

New York

WOMEN IN PRISON: 2,914 (11/04)¹

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

Penal § 130.05ⁱ – *Sex offenses; lack of consentⁱⁱ*

New York’s law is in the sex offenses section of the Penal code. It states that an inmate is considered incapable of consent for the purposes of sexual acts.

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?	--	The statute covers employees of the DOC, the division of parole and the office of mental health that perform professional duties in a state correctional facility as well as those who provide institutional parole services. It also covers certain employees of local correctional facilities. The law does not appear to cover contractors. It is not clear whether the law covers certain classes of individuals who may have contact with inmates, such as food service providers. In a written response to Amnesty International, the New York DOCS states that it “may be a jury question whether the law is applicable” to these individuals. ²
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	Offenses are class E felonies.

Custodial Sexual Misconduct – Allegations and Incidents

Indictments/Convictions (answer to AI letter requesting information) ³	In an August 2002 communication, the New York Department of Correctional Services reported that, as of that time, there had been 24 cases involving inappropriate sexual relations between male staff and female inmates. Nineteen of these resulted in a conviction. In four cases no charges
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ⁱ §130.05 was amended by the 2003 enactment of NY S.B. 5690. Prior to the amendment, the law had stated that it was an element of every offense defined in the article, except for the offense of consensual sodomy, that the sexual act was committed without the consent of the victim. The amendment removed from the article the language regarding the exception of consensual sodomy.

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

	<p>were filed by the District Attorney's office. One case was still pending.⁴</p> <p>In a January 2006 communication, the NY DOCS reported that 73 cases of staff on inmate sexual abuse had been referred to district attorneys since the inception of the Sex Crimes Unit of the Office of the Inspector General 1996. These included 39 cases of male staff abusing female inmates and one of a female staff member abusing a female inmate. 37 of the 73 cases resulted in convictions (17 felony convictions and 20 misdemeanor convictions). 14 cases are pending as of January 2006.⁵</p>
<p>Incidents reported in select media since January 2000</p>	<ul style="list-style-type: none"> - Onondaga County Jail: a guard was arrested and charged with having sex with two female inmates in October 2005. (<i>Prison Legal News, 11/2005</i>) - Various New York Detention Centers: Settlement notices were sent to tens of thousands of people who were illegally strip-searched in at least six New York detention centers between 1999 and 2002. The settlement ends a class-action lawsuit brought on behalf of 40,000 people, all of whom were arrested for misdemeanor violations, arraigned, and strip-searched as they entered detention centers. The suit claimed, among other things, that female inmates were subjected to "nonconsensual gynecological examinations" as they entered Rikers Island, and were threatened with retaliation if they refused. The settlement includes a stipulation that female detainees can refuse gynecological exams without fear of retaliation. (<i>New York Times, 7/14/05</i>) - Albion Correctional Facility: A corrections officer who allegedly had inappropriate sexual contact with inmates faces two courts of sexual abuse, six counts of official misconduct, and one count of forcible touching. (<i>Buffalo News, 04/22/05</i>) - Albion Correctional Facility: In March 2005 corrections officer Jerryl Reeple pleaded guilty to two counts of sexual misconduct with a female prisoner. (<i>Prison Legal News, 04/2005</i>) - Manhattan Central Booking: A former corrections officer pleaded guilty to getting oral sex from a transsexual inmate. He faces 10 years probation. (<i>The New York Post, 09/21/04</i>) - Columbia County Jail: Two former guards were charged in alleged sexual-related instances with female prisoners. One is alleged to have directed at least three female inmates to expose themselves to him, allow him to touch them and perform oral sex on him. The other is alleged to have watched an inmate expose herself. (<i>The Times Union, 07/29/04</i>) - Bedford Hills maximum-security prison for women: A female inmate alleged that a state correction lieutenant had sex with her. (<i>The New York Post, 04/19/04</i>) According to the New York DOCS, the criminal case was dismissed because the victim declined to cooperate with the prosecution but the lieutenant remains on administrative leave pending termination.⁶ - Rikers Island Jail: City correction officer, Jerome Reyes, allegedly raped a female inmate and then doctored records to make it appear she was in another jail area at the time. (<i>Daily News, 08/30/03</i>) - Albion Correctional Facility: State police are investigating whether, a state-employed painter at the Albion Correctional Facility, engaged in sex with inmates at the all-female prison. He was arrested on charges of third-degree sodomy. He has worked with the corrections department since 1985, and at Albion since 1992. (<i>Rochester Democrat and Chronicle, 9/4/03</i>)

