

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF CORRECTIONS  
SEXUAL HARASSMENT AND MISCONDUCT**

**PERFORMANCE AUDIT REPORT  
OCTOBER 2002**



*To The Fiscal Committee Of The General Court:*

We have conducted an audit of the Department of Corrections, related to employee-on-employee sexual harassment and sexual misconduct by Department employees with State prison inmates, to address the recommendation made to you by the joint Legislative Performance Audit and Oversight Committee. We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to provide a reasonable basis for our findings and conclusions. Accordingly, we have performed such procedures as we considered necessary in the circumstances.

The purpose of our audit was to evaluate how reasonable are current Department of Corrections safeguards against instances of sexual harassment and sexual misconduct within the State prisons. The audit period includes the five years from fiscal year 1997 through fiscal year 2001.

This report is our evaluation of the information noted above and is intended solely for the information of the Department of Corrections and the Fiscal Committee of the General Court. This restriction is not intended to limit the distribution of this report, which upon acceptance by the Fiscal Committee is a matter of public record.

*Office Of Legislative Budget Assistant*  
Office Of Legislative Budget Assistant

October 2002

**THIS PAGE INTENTIONALLY LEFT BLANK**



2.4 Rules And Policy .....	44
Observation No. 14: The DOC Lacks Policy Prohibiting Staff Sexual Misconduct With Inmates .....	44
Observation No. 15: Inmate Manual Needs Improvement .....	45
Observation No. 16: The DOC Needs To Display Educational Posters .....	47
Observation No. 17: Rules And Policy Regarding Inmate Visitation Need Clarification .....	47
<b>3. OTHER ISSUES AND CONCERNS .....</b>	<b>49</b>
<b>4. CONCLUSION .....</b>	<b>53</b>

**APPENDICES**

DOC Commissioner’s Letter To The Fiscal Committee .....	A
DOC Sexual Harassment Task Force Report (Draft) .....	B
DOC Commissioner’s Intra-Departmental Memo Regarding Letters Of Warning .....	C

**LIST OF FIGURES**

Figure 1: Department Of Corrections Organization Chart .....	11
Figure 2: Department Of Corrections Sexual Harassment Complaint Process .....	15

**LIST OF TABLES**

Table 1: Department Of Corrections Personnel By Gender As Of 6/30/2002 .....	12
Table 2: Inmate Distribution By Facility And Gender As Of 6/30/2002 .....	12
Table 3: Comparison Of DOC Investigation Timelines, And State And DOC Policy .....	35

**ABBREVIATIONS**

- CFR – Code Of Federal Regulations
- DOC – New Hampshire Department Of Corrections
- EEOC – United States Equal Employment Opportunity Commission
- NHCHR – New Hampshire Commission For Human Rights
- NIC – National Institute Of Corrections
- PPD – Policy And Procedure Directive

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF CORRECTIONS  
SEXUAL HARASSMENT AND SEXUAL MISCONDUCT**

**SUMMARY**

**Purpose And Scope Of Audit**

This audit was performed at the request of the Fiscal Committee of the General Court consistent with a recommendation from the joint Legislative Performance Audit and Oversight Committee. Our audit was conducted in accordance with generally accepted government auditing standards. The purpose of our audit was to evaluate how reasonable are current Department of Corrections safeguards against instances of sexual harassment and sexual misconduct within the State prisons. The audit period includes the five years from fiscal year 1997 through fiscal year 2001.

**Background**

Title VII of the U.S. Civil Rights Act of 1964 prohibits employment discrimination based on sex as well as race, color, religion, or national origin. Title VII's prohibition against sexual harassment focuses on unwelcome sexual conduct that is a term or condition of employment. New Hampshire statute prohibits harassment on the basis of sex. In 1965, RSA 354-A established the seven-member New Hampshire Commission for Human Rights, which is empowered to prevent and eliminate discrimination in employment and other areas, and may receive and investigate related allegations. Both the State and the Department of Corrections (DOC) have policies on sexual harassment that outline reporting, investigation, and training requirements.

Sexual misconduct includes behaviors or acts of any sexual nature directed toward an inmate or detainee by an employee, vendor, contractor, volunteer, or visitor. Aggravated Felonious Sexual Assault as defined in RSA 632-A:2 is a felony if a person engages in sexual penetration with the victim within defined circumstances, including when the person "has supervisory authority over the victim by virtue of the victim being incarcerated in a correctional institution." Consensual sex is not allowed as a defense in the aforementioned situation. RSA 632-A:3 Felonious Sexual Assault, defines a person guilty of a class B felony if the person subjects another person to sexual contact causing serious personal injury to the victim under the circumstances defined by RSA 632-A:2. Additionally, RSA 632-A:4 Sexual Assault, defines a person guilty of a misdemeanor if a person age 13 or older subjects another person to sexual contact under the circumstances defined in RSA 632-A:2.

**Results In Brief**

We noted a total of 17 observations with recommendations regarding sexual harassment and sexual misconduct. Five observations concern management of sexual harassment and sexual misconduct, including continuing to improve the professionalism of DOC supervisors and employees. Four observations and recommendations address employee investigations. Four observations concern training needs. Finally, four observations focus on policy and rules issues.

### Management Needs Additional Improvement

We found that management has made some improvements in the professional culture of employees within the prison facilities, yet additional improvements are required. Record keeping practices in the Bureau of Human Resources and the Bureau of Investigations impede management oversight of sexual harassment and sexual misconduct, including supplying accurate information to the Legislature. Prison facility staffing issues may increase the risk of misconduct allegations. We also found issues regarding non-compliance with the Bureau of Human Resources' statutorily required organizational structure, and the employee performance evaluation process.

### Employee Investigations Need Improvement

The Department lacks sufficient internal guidelines directing how and when to involve internal and external personnel for investigating allegations of employee misconduct, including documenting requests for investigators. Sexual harassment investigators receive little training, and written procedures for investigations are inadequate. We found the Department is non-compliant with State sexual harassment investigation timelines. Also, we believe the DOC's preliminary reviews of employee-related allegations should be clarified.

### Training Needs Improvement

We found gaps in required sexual harassment training and training documentation for employees and management. Departmental pre-service and in-service training generally overlooked volunteers in the areas of sexual harassment, sexual misconduct, and undue familiarity with inmates. Staff pre-service and in-service training about sexual misconduct with inmates was insufficient, as was in-service training regarding staff undue familiarity with inmates.

### Policy And Rules Need Improvement

The Department should have a detailed zero tolerance policy prohibiting and listing the consequences of sexual misconduct with an inmate. Prison facility inmate manuals are calendar year 1998 editions that contain some outdated content, need clarification, and are incomplete, including the areas of employee sexual misconduct and undue familiarity with inmates. Our inspections of DOC prison facilities disclosed the DOC does not conspicuously and continuously display required posters that communicate the State's opposition to sexual harassment and the right to report sexual harassment. Also, rules and policy regarding inmate visitation, including rules governing the behavior of volunteers, need clarification.



