State and Federal laws.

VII. NOTICE

A. A copy of this Stipulation shall be posted in the law library and reception area at each female correctional facility during the Stay Period.

B. A Notice in the form annexed to this Stipulation as Exhibit 4 summarizing the provisions of this Stipulation and advising inmates on how to contact Plaintiffs' counsel shall replace the Notice to the Class of the pendency of the litigation and shall reasonably remain posted in all female housing units, reception areas, and law libraries.

Dated: New York, New York

June 5, 2000

For the Plaintiffs: Washington Square Legal Services, Inc.
Claudia Angelos (CA-6512), 249 Sullivan Street New York, New York 10012 (212) 998-6430
and
Bantle & Levy, LLP; Lee F. Bantle (LB-7036), 817 Broadway, NY, NY 10003 (212) 228-9666

For the Defendant: Eliot Spitzer, Office of the Attorney General
Laura Jones (LJ-0985); Barbara Maddox; Jerry Slater; Lee Adlerstein
Assistant Attorneys General, 120 Broadway, New York, New York 10271 (212) 416-8627

New York, New York

So Ordered: June ____, 2000

Allen G. Schwartz, United States District Judge

EXHIBITS

1. Department of Correctional Services, Directive #4910, "Control of & Search for Contraband," provisions regarding the pat frisking of female inmates by male officers (#4910[III][B][3][b]).
2. Department of Correctional Services, Directive #4910, form entitled "Report of Cross Gender Pat Frisk - Female Inmate."
3. Cross-gender pat frisk biweekly reporting form for all sergeants in female correctional facilities who are assigned to areas where pat frisks are routinely conducted.
4. Notice to the Class summarizing the provisions of this Stipulation and advising inmates on how to contact Plaintiffs' counsel

¹ The Defendant has moved to decertify the class and Plaintiffs have opposed. Pursuant to Section I B of this Stipulation, the Court will stay decision on the motion during the Stay Period.

ⁱ *Prisoners in 1999*, Bureau of Justice Statistics Bulletin, August 2000 NCJ 183476

ⁱⁱ The information does not reflect prosecutions or convictions under rape statutes.

ⁱⁱⁱ Letter from Office of the Attorney General, Peter A. Drago, August 23, 2000

^{iv} *Luz Betty Noguera v. Dennis Hasty*, Warden of the Metropolitan Correctional Center of New York, R. M. Reish, Former Warden of the Metropolitan Correctional Center, Captain Nelson Aponte, Lt. Hubert R Garvin and Lt. Wade L. Smith, Civil Action File No. 99 Civ. 8786 (KMW)(AJP), United States District Court for the Southern District of New York, July 21, 2000

^v *Zoraida Safadi v. Domingo Almanzar*, Corrections Officer, Bridgette Gladwin, Superintendent of Taconic Correctional Facility and Glenn S. Goord, New York State Commissioner of Corrections, Civil Action File No. 7995 (GEL), United States District Court for the Southern District of New York, November 21, 2000

^{vi} *Joshua Liner v. Glenn Goord*; Walter Kelly; Gilmore Sgt; John Doe #1; John Doe #2, Docket No. 98-2925, United States Court of Appeals for the Second Circuit, September 22, 1999

^{vii} US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Remedies, and Incidence", National Institute of Corrections, Colorado, May 2000

^{viii} National Institute of Corrections, Prisons Division and Information Center, "Cross-sex Pat Search Practices: Findings From NIC Telephone Research", Colorado, January 1999

^{ix} US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Agency Response, and Prevention", National Institute of Corrections, Colorado, November 1996

^x US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Remedies, and Incidence", National Institute of Corrections, Colorado, May 2000

^{xi} US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Agency Response, and Prevention", National Institute of Corrections, Colorado, November 1996

^{xii} US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Remedies, and Incidence", National Institute of Corrections, Colorado, May 2000

^{xiii} US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Agency Response, and Prevention", National Institute of Corrections, Colorado, November 1996

^{xiv} US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Remedies, and Incidence", National Institute of Corrections, Colorado, May 2000

^{xv} New York Codes, Rules and Regulations. Title 9. Executive Department. Subtitle AA. State Commission of Correction. Chapter V. Minimum Standards and Regulations for Management of State Corrections Facilities. Part 7652. Health Services. (9 NYCRR @ 7651.17)

^{xvi} New York Codes, Rules and Regulations. Title 9. Executive Department. Subtitle AA. State Commission of Correction. Chapter V. Minimum Standards and Regulations for Management of State Corrections Facilities. Part 7652. Health Services. (9 NYCRR @ 7651.17)

^{xvii} New York Codes, Rules and Regulations. Title 9. Executive Department. Subtitle AA. State Commission of Correction. Chapter V. Minimum Standards and Regulations for Management of State Corrections Facilities. Part 7652. Health Services. (9 NYCRR @ 7651.17)

^{xviii} New York Codes, Rules and Regulations. Title 9. Executive Department. Subtitle AA. State Commission of Correction. Chapter V. Minimum Standards and Regulations for Management of State Corrections Facilities. Part 7652. Health Services. (9 NYCRR @ 7651.17)

^{xix} *Women in Prison: Their Family Relationships and Their Depiction in the Media*, Caneila Dyer, University of South Florida

^{xx} Department directive #4901, "Transporting Prisoners". Policy sent by Lucien Leclaire, Jr., 12/13/2000

^{xxi} Letter from Department of Corrections Deputy Commissioner Lucien Leclaire, Jr., 12/13/2000

^{xxii} Phone conversation with Tony Amucci, New York State Corrections, 01/18/2001

^{xxiii} US Department of Justice National Institute of Corrections Information Center, "Current Issues in the Operation of Women's Prisons", National Institute of Corrections, Colorado, September 1998

^{xxiv} US Department of Justice National Institute of Corrections Information Center, "Current Issues in the Operation of Women's Prisons", National Institute of Corrections, Colorado, September 1998

^{xxv} General Accounting Office, "Managing Female Inmate Populations", GAO/GGD-00-22, 2000

^{xxvi} "Behind Bars: The Growing Number of Black women in prison snaps families and meager community resources", Reginald Stuart, Emerge, March 31, 1997

^{xxvii} AI Index: AMR 51/123/00