	<ul style="list-style-type: none"> - Albion Correctional Facility: An inmate had sexual relations with a man hours before she committed suicide in her jail cell, according to authorities investigating the incident. Several correctional officers working on the day the woman hanged herself have reportedly been ordered to provide investigators with DNA samples. An investigation by the corrections inspector general is ongoing. However state police ended their investigation after they were unable to discover the identity of the man involved in the rape. (<i>Buffalo News</i>, 8/9/03)
	<ul style="list-style-type: none"> - Albion Correctional Facility: A former prison officer convicted of having sex with an inmate and impregnating her was sued, along with the state Department of Correctional Services officials, for nearly \$50 million by the victim. (<i>Rochester Democrat and Chronicle</i>, 08/10/02) - Albion Correctional Facility: Former corrections officer, Michael Galbreath, was convicted of having sexual relations with an inmate and spent 45 days in prison. <i>Rochester Democrat and Chronicle</i>, 08/10/02) - Seneca County Jail: Former prison guard Steven Burnett will serve a two-year sentence for sexually abusing three female inmates. (<i>AP</i>, 11/02/01) - Bayview Correctional Facility: A former correction officer was indicted on rape and sodomy charges for his alleged sexual assault of an inmate who became pregnant. <i>The New York Times</i>, 07/27/01 - Taconic Correctional Facility, Bedford Hills: A former New York State correctional officer, Victor Maldonado, pleaded guilty to charges of sodomizing a female inmate. (<i>Journal News</i>, 02/22/01) - Lt. Randy Denjen, was charged with forcing a 23 year-old inmate to perform oral sex, raping her, and then making her clean his office. These incidents allegedly took place when the victim was housed in an isolated cell. According to the complaint, semen samples taken from the woman's clothes and toilet paper found in a garbage can outside the cell match Denjen. (<i>New York Newsday</i> 1/30/02) - 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) - 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 Officers Corona, Downey and Escalera; Officer Aldarondo pleaded guilty. Male officers banned from female living quarters. (<i>The New York Times</i> 01/27/00, 12/21/00, <i>The Journal News</i> 12/13/01) - 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)