**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF CORRECTIONS  
SEXUAL HARASSMENT AND SEXUAL MISCONDUCT**

**RECOMMENDATION SUMMARY**

<b>Observation Number</b>	<b>Page</b>	<b>Legislative Action Required</b>	<b>Recommendation</b>	<b>Agency Response</b>
1	17	NO	DOC management and employees continue work to improve the professionalism of supervisors and employees.	Concur In Part
2	19	NO	Use and train personnel to manage a computerized database to help confidentially record, track, and monitor employee-related complaints, investigations, and outcomes. Ensure accurate and complete files. Improve management oversight over tracking and access to files. Ensure sufficient back-up of original file information.	Concur In Part
3	23	NO	Identify, minimize, and monitor prison-related high-risk personnel staffing practices and facility areas.	Do Not Concur
4	24	YES	Comply with statutes governing Departmental organization, reporting structure, and contemplated reorganization.	Concur In Part
5	25	NO	Ensure and document all full-time classified employees receive written performance evaluations at least annually.	Concur In Part

<b>Observation Number</b>	<b>Page</b>	<b>Legislative Action Required</b>	<b>Recommendation</b>	<b>Agency Response</b>
6	28	NO	Develop protocols outlining how and when to involve internal and external parties for investigating employee-related allegations, and to document DOC requests for investigators. Consider having memoranda of understanding with investigating agencies.	Concur In Part
7	30	NO	Ensure and document that DOC personnel who conduct employee investigations receive sufficient initial and refresher training. Establish and follow written investigation procedures including documentation requirements. Establish a protocol on who decides if an investigation should proceed criminally or administratively.	Concur
8	33	NO	Review and formalize fact finding practices regarding employee notification of investigations.	Concur
9	34	NO	Comply with State and DOC sexual harassment policy investigation timelines. Seek to have the policies amended if the required timeline is unreasonable. Inform personnel of timelines.	Do Not Concur
10	37	NO	Ensure personnel annually receive required sexual harassment information and training. Accurately document training histories.	Concur In Part

<b>Observation Number</b>	<b>Page</b>	<b>Legislative Action Required</b>	<b>Recommendation</b>	<b>Agency Response</b>
11	40	NO	Ensure volunteers receive initial and refresher information regarding sexual harassment, sexual misconduct, and undue familiarity with inmates.	Concur
12	41	NO	Ensure and document prison facility personnel receive pre-service and annual in-service training regarding sexual misconduct with inmates.	Concur
13	42	NO	Ensure and document prison facility personnel receive annual in-service training regarding undue familiarity with inmates.	Concur
14	44	NO	Develop and distribute a detailed zero tolerance sexual misconduct policy.	Concur In Part
15	45	NO	Ensure each prison facility's respective inmate prison manual is reviewed and updated.	Concur
16	47	NO	Obtain and display educational posters communicating the State's opposition to sexual harassment.	Do Not Concur

Observation Number	Page	Legislative Action Required	Recommendation	Agency Response
17	47	NO	Review and clarify visitation policies to ensure they are consistent with administrative rules. Review and clarify volunteer policies especially in the area of volunteer physical contact with inmates. Inform personnel of changes.	Concur

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF CORRECTIONS  
SEXUAL HARASSMENT AND SEXUAL MISCONDUCT**

**INTRODUCTORY SECTION**

On December 12, 2001, the Fiscal Committee approved a recommendation from the joint Legislative Performance Audit and Oversight Committee for an audit of the Department of Corrections. The Legislature's interest was in knowing if the Department of Corrections had improved its management of State prison sexual harassment and sexual misconduct. The audit period for this performance audit includes the five years from FY 1997 through FY 2001.

**1.1 Overview**

RSA 21-H:3 established the Department of Corrections (DOC) and made it responsible through its officials to provide, maintain, and administer State corrections facilities and programs required for custody, safekeeping, control, treatment, and rehabilitation of inmates. The Department also supervises persons placed on probation or parole, and advises law enforcement agencies and communities regarding crime and delinquency prevention.

Under RSA 622:5, the DOC Commissioner is statutorily empowered to provide a military guard for prison facility security, and to appoint and remove personnel necessary for prison management, subject to State personnel regulations.

Against this backdrop may come allegations of sexual harassment in the DOC workplace, employee sexual misconduct with an inmate, or employee undue familiarity with an inmate. State and federal law prohibit sexual harassment and retaliation against those who report harassment. Sexual misconduct – behaviors or acts of any sexual nature directed toward an inmate or detainee – is prohibited by State law. Under RSA 632-A, an individual who commits sexual misconduct is guilty of either a felony or a misdemeanor when the person “has supervisory authority over the victim by virtue of the victim being incarcerated in a correctional institution.” Training material developed for the National Institute of Corrections (NIC) reports that staff undue familiarity with inmates can include the following improper activities between a staff member and an inmate: use of first names, small favors, letter writing, and exchange of photographs. It also reported that unchecked cases of undue familiarity between staff and inmates often lead to serious issues including staff sexual misconduct. DOC personnel including senior correctional officers, non-senior uniformed and non-uniformed personnel, and investigation personnel agreed undue familiarity can lead to staff sexual misconduct.

As of August 2002, the State had made several settlements or was required by jury awards to make payment related to DOC employee-on-employee sexual harassment or staff-with-inmate sexual misconduct. Sexual harassment awards or settlements, including attorney costs and interest costs on State-contested awards, totaled \$556,767 for five cases. The incidents central to the cases occurred between calendar years 1995 and 1997. In addition, the State paid a single settlement of \$140,000 related to a 1996 incident of employee sexual misconduct with an inmate. Conversely, the State Supreme Court in May 2002, upheld a Superior Court decision to set aside a sexual harassment-related award by the Human Rights Commission of \$200,284 plus attorney fees.

Using information obtained from the State Division of Personnel, we note for the period October 1999 through July 2001, 14 agencies reported 31 alleged cases of sexual harassment to the Division:

- one agency reported seven (22.6%) cases;
- one agency reported five (16.1%) cases;
- two agencies each reported three (9.7% each) cases;
- the DOC reported two (6.5%) cases, as did each of two other agencies; and
- seven agencies each reported one (3.2%) case.

The current DOC Commissioner, appointed in May 2000, reported knowing when he started that the sexual harassment issue must be addressed. He reported establishing a “zero tolerance” sexual harassment policy and addressing harassment in staff memos and newsletters. In October 2000, the DOC commissioner asked for sexual harassment-related technical assistance from the NIC. The resulting NIC report of June 2001 made fifteen recommendations including improving areas of record keeping, communication, investigations, training, and policy. The Commissioner organized a Sexual Harassment Task Force in October 2001 to review DOC practices related to harassment complaints and develop an action plan on how Department management can improve harassment prevention. The Task Force also worked to review and identify what action the DOC needs to take in answer to the NIC report recommendations. The Department anticipates the Task Force report will be complete in October 2002.

## **1.2 Scope, Objectives, And Methodology**

This audit was conducted in accordance with generally accepted government auditing standards and included such procedures as we considered necessary in the circumstances. The audit period for this performance audit includes the five years from FY 1997 through FY 2001.

### *Scope And Objectives*

Our audit focused on the following question: *Has the DOC improved its management of sexual harassment and sexual misconduct issues in its prisons?* We developed three audit objectives to guide our work in answering this question:

1. Assess how the DOC disseminates and reinforces its current “zero tolerance” sexual harassment and sexual misconduct stance to New Hampshire State prison-related personnel and inmates.
2. Analyze current related DOC record keeping and investigative mechanisms.
3. Examine historical information.

