

**COUNTY OF MONROE
OFFICE OF THE SHERIFF
ROCHESTER, NEW YORK**

GENERAL ORDER MULTI-BUREAU	DATE OF ISSUE NOVEMBER 25, 2019	EFFECTIVE DATE NOVEMBER 25, 2019	NO. 068-19
SUBJECT: GENERAL ORDER Staff Conduct with Persons in Custody		DISTRIBUTION All Personnel	AMENDS
REFERENCE: NYS PENAL LAW ARTICLE 130			RESCINDS 068-12

Purpose: To develop and maintain specific, clear, and concise policies for defining and reporting alleged sexual misconduct and prohibited behavior on the part of staff with persons in custody.

Policy: In accordance with New York State Penal Law, Section 130.05(1) (f), and the Prison Rape Elimination Act 2003, the Monroe County Sheriff's Office (MCSO) strictly forbids any form of sexual contact, misconduct, abuse or harassment of individuals in custody by staff. Any violation of this Order will be subject to civil, criminal and/or departmental disciplinary action. No employee of the MCSO will engage in conduct on or off duty which adversely affects the morale, efficiency of the department, and/or destroys public respect for the employee and/or the Sheriff's Office.

Note: Nothing in this Order should be construed as compromising officer safety or limiting the execution of proper search, custody, transport and treatment duties for persons in custody as specified in Prisoner Custody Transport Treatment (MBGO-22).

Definitions: Persons in Custody: Includes, but is not limited to, suspects, detainees, and/or inmates.

Staff: For the purpose of this directive, is defined by the NYS Penal Law, Sections 130.05(f) and Correction Law, Section 40(2) as an employee who knows or reasonably should know that such person is committed to the care and custody of such facility. Employee shall mean 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. This will also be inclusive for any facility, or zone substation used for temporary detention as provided for in **PBGO-051 Temporary Detention**.

Volunteers: Although volunteers are not subject to all of the same criminal statutes governing the misconduct of MCSO employees, when volunteers engage in illicit conduct, they may still be held liable civilly and may be subjected to internal disciplinary action (i.e., losing volunteer privileges such as access to the facility) regardless of whether or not their conduct violates a criminal statute. The provision in no way precludes any charges that are covered under the laws of New York and or the United States.

Local Correctional Facility: As defined in the New York State Correction Law, Section 40(2), a local correction facility is a county jail, county penitentiary, county lockup, city jail, police station jail, town or village jail or lockup, court detention pen, or hospital prison ward.

Sexual Misconduct: Includes, but is not limited to: acts or attempts to commit acts such as sexual assault, sexual abuse, sexual harassment and/or sexual contact, which includes but is not limited to: hugging, kissing, fondling, etc. Additionally, sexual behavior between a staff member and detainee can include, but need not be limited to indecent, profane or abusive language or gestures and/or inappropriate visual surveillance of detainees and is strictly prohibited. In addition, unreasonable and unnecessary invasion of privacy, behavior of a sexual nature or implication, and statements or correspondence suggesting a physical or sexual relationship are strictly prohibited.

Sexual Contact: Includes, but is not limited to: the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breasts, inner thighs or buttocks of any person with the intent to abuse, humiliate, harass, degrade, arouse or gratify the sexual desire of any person.

Sexual Abuse: Includes, but is not limited to: subjecting another person to sexual contact by persuasion, inducement, enticement or forcible compulsion; subjecting another person to sexual contact while in custodial status; subjecting another person to sexual contact who is incapable of consenting by reason of being physically helpless; physically restrained or mentally incapacitated; in addition to sodomizing, molesting, prostituting, or otherwise sexually exploiting another person.

Sexual Harassment: Includes, but is not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.

Consent: Consent is not a defense. As defined by the New York State Penal Law, Section 130.05, a person is deemed incapable of consent when he/she is committed to the care and custody of a local correctional facility as defined in Subdivision 2, Section 40 of the Criminal Procedural Law. In addition, the person committing the act is an employee who knows or reasonably should know that such person is committed to the care and custody of such facility.

I. General Guidelines

A. New York State Penal Law, Section 130.05 and the Prison Rape Elimination Act 2003, specifically apply to those employees who, by virtue of their employment status, are in positions of power over individuals in custody in local correctional facilities. All employees must understand the policy of the MCSO, which prohibits sexual relationships, sexual misconduct, sexual contact, sexual abuse, and/or sexual harassment of any type between ANY staff members and ANY individuals in custody.

1. Individuals in custody cannot grant consent to any sexual acts, sexual relationships, sexual misconduct, sexual contact, or sexual abuse of any type – the gender, age and wishes of the inmate are irrelevant.
2. Violations of the provisions of Section 130 of the NYS Penal Law regarding staff members and individuals in custody depend on the nature of the conduct and/or contact.

B. The District Attorney's Office has discretion relative to charges and may apply the general Rape and Criminal Sexual Act laws in cases of sexual misconduct occurring within the Monroe County Jail facilities regardless of whether the employee meets the definition in Section 130.05(3)(e) of the New York State Penal Law or not.

1. In addition to normal sanctions, a court can order that an employee convicted of a provision of NYS Penal Law Section 130 be considered a sex offender for the purposes of the New York State sexual offender registry and require him/her to register as such with the Division of Criminal Justice Services.