<p>Other reported incidents</p>	<p><u><i>Amador v. Superintendants of Dep't of Corr. Servs. v.</i></u>, 2005 U.S. Dist. LEXIS 20249 (S.D.N.Y. 2005) Fifteen female inmates in New York prisons filed a lawsuit against the state claiming that male guards routinely sexually abused them and that DOC authorities ignored their complaints. The inmates, some of whom are still in jail, allege that the guards were guilty of a unwanted sexual acts, including forcible rape, sexual intercourse, anal intercourse, oral sexual acts, sexual touching, voyeurism, invasions of personal privacy, demeaning sexual comments and intimidation to deter women prisoners from reporting such sexual misconduct. Many of the plaintiffs claim they were threatened with transfer to prisons further from their families if they reported the abuses.</p> <p>The lawsuit reportedly seeks an undisclosed amount of monetary damages for the plaintiffs and insists upon a complete overhaul of training and investigation procedures used in correctional facilities. (<i>Women's E-news</i>, 3/17/03)</p> <p>Amnesty note: As of a September 2005 decision, some of the inmates' claims for injunctions were dismissed for lack of standing. The court had not yet addressed other issues, including whether the inmates could file the suit as a class action.</p>
	<p><u><i>Morris v. Eversley</i></u>, 2004 U.S. Dist. LEXIS 1186 (S.D.N.Y. 2004) Plaintiff Beatrice Morris alleged that she was sexually assaulted in 1999 by defendant Gilbert Eversely, then a corrections officer at the DOC Bayview Correctional Facility, a prison for women. Morris alleged that, using a master key to unlock the door, he entered her cell without her permission, as she was asleep. He then attempted to rape her. He was unable to penetrate her, and instead he ejaculated on her leg and onto her bed. The next morning, Morris used nail clippers to cut out a piece of the sheet that had been stained by Eversley's semen. DNA testing later confirmed that it was his semen.</p> <p>A jury found that Eversely violated Morris's right under the Eighth Amendment to be free from cruel and unusual punishment. The jury found that he had acted intentionally and maliciously, and that Morris had suffered damages as a result. Judge Denny Chin highlighted an inmates incapacity to consent, writing that "[t]he law presumes that even if an inmate says 'yes,' she is doing so not because she wants to, but because the disparity in power makes it impossible for her to say 'no.' Here, even assuming Morris did not scream or shout, even assuming she did not say 'no,' and even assuming that she said 'yes,' it was still attempted rape – or at a minimum, unlawful sexual abuse."</p>
	<p><u><i>Babosa v. New York</i></u> 722 N.Y.S.2d 346, 186 Misc. 2d 926, N.Y. Misc. LEXIS 27 (N.Y. Ct. Cl. 2001) Cindy Barbosa was raped three times by correction officer, Thomas Haynes, while incarcerated at the Bedford Hills Correctional Facility. After the second rape she reported the officer. Although Barbosa received assurances that her concerns about the officer would be passed along, she saw no change in his presence around the facility.</p> <p>Prison officials offered to place her in protective custody, which meant that she would be kept in her cell for 23 hours a day. She refused the offer. Later she reiterated her fears of a future rape and that evening, the officer raped her for a third time. He was later arrested. Barbosa sued the state to recover damages for her injuries. DOC officials testified that Barbosa had reported</p>

	<p>the officer, and that, prior to the third rape, it had received complaints from other inmates about the officer's sexual misconduct.</p> <p>The court found that “the credible evidence established that, prior to the February incident, defendant had notice that Haynes posed a danger to claimant. Indeed, defendant offered claimant protective custody in response to her allegations. Given Haynes’ position as a correction officer, protective custody can hardly be viewed as an effective manner of assuring that claimant would not be accessible to Haynes... It was not claimant’s movement within the facility that needed to be confined, it was Haynes. Defendant, however, failed to demonstrate to this court hat it took any steps toward monitoring Haynes’ movement and behavior in the facility. Significantly, there was not even any testimony regarding the procedures of conducting an investigation. While defendant maintains that an investigation was undertaken, the absence of proof fails to convince this court that anything meaningful was ever done until five days after the February incident. Under the circumstances, the court finds no basis for apportioning liability between defendant and Haynes for the rape which occurred on February 10, 1997 in defendant's facility. Accordingly, the court finds defendant 100 percent liable for damages relating to the February incident.”</p>
	<p><i>Safadi v. Almanzar</i>, 2000 U.S. Dist. LEXIS 16968, (S.D.N.Y. 2000)</p> <p>Taconic Correctional Facility: Corrections Officer Domingo Almanzar pleaded guilty to assaulting Zoraida Safadi and raping another prisoner. He was later sentenced to a term of probation. Safadi’s was unsuccessful in her suit against employees of the Department of Corrections for failing to protect her from abuse.</p>

Custodial Sexual Misconduct – Policies, Procedures and Practices of Guarding Specific to Women

The following is based on data provided by the New York Department of Correctional Services in response to AI’s survey in 2000 and 2002. AI did not receive data from the New York Department of Correctional Services in 2005. Additional information from other sources is included where available.