### *Methodology*

To obtain background information and develop an overall understanding of sexual harassment and sexual misconduct, we reviewed information from several sources including: State statutes;

the State sexual harassment policy; Governor and Council minutes; DOC-supplied programmatic documents including a recent NIC review of DOC sexual harassment issues; DOC sexual harassment-related court cases; DOC web site information; DOC administrative rules and policies and procedures; DOC supplemental job descriptions; the New Hampshire Commission for Human Rights manual on sexual harassment; and various federal, state, prison, and private sector sexual harassment and sexual misconduct background information.

We observed a meeting of the House Criminal Justice and Public Safety Committee. We also conducted scoping interviews with:

- the Chairman of the House Criminal Justice and Public Safety Committee;
- two attorneys with the NH Attorney General's office and a DOC attorney;
- the DOC Commissioner;
- three DOC wardens; and
- the DOC Human Resources Administrator.

Additionally, we accompanied department personnel on detailed walking tours of three of the State prisons: the State Prison for Men, the State Prison for Women, and the Lakes Region Facility.

We used the following methods to address the audit objectives:

- Structured interviews with DOC personnel including the Warden of the Northern New Hampshire Correctional Facility, the Human Resources Administrator, the senior uniformed correctional officer at each of the previously mentioned State prisons, correctional officers, non-uniformed prison employees, Bureau of Investigation personnel, and Bureau of Training personnel.
- Structured interviews with the Director of the Division of Personnel, Department of Administrative Services; the Executive Director of the Human Rights Commission; and the State Police liaison to the DOC.
- Review and analysis of DOC personnel files.
- Review and analysis of DOC training files and other training documentation.
- Review and analysis of DOC investigation files.
- Review and analysis of DOC investigation and discipline logs.
- Telephone conversations with State personnel including a DOC supervisor of volunteer activities; employees of the New Hampshire Office of the Attorney General; and an employee of the State Police.
- Discussion with members of the House Criminal Justice and Public Safety Subcommittee.
- Attended a DOC sexual harassment training session.
- Review and analysis of other DOC-provided information including draft reports prepared by the Sexual Harassment Task Force (Appendix B).
- Review of DOC sexual harassment-related awards and settlements.

### **1.3 Department Of Corrections Overview**

Through RSA 21-H, Department of Corrections (DOC), the Legislature intends to “improve the administration of state government by consolidating and providing unified direction of policies, procedures and programs in the field of corrections.” The Legislature also intends the DOC “provide for consistency and continuity in the collection, retention and analysis of management information and records and reduction in the administrative and operating costs of corrections agencies.”

To meet legislative intent, the DOC organization included, as of August 2002: a Commissioner, an Assistant Commissioner, a Division of Administration, a Division of Field Services, institutional operations that include the State’s four prisons, central support services, and human resources including training (see Figure 1, page 11). The Commissioner exercises general supervisory and appointing authority over employees within the limits of governing personnel statutes and rules, and must obey and enforce State regulations governing prison management. RSA 21-H:4, I, (a), (2) directs the “division of administration, under the supervision of a director of administration,” to be responsible for personnel management. However, Observation No. 4, page 24, reports the Human Resources Director currently is responsible for personnel and reports directly to the Commissioner.

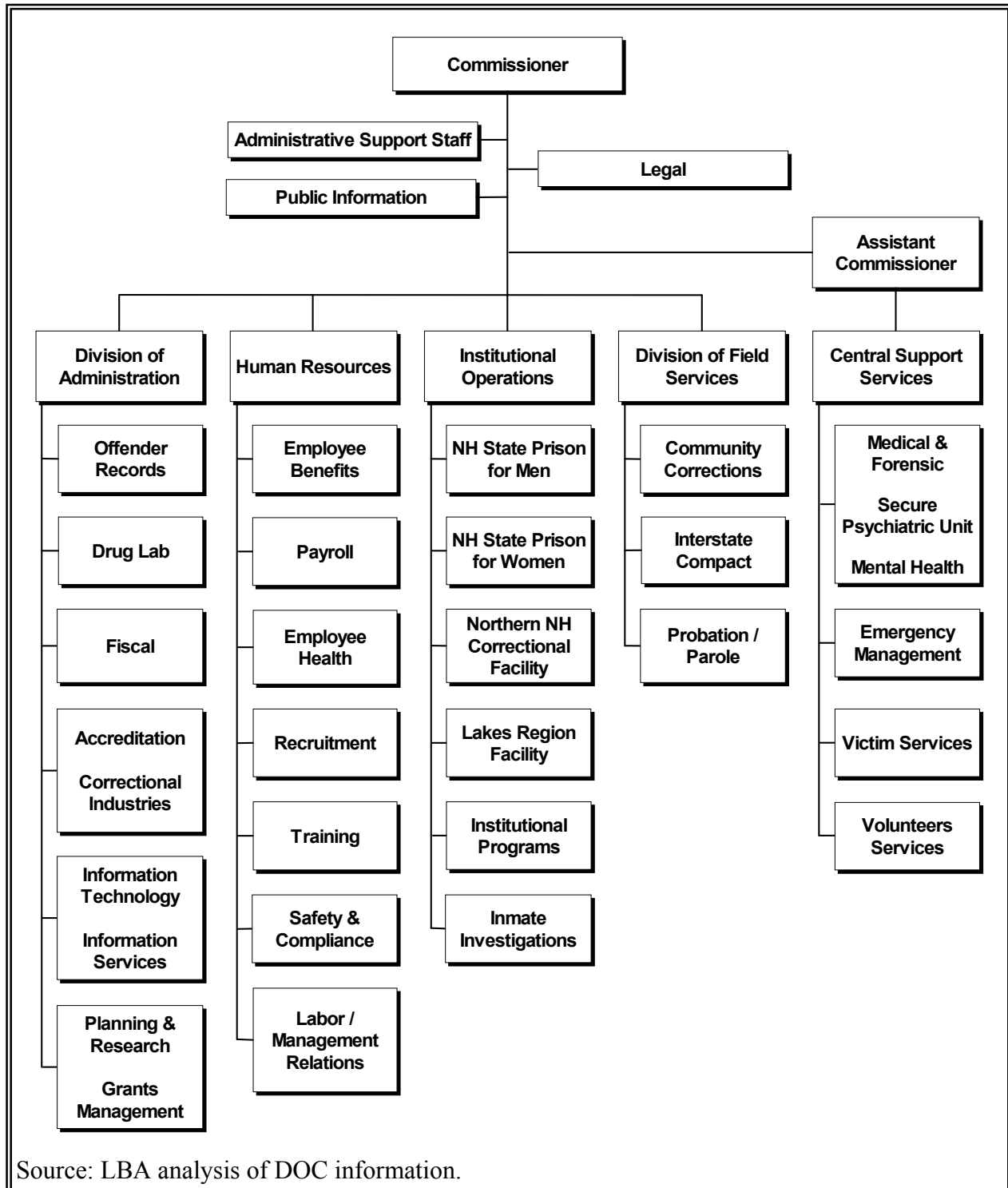
RSA 21-H:8, III, (a) requires the Commissioner adopt reasonable internal practices and procedures including “[a] comprehensive manual of procedures for the operation of the state prison...including provisions for the humane treatment of inmates.” Additionally, RSA 21-H:14 requires the Commissioner establish written standards regarding the behavior and responsibilities of inmates. The DOC has numerous policies and procedures governing employees, and each prison facility has its own respective manual for inmates.