2. Depending upon the rated risk of re-offending, the community may be notified of such person's identity and personal residence upon parole or probation.

II. General Duties and Responsibilities

- A. All employees will adhere to the procedures delineated in this order by ensuring that their conduct does not constitute or promote any time of misconduct of a sexual nature or in any other way violate the provisions of these procedures.
 1. The MCSO requires mandatory immediate reporting by staff of any known act or allegations of sexual misconduct or retaliation to the shift supervisor through the appropriate chain-of-command.
 2. It also is the responsibility of each staff member to provide complete cooperation and full disclosure during any inquiry or investigation into alleged acts of sexual misconduct or related prohibited conduct.
- B. All shift supervisors will treat reported incidents of prohibited conduct seriously and ensure that all known or suspected acts/allegations of sexual misconduct are reported to his/her appropriate Bureau Administration for review.
 1. Shift supervisors will ensure that adequate measures have been taken to provide separation between the affected individual and staff member during the course of an investigation, while being cognizant that such separation does not represent a form of punishment for the individual or staff.
 2. All individuals who report that they have been sexually abused or assaulted will be appropriately referred to a medical and/or mental health provider to receive appropriate and if need be, ongoing support.
- C. Failure to report, or attempt to cover-up an incident of sexual misconduct, may result in disciplinary action.
- D. Failure to cooperate with an investigation or inquiry is prohibited and may result in disciplinary action.

Note: All staff and employees will be held fully accountable for the decisions and actions taken during the discharge and execution of their duties and responsibilities and will be held accountable for their failure to exercise their lawful delegated authority.

- E. Responsibilities Specific to Jail Bureau Members
 1. When persons are confined in the Monroe County Jail (MCJ) or Monroe Correctional Facility (MCF), Jail Bureau security staff will ensure that inmates are informed of the complaint/grievance procedures and understand the process by which incidents are reported and investigated. Inmates will also be informed of the sanctions for making false allegations against a staff member. All information regarding complaints is explained in the Inmate Handbook.
 2. No staff member should be alone in a room or area with a person in custody under circumstances where the staff member and inmate cannot be observed by other staff members (either by camera or actual witnesses).

3. On those rare occasions where a member feels that it is necessary to be alone with an inmate in an area that cannot be observed by other staff members (either by camera or actual witness), he or she will immediately advise a superior officer and document the circumstances surrounding this private encounter and why it was necessary on a Special Report. The report will be submitted to the member's immediate supervisor. Simply wanting to meet privately with an inmate without a compelling justification shall not constitute sufficient grounds for a private meeting and will constitute a violation of this order.

Note: This provision will not apply to deputies transporting inmates through designated travel routes/corridors where those locations are being used to transport exclusively and are not being used as any type of meeting or lingering place. The amount of time that a deputy may be alone with an inmate in one of these areas, if it is necessary, will be limited to that amount of time required to transport the inmate through the area.

F. Responsibilities Specific to Police Bureau Members

All members are advised that when conducting custodial interrogations, complete interview logs detailing all activities with respect to the interview are required, as per **PBGO-051 Temporary Detention**. Notations should include, but not be limited to: times that the detainee was placed in an interview room; when the deputy departed and returned to the room; when toilet facilities and refreshments were provided; and time of placement in a holding cell. Investigators should continue their current practice of transcribing the above information in Investigative Action Reports.

G. Responsibilities Specific to Court Bureau Members

If a person is ordered into custody by a judge or is taken into custody under arrest, the individual will be handcuffed and searched in accordance with current directives and placed in a secure holding area as per **CSBO-002 Courtroom Prisoner Custody by Order of a Judge**. At no time will a person in custody be left unattended. Visual observation of the individual will be made at all times pending the arrival of CIS or Prisoner Transport staff for appropriate turnover.

III. Referral Procedures

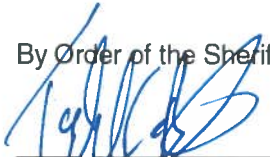
- A. Upon review of submitted reports by the appropriate Bureau Administration, the Operations Major or designee will refer the incident or alleged incident to the Criminal Investigation Section Captain and the Internal Affairs Unit.
- B. All referrals leading to an investigation or allegations which could, if substantiated, result in criminal prosecution, will adhere to the guidelines established in **JBGO-054 Criminal Investigations of Incidents Occurring in Jail Facilities**, **PBGO-003 Criminal Investigation Section** and **MBGO-021 Internal Affairs Unit**.
- C. All incidents of sexual misconduct involving inmates will be reported to the New York State Commission of Correction in accordance with **JBGO-052 Reportable Incidents** and 9NYCRR, Part 7022, Reportable Incident Guidelines.

IV. Findings / Recommendations

- A. Although an internal investigation of any nature can be conducted independently of any other investigation, it may proceed concurrently with another investigation (criminal or otherwise) with the determination being made by the Sheriff or the Undersheriff.

- B. The investigative report will indicate whether the evidence supports a finding that misconduct has occurred (founded), the allegations are false, or the evidence is inconclusive (unfounded).
- C. In the event that there is a finding of misconduct that violates New York State statute, a copy of the report and supporting documentation/evidence will be forwarded to the District Attorney's Office for criminal prosecution.

By Order of the Sheriff,



Todd K. Baxter