Is the current Department of Corrections policy on custodial sexual misconduct language explicit?	Yes	Section 2.15 of the Employees Manual state that employees shall not “engage in 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 employees duties.” This allows the Department to take action against activities that are improper while, in and of themselves, not illegal or of a sexual nature.
Allow cross-gender pat-down searches?	Yes	Cross-gender searches were routinely done in the past (class action suit filed). ⁷ Now cross-gender pat-downs are performed on a limited basis. ⁸
What is the percentage of female officers in relation to male officers?		Across all facilities 9% of officers are female (91% male). In female facilities 29% of officers are female (71% male). ⁹
Restrictions on the duties of male guards?	Yes	No restrictions other than pat-down searches, see above. ¹⁰
Staff training on sexual misconduct?		No information provided.
Inform inmates of agency policies		No information provided.

and reporting procedures on sexual misconduct?		
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Custodial Sexual Misconduct - Policies and Procedures Guiding Official Response

The following is based on the New York Department of Corrections response to AI's surveys, please see above.

Is medical help available for the victim of alleged sexual abuse?	Yes	According to New York DOCS, medical help is available, but no details were provided. ¹¹
Are immediate mental health services available for the victim of alleged sexual abuse?	Yes	According to New York DOCS, mental health services are immediately available, but no details were provided. ¹²
Is counseling available for the victim of alleged sexual abuse?	Yes	According to New York DOCS, counseling is available, but no details were provided. ¹³
Is a rape kit taken?	Yes	According to New York DOCS, rape kits are taken when appropriate. ¹⁴
Are there special procedures for investigating allegations of sexual misconduct?	Yes	The Investigator General developed a new sex crime unit in September 1996 to investigate sexual misconduct allegations. The investigators are trained in how to conduct criminal investigations. As of 2002, there were eight investigators and a Deputy Inspector General assigned to the sex crimes unit. ¹⁵
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?		No information provided.
Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DOC?	Yes	According to the New York DOCS, a reporting system does exist. ¹⁶ However no details of it were provided.
Is the investigation external?	--	According to New York DOCS, an external investigation may be commenced if the evidence indicates possible criminal activity. ¹⁷
If there is an external investigation, how is it triggered?		No information provided.
Are special measures taken to shield alleged victims from retaliation?	Yes	According to the New York DOCS, measures are taken to shield victims from retaliation. ¹⁸ However no details or examples of these measures were provided.
If so, do the measures include solitary confinement or lock-down of the inmate?		No information provided.
Is there an independent body, such as a Corrections Ombudsman, with independent oversight of correctional facilities and the DOC?		No information provided.
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?	Yes	According to the New York DOCS, a tracking system does exist. ¹⁹ However no details of it were provided.

Custodial Sexual Misconduct –Pending Legislative Proposals

<p>A.B. 2862 <i>Sponsor: Assemblyman Pretlow</i> 01/28/05 Introduced 01/28/05 To Assembly Committee on Correction</p>	<p>Would prohibit male correctional officers from pat frisking female inmates unless such officer has probable cause that a pat frisk is necessary to prevent escape or to protect other inmates or prison employees.</p>
<p>A.B. 3211 <i>Sponsor: Assemblyman Robinson</i> 02/01/05 Introduced 02/01/05 To Assembly Committee on Correction 06/20/05 to Assembly Committee on Rules 01/04/06: Withdrawn from Assembly Committee on Rules; To Assembly Committee on Correction</p> <p>S.B. 1695 <i>Sponsor: Senator Montgomery</i> 02/01/05 Introduced 02/01/05 To Senate Committee on Finance</p>	<p>These bills would create a temporary state commission to study sexual misconduct in state correctional facilities.</p>
<p>A.B. 7875 <i>Sponsor: Assemblyman Aubry</i> 05/03/05 Introduced and to Assembly Committee on Codes</p> <p>S.B. 5441 <i>Sponsor: Senator Nozzolio</i> 05/23/05 Introduced and to Senate Committee on Codes 06/21/05 Withdrawn from Senate Committee on Codes; To Senate Committee on Rules 06/22/05 Passed Senate; To Assembly; To Assembly Committee on Codes 01/04/06 Recalled from Assembly; Returned to Senate</p>	<p>These bills would expand New York's CSM statute's coverage of potential perpetrators to include non-employees of local correctional facilities. Specifically, the amended statute would include facility department employees or a person who is permitted entry to a local correctional facility pursuant to his or her duties (I) as an employee of any governmental agency, (II) as a volunteer, or (III) under a contractual arrangement with any governmental agency.</p>