RSA 622:7, I charges the Commissioner to safely keep all inmates. Inmates are incarcerated in the State’s four institutions: the State Prison for Men in Concord, the State Prison for Women in Goffstown, the Lakes Region Facility in Laconia, and the Northern New Hampshire Correctional Facility in Berlin.



Figure 1

Department Of Corrections Organization Chart



Correctional officers of both genders maintain security over inmates in each State prison. Other employees are involved in non-security services within and external to the prisons such as administration, inmate education, counseling, and physical plant maintenance. Table 1, page 12, indicates the total number of DOC employees including correctional officers by gender as of

June 30, 2002. However, the DOC was unable to provide us with the number of correctional officers per facility by gender.

**Table 1**

<b>Department Of Corrections Personnel By Gender As Of 6/30/2002</b>			
<b>Category</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
Non-Uniformed Employees	249 (54%)	216 (46%)	465 (100%)
Uniformed Employees	529 (85%)	92 (15%)	621 (100%)
<b>Total number of DOC employees</b>	<b>778 (72%)</b>	<b>308 (28%)</b>	<b>1,086 (100%)</b>
Source: LBA analysis of DOC information.			

Table 2 provides information regarding the number of inmates by gender per facility for fiscal year 2002. State law requires housing females in institutions or quarters separate from males. The Lakes Region Facility has both male and female inmates and houses them in separate housing units.

**Table 2**

<b>Inmate Distribution By Facility And Gender As Of 6/30/2002</b>		
<b>Facility</b>	<b>Male</b>	<b>Female</b>
Lakes Region Facility	326	38
North Country Facility	512	0
NH Prison for Women	0	112
NH State Prison	1,353	0
Secure Psychiatric Unit	38	7
<b>Total By Gender</b>	<b>2,229</b>	<b>157</b>
<b>Total Inmate Population</b>	<b>2,386</b>	
Source: LBA analysis of DOC information.		

## **1.4 Laws And Regulations**

### *Federal Laws*

#### Sexual Harassment

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on sex, as well as race, color, religion, or national origin. Title VII's prohibition against sexual harassment focuses on unwelcome sexual conduct that is a term or condition of employment. The federal *Guidelines On Discrimination Because Of Sex* (29 CFR 1604.11(a)) detail:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Title VII also prohibits retaliation against an individual who makes an allegation of sexual harassment or is involved in an investigation.

The United States Equal Employment Opportunity Commission (EEOC) investigates administrative charges of employment discrimination filed with it by employees. If the alleged incident occurs in a state or state political subdivision having a law prohibiting the behavior, the EEOC prohibits persons from filing complaints with the EEOC until 60 days after proceedings commence under state or local law. If the EEOC receives a complaint and determines reasonable cause exists to believe harassment occurred, the EEOC will try to reconcile a voluntary resolution between the parties. The EEOC may also bring a federal court suit should conciliation fail. Persons found to have been discriminated against "with malice or with reckless indifference" may recover (1) compensatory damages up to \$300,000, and (2) punitive damages.

### Sexual Misconduct

Federal regulations define and disallow sexual abuse and contact within federal prisons. Additionally, the Civil Rights of Institutionalized Persons Act allows the U.S. Attorney General's Special Litigation Section to conduct investigations of state prison facilities to determine if there is a pattern of violations of federal rights, including sexual abuse.

### *State Laws And Regulations*

### Sexual Harassment

In 1965, RSA 354-A established the seven-member New Hampshire Commission for Human Rights (NHCHR). This body, empowered to prevent and eliminate discrimination in employment and other areas, may receive and investigate related allegations.

State and federal law similarly affect employer responsibilities and liabilities regarding sexual harassment. RSA 354-A:7, (V), prohibits harassment on the basis of sex as it constitutes unlawful discrimination, and defines harassment in language largely identical to that within the federal guidelines 29 CFR 1604.11 (a). According to the NHCHR and others, quid pro quo harassment occurs when "Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; [S]ubmission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual." Hostile environment harassment occurs when, "Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or

offensive working environment.” Additionally, RSA 354-A:19 prohibits retaliation against any individual who files a complaint, testifies, or assists in a related proceeding.

NHCHR rules hold an employer responsible for sexual harassment committed by management or other personnel that have the ability to alter another employee’s employment status, regardless whether the actions were allowed or forbidden, the employer knew or should have known of the actions, or the actions were quid pro quo or hostile work environment. Additionally, an employer is liable for harassment that occurs between co-workers in the workplace when the “employer, its agents or supervisory employees, knows or should have known of the conduct, unless it can show it took prompt, appropriate remedial action.” Furthermore, an employer may be liable for sexual harassment committed by non-employees such as volunteers or contractors; the liability test applied is the same one applied towards allegations of co-worker harassment.

Statute allows a person to file a sexual harassment complaint through the NHCHR and specifies the complaint procedures and review process (RSA 354-A:21-22). Statute also empowers the NHCHR to grant victims of sexual harassment various forms of relief including but not limited to reinstatement, employee upgrading with back pay, granting cease and desist orders for relief, and compensatory damages. Additionally, the NHCHR may impose administrative fines that are not to exceed:

- \$10,000 if the complaint respondent has committed no prior discriminatory practice,
- \$25,000 if the complaint respondent has committed one discriminatory practice within five years, and
- \$50,000 if the complaint respondent has committed at least two discriminatory practices within seven years.

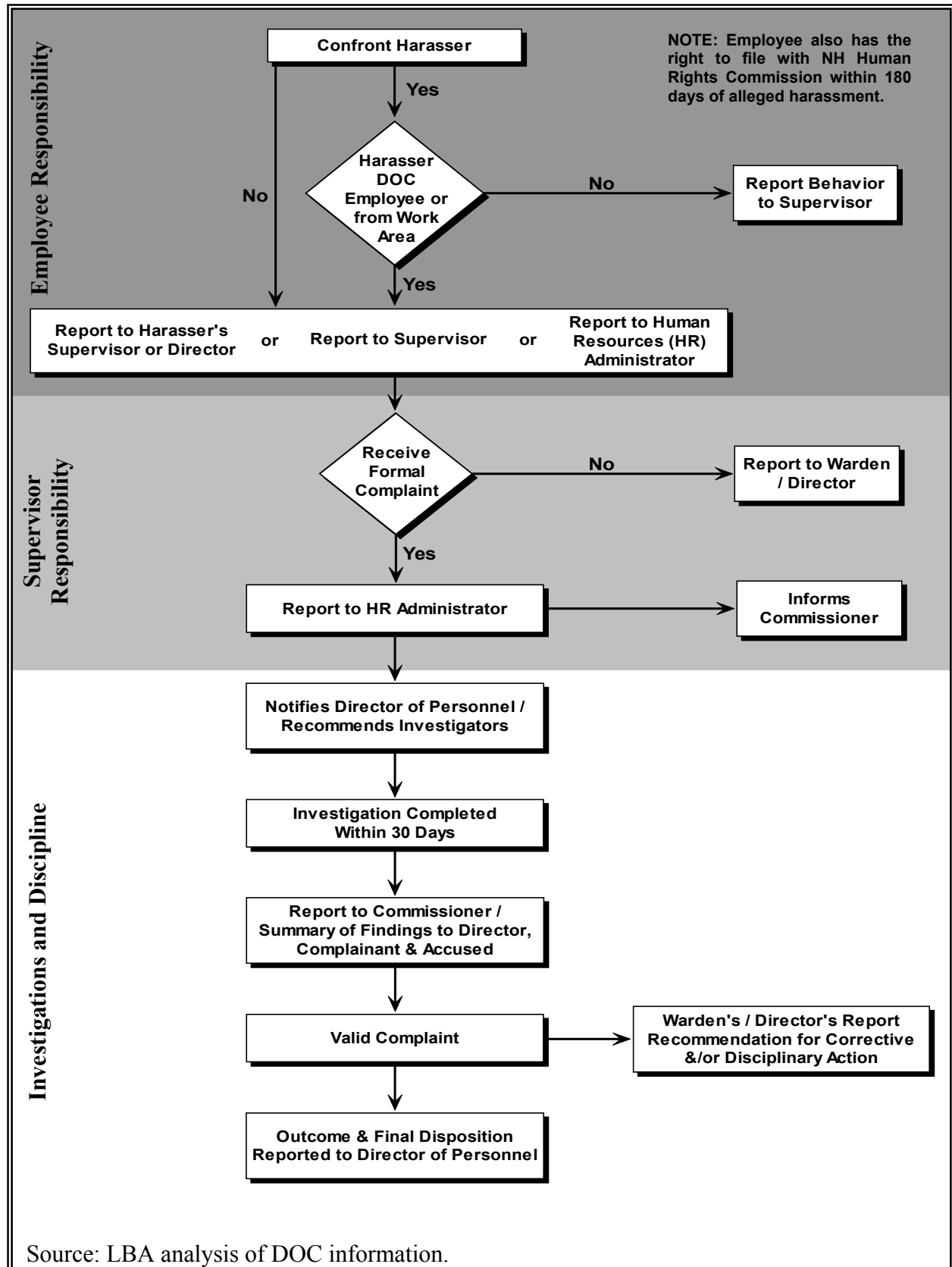
The New Hampshire Policy on Sexual Harassment states that harassment may “have a devastating impact on victims and coworkers,” and affirms the State’s commitment to preventing and eliminating harassment. The policy also informs:

- what constitutes prohibited conduct;
- procedures for making, investigating, and resolving complaints;
- requirements be communicated in writing to employees;
- education posters, “communicating the state’s opposition to sexual harassment...be conspicuously and continuously displayed in the workplace;” and
- supervisory employees annually participate in training on sexual harassment that informs them of the responsibility to know the State’s sexual harassment policy.

#### *Department Of Corrections Policy*

DOC policy and procedure directive (PPD) 2.39 governs sexual harassment-related employee grievances. The PPD describes procedures and responsibilities for employees, supervisors, and others, and requires employees know and comply with the State sexual harassment policy. Figure 2, page 15, illustrates the process outlined in PPD 2.39.

**Figure 2 Department Of Corrections Sexual Harassment Complaint Process**



DOC prison personnel are certified as qualified to be corrections officers through training provided by the New Hampshire Police Standards and Training Council. The curriculum includes sexual harassment-related training. Additionally, according to the DOC training policy, personnel must receive 16 to 44 hours of annual training, depending on their position; however, the amount of annual sexual harassment-related refresher training is unspecified.

### Sexual Misconduct

Sexual misconduct includes behaviors or acts of any sexual nature directed toward an inmate or detainee by an employee, vendor, contractor, volunteer, or visitor. Aggravated Felonious Sexual Assault as defined in RSA 632-A:2 is a felony if a person engages in sexual penetration with the victim within defined circumstances, including when the person “has supervisory authority over the victim by virtue of being incarcerated in a correctional institution.” Consensual sex is not allowed as a defense in the aforementioned situation. RSA 632-A:3 Felonious Sexual Assault, defines a person guilty of a class B felony if the person subjects another person to sexual contact causing serious personal injury to the victim under the circumstances defined by RSA 632-A:2. Additionally, RSA 632-A:4 Sexual Assault, defines a person guilty of a misdemeanor if a person age 13 or older subjects another person to sexual contact under the circumstances defined in RSA 632-A:2.

### *Department Of Corrections Policy*

DOC PPD 2.16 prohibits “[S]exual harassment, sexually harassing conduct or sexual misconduct as defined by the State of New Hampshire Sexual Harassment policy.” However, the State’s policy does not define or discuss sexual misconduct. DOC policy bars employees from undue familiarity with a person under DOC control. However, no DOC policy specifically addresses employee, vendor, or volunteer sexual misconduct with inmates.

DOC policy allows inmates to complain or grieve allegations of mistreatment and states, “[N]o person shall be mistreated or abused in any way.” However, inmates are not briefed specifically about reporting sexual misconduct.

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF CORRECTIONS  
SEXUAL HARASSMENT AND SEXUAL MISCONDUCT**

**OBSERVATIONS AND RECOMMENDATIONS**

This part of the report provides our assessment of how well the Department of Corrections (DOC) is managing sexual harassment and sexual misconduct in the State prison facilities. The following four sections focus on management issues, investigations, training of personnel, and rules and policies. The observations and recommendations we provide specify issues with and suggest improvements to past and current Department practices regarding sexual harassment, and sexual misconduct with inmates.

**2.1 Management Issues**

Through RSA 21-H, Department of Corrections, the Legislature intends to “improve the administration of state government by consolidating and providing unified direction of policies, procedures and programs in the field of corrections.” The Legislature also intends the DOC, “provide for consistency and continuity in the collection, retention and analysis of management information and records and reduction in the administrative and operating costs of corrections agencies.”

The Department’s Commissioner exercises general supervisory and appointing authority over employees within the limits of governing personnel statutes and rules, and must obey and enforce State regulations governing prison management. Statute requires the Commissioner adopt reasonable internal practices and procedures. While we noted improvements, our audit also revealed areas that would benefit from additional management attention.

**Observation No. 1**

***Prison Facility Professional Culture Needs  
Additional Improvement***

DOC and non-DOC personnel report professionalism and accountability among prison personnel have increased under the current Commissioner. However, we found areas where the DOC prison employee culture required additional improvement.

DOC Policy and Procedure Directive (PPD) 2.16 requires all DOC employees to: embrace and adhere to integrity, respect, and professionalism; act within generally accepted ethical principles that will reflect credit on the DOC; and, interact with co-workers and management in a positive and cooperative way. We note uniformed and non-uniformed employees and non-DOC personnel, reported issues within DOC prison facilities including:

- Not all supervisors practice the Commissioner’s message that sexual harassment is not to be tolerated.
- Not all employees, including supervisors, follow the DOC sexual harassment policy regarding allegation reporting.
- Some employees do not want to report harassment incidents for fear of being labeled as a troublemaker or being “blackballed.”
- Some employees who report sexual harassment allegations experience retaliation, while others are afraid to report harassment due to fear of retaliation.