<p>A.B. 3804 <i>Sponsor: Assemblyman Perry</i> 02/04/05 Introduced and to Assembly Committee on Correction</p>	<p>This bill prohibits the use of shackles, handcuffs, or restraints of any kind from being used during the transport of female prisoners to a hospital for the purpose of giving birth; requires the presence of law enforcement personnel during the prisoner’s transport to and from and during her stay at the hospital.</p> <p>Justification for Proposal: The bill summary notes that, “According to Amnesty International, New York State is still one of the many states that permits the shackling of pregnant inmates. In New City, a 1990 consent decree agreement ended the shackling of pregnant inmates. The use of mechanical restraints on a pregnant inmate constitutes a cruel and inhumane form of punishment and poses a serious risk to both the mother and her unborn child.</p> <p>A 1999 press release from Amnesty International included a quote from a pregnant female prisoner in Cook County. She described how while in labor, her feet were shackled and, as a result, was unable to facilitate the birth of her baby. Ultimately, the officer had to be summoned to unlock the shackles before the baby could be born. Accordingly, this bill is designed to ensure the protection of pregnant prisoners and their unborn child.”²⁰</p>
<p>A.B. 7962 5/3/05 Introduced to Assembly Committee on Correction</p> <p>S.B. 5640 06/09/05 Introduced 06/22/05 Passed Senate; To Assembly Committee on Correction 06/22/05 To Assembly Committee on Correction 01/04/06 Recalled from Assembly; Returned to Senate</p>	<p>These bills create a duty for DOCS employees to report any sexual conduct between an employee and an inmate, and provide that employees that fail to report shall be subject to disciplinary action.</p>

Pregnancy in Custody

Pregnancy - Statute

Legislation banning shackling in the third trimester or during labor	No	Legislative proposal introduced to prohibit shackling. (See below for details.)
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Pregnancy - Policies, Procedures and Practices

The following is based on the New York Department of Corrections response to AI’s surveys, please see above.

Use of restraints in third trimester	Yes	<p>According to the NY DCS, use of restraints in the third trimester is “limited.”²¹</p> <p>Only applicable at Bedford Hills and Taconic, where all pregnant</p>
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		inmates are housed. 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.” ²²
Restraints during transport	Yes	According to the NY DCS, use of restraints in the third trimester is “limited.” ²³
Restraints during labor	No	According to the NY DCS, restraints are not used during labor. No details provided. ²⁴
Officer in delivery room	Yes	Official procedure is to have a female correctional officer present. ²⁵

Pregnancy – Pending Legislative Proposals

<p>2005 A.B. 3804 <i>Sponsored by Assemblyman Perry</i></p> <p>02/04/05 to Referred to Assembly Committee on Correction</p>	<p>Provides for the care and custody of pregnant female inmates before, during and after delivery; prohibits the use of restraints of any kind from being used during the transport of such female prisoner to a hospital for the purpose of giving birth, unless such prisoner is a flight risk whereupon handcuffs may be used; prohibits the use of any restraints during labor; requires the presence of corrections personnel during such prisoner’s transport to and from the hospital and during her stay at such hospital.</p> <p>Prior legislative history: 2000 A.10807; 2001-2002 A. 3292; 2003-2004 A. 5134.</p> <p><u>Justification for Proposal:</u> The bill summary notes that, “According to Amnesty International, New York State is still one of the many states that permits the shackling of pregnant inmates. In New City, a 1990 consent decree agreement ended the shackling of pregnant inmates. The use of mechanical restraints on a pregnant inmate constitutes a cruel and inhumane form of punishment and poses a serious risk to both the mother and her unborn child.</p> <p>A 1999 press release from Amnesty International included a quote from a pregnant female prisoner in Cook County. She described how while in labor, her feet were shackled and, as a result, was unable to facilitate the birth of her baby. Ultimately, the officer had to be summoned to unlock the shackles before the baby could be born. Accordingly, this bill is designed to ensure the protection of pregnant prisoners and their unborn child.”²⁶</p>
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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) 457-8126; Fax: (518) 457-2940</p>	<p>Homepage: http://www.docs.state.ny.us/</p> <p>Inmate information: http://nysdocslookup.docs.state.ny.us/kinqw00</p>
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NEW YORK COMMISSION OF CORRECTIONS