- A male dominated “old boy” culture and network exists in the prisons, including some male uniformed employees who are resistant to working with female employees and feel females should not work at the prisons. The Commissioner reported the older prisons are entrenched in culture, tradition, and an old school male dominant attitude, and that women receive the greatest challenges in establishing themselves at the Concord prison facility .
- Some employees said they need to be more accepting of sexually harassing behavior due to the nature of their job.
- Unresolved conflict exists due to past DOC sexual harassment issues, including lack of trust in the Human Resources function.
- Non-investigative employees are aware of sexual harassment cases and discipline apart from newspaper reports, even though DOC PPD 2.39 requires that DOC employees not release sexual harassment complaint-related information to anyone within the DOC who does not have a need to know or is not involved with an investigation.
- DOC training and Police Standards and Training Academy personnel provide sexual harassment training information, but sometimes lessen training effectiveness by making inappropriate comments during presentations.
- The DOC is a closed system that may discourage reporting sexual harassment complaints.

We interviewed 21 uniformed and non-uniformed prison facility personnel, who indicated DOC personnel sometimes engage in the following behaviors that co-workers may view as inappropriate and create a risk of sexual harassment complaints:

- curse or swear;
- give or receive pats on the back, shoulder, or other body part;
- flirt;
- tell “dumb men, dumb women” type jokes;
- tell dirty jokes;
- discuss their sex life;
- engage in sexual stereotyping such as asking male correctional officers to lift heavy objects or move furniture, asking female correctional officers to make coffee, run errands; and
- have sexualized discussions.

DOC and non-DOC personnel report the Commissioner has addressed staff sexual harassment through a strong “zero tolerance” stance. The Commissioner requested and received sexual harassment-related technical assistance from the National Institute of Corrections (NIC), and established a Task Force to review and identify specific action the DOC should take in response to the NIC technical assistance report. The Commissioner also asked for and received training assistance from the Executive Director of the Human Rights Commission.

Furthermore, the DOC reported the calendar year 2002 development of a supervisor-targeted training program, including an interaction management component, to remedy longstanding supervisor training deficiencies. The training eventually will be provided to 250 to 300 new and existing DOC supervisors. The Commissioner reported the DOC has a large number of excellent



supervisors and managers, yet the DOC has not provided them training in and experience with best management practice. Other DOC and non-DOC personnel also reported DOC supervision needs improvement, and recruiting quality individuals to be correctional officers was problematic.

**Recommendation:**

**We recommend the Commissioner, through DOC management and employees, continue work to improve the professionalism of DOC supervisors and employees including the areas reported in the observation.**

*Auditee Response:*

*We concur in part. The New Hampshire Department of Corrections is continually working towards improving its professional image and professionalism of its supervisors and employees. In the past two years, the Department has focused on training. The Department has implemented a Basic Supervisory Training program as well as a specific curriculum that informs supervisors of their responsibilities when managing employees and issues related to sexual harassment. This training focuses on skill building and provides information and the tools to help assist supervisors in supervising their employees and preventing sexual harassment in the work place.*

*The Department has initiated Labor Management Committee meetings so labor and management meet on a regular basis to discuss issues that impact our employees and to work together towards resolving issues and to improve practices.*

*As demonstrated in the other observations, the department has been taking steps to address the issues of sexual harassment, sexual misconduct and undue familiarity. We will continue to develop our supervisory training and amend our policies that govern how we do business to ensure that the Department continues to meet the needs of the state and the citizens it serves.*

**Observation No. 2**

***DOC Record Keeping Needs Improvement***

Record keeping in the Department's Bureau of Human Resources and among investigative personnel needs improvement. They cannot efficiently, effectively, or accurately report information to DOC management regarding the numbers of allegations and proven cases of staff misconduct including sexual harassment, sexual misconduct, and undue familiarity with inmates. DOC personnel were unaware of the location of some investigation and personnel files. Procedures for signing out and tracking investigation and Human Resource files also need improvement.

Our review revealed current and historical information systems used to record and manage staff misconduct-related information are inadequate. The DOC uses investigation logs and a Human Resources discipline log to track cases involving employee-related allegations, investigations, outcomes, and disciplines. Investigative personnel log investigation information by word processor, and Human Resources uses a combination of handwritten and word processor document logs. We attempted to follow the progress of cases from investigation initiation to final

disposition including any DOC-imposed discipline. We were unable to reconcile information contained in the dissimilar logging systems. We also noted:

- investigative personnel applied a unique log number to each case but Human Resources logs did not use that or any other numbering system, making it difficult to follow cases;
- log information was ambiguous and scant;
- logs do not indicate if investigations are administrative, criminal, or both;
- investigative personnel incompletely filled out logs;
- the Human Resources discipline log only dated back to March 2000 (The discipline log was begun in response to a technical assistance report recommendation received from the National Institute of Corrections (NIC)); and
- Human Resources does not log the status of sexual harassment complaints brought before the State's Commission for Human Rights by past or current DOC employees.

We subsequently reviewed investigation files from investigative personnel and Human Resources, compared them to investigation logs, and found the logs and files inadequately and ambiguously report items such as: who were the complainants and the alleged perpetrators; whether allegations included sexual harassment, sexual misconduct, undue familiarity with inmates, or other possible staff misconduct; and investigation findings.

We also found problems with maintenance and tracking of DOC investigation and personnel files:

- Investigative personnel reported not knowing the location of some investigation files, and that currently there is no tracking mechanism indicating when, why, and by whom investigation files were removed:
  - Some cases lacked a file, or the file was empty (including the contents of a past investigation of a current warden).
  - The length of investigation could not be determined for some cases because files lacked information.
  - File organization often was sloppy with no indication of a file's contents.
- Back-up material for investigative cases is contained in unordered and unlabeled cardboard boxes. Investigative personnel reported some investigation files and numerous investigation-related videotapes were lost during flooding. Personnel stated case material was also kept in a prison warehouse but did not know how the material was organized.
- The DOC sometimes gives original investigation and personnel files to external entities such as the Attorney General's Office or the State Police, but the DOC does not maintain for itself a back-up copy of the original materials it provides.
- Human Resources Bureau personnel reported there is no system for signing out or tracking archived personnel files, which may be needed in case of legal action or appeal, and the Bureau did not know what personnel files or other files were in its archives.

Additionally, the Human Resources Administrator reported past DOC management sometimes removed letters of discipline from employee personnel files.

During fiscal year 2001, the joint Legislative Performance Audit and Oversight Committee requested the DOC provide it with the number of “cases of harassment or assault (including sexual) by NH DOC personnel on other personnel or prisoners...since the 1992 performance audit.” The DOC provided the Legislature with a summary table that included a total of 22 cases for the period. Human Resources personnel including the Human Resources Administrator reported they supplied incomplete case information to the Legislature, in part because the DOC shaped its response to reply to an outsider’s allegations, and because personnel could not reconcile DOC investigation and discipline log information. Furthermore, Human Resources sought no case input from investigative personnel. However, a current investigator’s deposition in calendar year 1999 for a New Hampshire Superior Court reported “the only way to identify any and all reports that pertained to allegations of sexual contact between correctional officer and inmate” was by sitting down with someone from the Bureau and going through the case log.

Training information prepared by the NIC reports employees are the most significant and important agency assets. The NIC states the Human Resources function can maximize that resource by helping to maintain personnel standards and by providing data to decision-makers and investigators. The NIC technical assistance report recommends the DOC develop a computerized database to track and report on sexual harassment and other areas of financial risk. However, the Human Resources Administrator reported DOC’s focus on tracking employee-related investigations and outcomes was historically insufficient, and the current system needs additional improvement, including gathering and tracking information from the Investigation Bureau, the DOC’s lead attorney, and the Attorney General’s Office. The Administrator also reported Human Resources currently uses word processing software to track and record some DOC sexual harassment case information because the Bureau lacks computer software and technology sophistication.

The absence of an adequate data information system makes it difficult to:

- monitor the incidence of staff misconduct including sexual harassment, sexual misconduct, and undue familiarity with inmates;
- keep track of allegations against employees;
- keep track of employees found to have violated prison rules or criminal law; and
- identify corrective actions needed to help prevent such misconduct.

Management may lack sufficient information to make informed decisions.

### **Recommendation:**

**We recommend the Department:**

- **appropriately use and train personnel to manage a computerized database designed to help confidentially record, track, and monitor employee-related complaints, investigations, and outcomes including those involving sexual harassment, undue familiarity with inmates, and sexual misconduct;**
- **ensure its files are accurate and complete;**

- **improve management oversight over tracking and controlling access to investigation and personnel files;**
- **ensure it has sufficient back-up of original file information it provides to other parties including external agencies; and**
- **coordinate with external entities such as the State Police and the Attorney General's Office to determine what investigation-related information is needed.**

Auditee Response:

*We concur in part. As addressed in Observation No. 7, methods for investigating allegations of NH DOC staff sexual misconduct and misconduct, in general, has improved. With the restructuring by the NH DOC Commissioner removing the Investigations Unit (Bureau) from direct involvement in the investigations of allegations pertaining to staff, tracking of these investigations now rests within the Bureau of Human Resources. The development of an investigation log has been initiated and investigative timelines as well as the allegation, findings of the investigation, disposition and any corrective action or discipline are included.*

*Previously, the Human Resource Bureau solely maintained a disciplinary log, which tracked all discipline issued to employees. This log dates back to 1990. The disciplinary log recorded disciplinary action taken against an employee for performance issues. This log did not track the allegations of sexual harassment, sexual misconduct or undue familiarity. The disciplinary log only recorded disciplinary action taken, whether it was due to an investigation or general performance concerns.*

*Since March of 2000, all employee investigations including sexual harassment, sexual misconduct and undue familiarity are maintained in the Bureau of Human Resources and are tracked accordingly. Investigative files or personnel files that have been removed due to a request from the Attorney General's Office, are tracked by replacing the file with an index card that records the name of the individual requesting the record, the employee file name, along with the date the record was removed. This card is maintained until the record is replaced. Historically, copies of those files are not made and retained in the absence of the permanent record, due to limited resources. To address the audit's observation, the Department will initiate steps to ensure that complete file copies are made prior to releasing the permanent record to external sources. These reproduced copies will be retained until the permanent record is returned.*

*Under the authority of Per 202, NH Division of Administrative Personnel Rules an appointing authority can remove a letter of warning during the Informal Settlement of Dispute process, or letters of warning may be removed due to decisions by the Personnel Appeals Board or through negotiations to settle appeals. In December 2001, the Commissioner issued a memorandum to DOC Wardens and Directors that states his position on an appointing authority's responsibility when issuing letters of warning and removal of letters of warning. (See Appendix C.)*

*The issues outlined in this report have been maintained in a variety of places. We concur that a database that can easily be maintained to record this type of information would be beneficial in monitoring allegations/incidents of staff misconduct.*

*Currently, the Department has an Information Technology Committee to determine the organizational needs for further IT development. With this Committee's assistance the Department will be able to determine what resources or program development is needed to establish an adequate data information system to enhance what is currently in place.*

**Observation No. 3**

***DOC Staffing Issues May Increase Risks  
Of Staff Misconduct Allegations***

DOC staffing patterns and work requirements may increase the DOC's risk for allegations and instances of staff misconduct including claims of sexual harassment, undue familiarity with inmates, and sexual misconduct with an inmate. When an employee is alone with another employee or an inmate, there may be increased opportunity for staff misconduct to occur and go undetected.

Personnel we interviewed reported the staffing of some prison units was one or two uniformed officers. Uniformed and non-uniformed personnel reported DOC prison personnel are sometimes alone with another employee, a volunteer, or an inmate; at times for up to eight hours. An employee might be alone with an inmate for numerous reasons including the following: disciplinary report, work detail, counseling, strip search, and pat-down search. Furthermore, DOC personnel and an inmate might be alone in a relatively unsupervised location.

There are founded cases of DOC employee sexual harassment, undue familiarity with an inmate, and sexual misconduct with an inmate. Also, an employee or inmate may file a false report of staff misconduct. When employee misconduct is alleged to occur while an employee is alone with another employee or another inmate, investigators may not be able to clearly support or refute whether a reported allegation actually occurred or staff or inmates purposely falsified an allegation. The DOC's chief legal counsel reported the DOC does not like an employee to work alone, but the DOC's workforce does not always allow for staffing improvements.

Training material prepared by the National Institute of Corrections recommends agencies should identify high risk areas and job functions, and install the following safeguards:

- ensure close supervision of staff and inmates in remote or secluded facility areas where other staff or inmates are not scheduled to be present;
- routinely rotate staff with high-risk assignments;
- use video surveillance in high risk areas; and
- assess staffing plans for opportunities for misconduct and allegations of misconduct related to night operations and special housing units.

**Recommendation:**

**The DOC should identify, minimize, and monitor prison-related high-risk personnel staffing practices and facility areas.**

Auditee Response:

*We do not concur. The Department ensures observations of work sites by having supervisors responsible for overseeing staff behavior; there are unannounced visits by the Wardens in the institutions and visits by Department Administration. Also, American Corrections Association auditors tour and inspect our facilities during each audit period. The department makes every effort to monitor areas that may be at risk due to the nature of the post or work section and surveillance cameras are throughout prison facilities to monitor institutional security and safety.*

*Staff patterns are based on the identification and maximization of high-risk facility areas. The ratio of staff to inmates is greater in high-risk areas and lower in low risk areas such as the Minimum Security Unit and Halfway Houses.*

*New Hampshire staffing ratios compare well with the overall national average. The national average of the number of inmates to uniform staff in correctional facilities is 4.6 inmates to each uniformed staff member. In New Hampshire, the average is 4.4 inmates for each uniformed staff member. Overall average of inmates to total institutional staff is 3.2 inmates to each staff member. In New Hampshire, the average is 3.0 inmates to each staff member. (Information obtained from the 2000 Corrections Yearbook).*

**Observation No. 4**

***Organizational Structure Not According To Statute***

The Department is not adhering to its statutorily defined organizational structure. RSA 21-H:4 requires the DOC's Division of

Administration, under the supervision of a director, be responsible for personnel management among other duties. However, documentation and interviews with the Commissioner and the Human Resources Administrator revealed the Human Resources Administrator reports directly to the Commissioner, not the Director of Administration.