<p>Alan J. Croce, Chairman of Commission 80 Wolf Road, 4th floor Albany, NY 12205 Tel: (518) 485-2463; Fax: (518) 485-2467</p>	<p>Homepage: http://www.scoc.state.ny.us/</p>
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NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES FACILITIES FOR WOMEN

<p>Albion Correctional Facility* <i>Female inmates: 1180 (8/02)</i>²⁷ Robert Kirkpatrick, Superintendent Albion Correctional Facility 3595 State School Road Albion, New York 14411 (716) 589-5511</p>	<p>Bayview Correctional Facility <i>Female inmates: 349 (8/02)</i>²⁸ Dolores Thornton, Superintendent Bayview Correctional Facility 550 West 20th Street New York, New York 10011-2878 (212) 255-7590</p>	<p>Beacon Correctional Facility <i>Female inmates: 222 (8/02)</i>²⁹ Gail Thomas, Superintendent Bayview Correctional Facility P.O. Box 780 Beacon, New York 12508-0780 (914) 831-4200</p>
<p>Bedford Hills Correctional Facility <i>Female inmates: 834 (8/02)</i>³⁰ Ada Perez, Superintendent 247 Harris Road Bedford Hills, New York 10507-2499 (914) 241-3100</p>	<p>Lakeview Shock Incarceration Correctional Facility (Male / Female) <i>Female inmates: 115 (8/02)</i>³¹ Ronald Moscicki, Superintendent P.O. Box T Brocton, New York 14716 (716) 792-7100</p>	<p>Taconic Correctional Facility <i>Female inmates: 378 (8/02)</i>³² Alexandreena Dixon, Superintendent Taconic Correctional Facility 250 Harris Road Bedford Hills, New York 10507-2498 (914) 241-3010</p>

NEW YORK EXECUTIVE

<p>Governor George E. Pataki [R] State Capitol Albany, NY 12224 Phone: (518) 474-8390 Email link: http://www.state.ny.us/governor/</p>	<p>Homepage: http://www.state.ny.us/governor/</p> <p>Elected: 1994, re-elected in 1998 and 2002</p>
<p>Attorney General Eliot Spitzer [D] State Capitol Albany, NY 12224 Tel: (518) 474-7330</p>	<p>Homepage: http://www.oag.state.ny.us/</p> <p>Elected: 1998</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 Phone 914 232 7959; Fax 914 232 1524 Email cureny@bestweb.net Web: www.bestweb.net/~cureny</p>
<p>The Children's Center Bedford Hills Correctional Facility 247 Harris Road Bedford Hills NY 10507 Phone: (914) 241-3100 ext. 384 Website: http://www.fcnetwork.org/4thnorth/children.html Services: The Children's Center offers a wide range of services to Bedford inmates and their children. Designed to help women preserve and strengthen family ties and receive visits from their children as often as possible in a warm, nurturing, atmosphere. Inmates are kept informed about their children's physical, intellectual and emotional well-being while they are apart. Offers various classes and projects to help inmates to better understand their role as parents.</p>
<p>Women's Prison Association and Home Inc 110 Second Avenue New York NY 10003 Phone: (212) 674-1163 ext. 47; Fax: 212-677-1981 Web: www.wpaonline.org Services: Alternatives to Incarceration, Family Reunification Assistance and Family Support Services, Reentry Case Management, Targeted Assistance and Support, and Jail- and Prison-Based Education and Pre-Release Services. Operate from four community sites: Hopper Home and Sarah Powell Huntington House, both located on Manhattan's Lower East Side; the Reentry Services Center in downtown Brooklyn; and the Brooklyn Community Office in East New York, Brooklyn.</p>
<p>New York Civil Liberties Union 125 Broad Street, 17th Floor New York, NY 10004 Phone: (212) 344-3005; Fax (212) 344-3318 Web site: www.nyclu.org</p>

Women in Prison Project
The Correctional Association of New York
135 East 15th Street
NY, NY 10003
Phone: (212)254-5700 ext. 306
Website: www.correctionalassociation.org
Services: Issue areas range from prisoners with HIV/ AIDS to work release for battered women. Currently, there are four working projects: the Public Policy Project, the Women in Prison Project, the Prison Visiting Project and the Juvenile Justice Project.

Prisoners' Legal Services of New York (PLSNY)
114 Prospect Street
Ithaca NY 14850
Phone: (607) 273-2283; Fax: (607) 272-9122

Legal Aid Society, Criminal Practice
Prisoners' Rights Project
199 Water Street, 6th Floor
New York NY 10038
Phone (212) 577-3530; Fax: (212) 509-8432
Website: www.legal-aid.org
Services: Advocates for constitutional and humane conditions of confinement for prisoners in the New York City and State correctional systems

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 [fig 1] that the sexual act was committed without consent of the victim.

....

3. A person is deemed incapable of consent when he or she is:

....

(e) 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) 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 [fig 1] ...

Cross-Gender Pat-down searches – Settlement

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

-against-

VOLUNTARY
STIPULATION
FOR A STAY WITH
CONDITIONS

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

97-CV-1363 (AGS)

Defendant.

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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.

¹ Bureau of Justice Statistics, *Prisoners in 2003*, NCJ205335, November 2004, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p03.pdf>, as per 01/27/06.

² Letter from Glenn S. Goord, Commissioner, New York, DOCS, 1/26/06.

³ The information does not reflect prosecutions or convictions under rape statutes.

⁴ Faxed letter from Glenn S. Goord, Commissioner, New York Department of Correctional Services (DOCS), 08/27/02.

⁵ Letter from Glenn S. Goord, Commissioner, New York, DOCS, 1/26/06.

⁶ Letter from Glenn S. Goord, Commissioner, New York, DOCS, 1/26/06.

⁷ National Institute of Corrections, Prisons Division and Information Center, "Cross-sex Pat Search Practices: Findings From NIC Telephone Research", Colorado, January 1999.

⁸ Statistics attached to faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

⁹ Faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

¹⁰ Faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

¹¹ Faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

¹² Faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

¹³ Faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

¹⁴ Faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

¹⁵ Faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

¹⁶ Faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

¹⁷ Faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

¹⁸ Faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

¹⁹ Faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

²⁰ New York State Assembly, Bill Summary – A03804, available at <http://assembly.state.ny.us/leg/?bn=A03804>, as per 01/27/06.

²¹ Faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

²² Department directive #4901, "Transporting Prisoners". Policy sent by Lucien Leclair, Jr., 12/13/00.

²³ Faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

²⁴ Faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

²⁵ Phone conversation with Tony Amucci, New York State Corrections, 01/18/01.

²⁶ New York State Assembly, Bill Summary – A03804, available at <http://assembly.state.ny.us/leg/?bn=A03804>, as per 01/27/06.

²⁷ Statistics attached to faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

²⁸ Statistics attached to faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

²⁹ Statistics attached to faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

³⁰ Statistics attached to faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

³¹ Statistics attached to faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.

³² Statistics attached to faxed letter from Glenn S. Goord, Commissioner, New York DOCS, 08/27/02.