Statute requires the Commissioner to present a plan to the General Court for its consideration should the Commissioner determine department functions would be more efficiently performed by establishing a new division. We found no indication that the Commissioner provided the General Court with a plan supporting establishment of a new Human Resources division.

**Recommendation:**

**We recommend the Commissioner comply with statutes governing Departmental organization, reporting structure, and contemplated reorganization.**

Auditee Response:

*We concur in part. The Personnel Management is statutorily a function under the Division of Administration. In an effort to better manage the Human Resource functions, particularly in the area of staff misconduct, the Commissioner determined that the Personnel Bureau Supervisor should report directly to the Commissioner.*

*When the Commissioner arrived in May 2000, he realized that there were a variety of personnel practices that were not operating appropriately. There was a concern that had been relayed to the Commissioner by the Executive Council upon his hiring that sexual harassment issues need attention and action. The Commissioner was also aware that personnel decisions resulting in disciplinary action were often overturned by the Personnel Appeals Board. After asking questions about other personnel practices, the Commissioner determined that a more direct oversight needed to be created between the Bureau of Human Resources and the Commissioner.*

*Full discussion in change in reporting relationships occurred with the Director of Administration. In addition to personnel appeal board decisions, and sexual harassment investigation concerns, the Commissioner had concerns about the handling of personnel matters in the following areas: labor management relations; promotional selection processes; unclassified staff selection processes; staff training, staff disciplinary/corrective action decision-making; personnel investigation processes (other than sexual harassment); and other related issues.*

*It is the Commissioner's intent to submit legislation to change the organizational structure to reflect current practice and to more efficiently perform functions within the department, not just Personnel. However, the Commissioner has proposed a change to RSA 21-H:8 to address the Personnel Management observation of the Audit. Additionally, in our budget request for 2004-05, the Bureau of Human Resources is under the Commissioner's Office.*

#### **Observation No. 5**

##### ***Employee Performance Evaluation Process Needs Improvement***

The DOC needs to assure each full-time employee receives, and respective personnel files contain, annual performance evaluations.

Additionally, personnel responsible for conducting employee annual evaluations should document areas in which employees need improvement including employee sexual harassment, sexual misconduct, and undue familiarity with inmates. (We report in our section on Other Issues and Concerns, page 49, that some supplemental job descriptions to be used in DOC employee performance evaluations are inaccurate.)

The current Commissioner convened a Sexual Harassment Task force in October 2001 to "review and identify what specific action" the DOC should take as a result of recommendations provided by the National Institute of Corrections Technical Assistance Report. Among the actions the Task Force recommended were to develop:

- procedures that report, to upper level management, how lower level supervisors manage "lower level risky behaviors" of subordinates;
- policy and procedure that requires unit personnel report to Human Resources any behaviors handled at the unit level that, if continued, could potentially result in a sexual harassment complaint; this centralized reporting is supposed to assist the DOC monitor employee conduct and aid employees to take corrective action.

RSA 21-I:42 (XIII) and administrative rule Per 801.06 require all full-time classified employees to receive written performance evaluations at least annually. According to Per 901.03,

performance evaluations are required before employees receive annual increments. Our review of DOC personnel files showed some personnel received performance evaluations late or not at all. Human Resources personnel reported the DOC tracks the status of evaluations, knows it is not getting them returned timely, and that the Commissioner and Directors are aware of the issue.

We found evidence in some personnel files that some supervisors, either in written employee performance evaluations or counseling letters included in employee personnel files, counseled employees about the need for performance improvement. However, we found no mention of counseling or evaluation comments related to sexual harassment, sexual misconduct, or employee undue familiarity with inmates.

Human Resources management is responsible for coordinating and monitoring personnel management programs. A performance evaluation is an important management tool useful to annually summarize and communicate to an employee specific written performance expectations, accomplishments, and areas and means for improvement. Management review of performance evaluations can help management monitor employee conduct and gauge the existence, implementation, and effectiveness of corrective action plans.

### **Recommendation:**

**We recommend the Department ensure and document all full-time classified employees receive written performance evaluations at least annually, in accordance with RSA 21-I:42 (XIII) and administrative rule Per 801.06. Additionally, supervisors should 1) document areas that require employee improvement including employee sexual harassment, sexual misconduct, and undue familiarity with inmates; and 2) develop, implement, monitor, and adjust corrective action plans to remedy employee shortcomings.**

### **Auditee Response:**

*We concur in part. The NH Department of Corrections has a policy in place PPD 2.10 Employee Performance Evaluations that includes procedures that are in compliance with the State's Administrative Rules. The Department has utilized three state evaluation forms along with an additional evaluation form utilized for uniformed officers (approved by the NH Division of Personnel). The State has recently proposed new evaluation forms and the NH Department of Corrections will be adopting the new forms. Each form has a set of performance criteria the employee is evaluated on. Along with the evaluation is a procedural guideline that communicates to the supervisor how to approach an employee performance evaluation. Supervisors are aware they are to communicate to their employees about areas of improvement, however, specific notations of sexual harassment, sexual misconduct, or undue familiarity may not always be noted on an evaluation if allegations were unfounded or unsubstantiated. If investigative findings indicate other concerns, i.e., professional conduct due to inappropriate language, attitude, interaction with staff or inmates, it may not be specifically noted as sexual harassment, sexual misconduct or undue familiarity, but may be addressed under other areas of improvement in the evaluation, i.e. communication, leadership, cooperation, etc.*



*In compliance with our NHDOC policy, the Bureau of Human Resources sends out performance evaluation forms to Division Directors/Wardens, at least two months prior to the due date. These forms are tracked and monitored. On a quarterly basis, the Bureau provides a report to Division Directors/Wardens notifying them of any delinquent evaluations.*

*Upon review of our records, in calendar year 2000, 82% completed evaluations were returned, in 2001, 86% were returned and currently in 2002 in the first six months, 91% of evaluations sent out have been returned.*

*The Department has taken steps to begin attaching the State's Sexual Harassment policy to each employee evaluation and has developed a Basic Supervisory Training Program, that includes training on coaching and counseling employees, documentation and preparing for the performance evaluation.*

*Also, the Department has taken steps to ensure that employees who have been counseled regarding professional conduct in matters that could potentially put the department in a liability situation, receive a documented memo of counseling. The Department agrees that there is a need to monitor employee behaviors and to ensure that supervisors take appropriate corrective action, so future incidents are not repeated. Also, in addressing employee behaviors in the workforce, the Sexual Harassment Task Force in its review of the NIC report, included recommendations that the Department take steps to implement a tracking mechanism to monitor complaints of "Risky Behaviors" in an attempt to prevent any reoccurrence. As we work with our new training program and inform supervisors of their responsibilities in communicating performance expectations, the Department will take steps to develop a more formalized tracking of poor performance complaints, "Risky Behaviors," that impact the work environment.*

## **2.2 Investigations**

Reported allegations of sexual harassment or sexual misconduct by DOC personnel or volunteers require investigation. Sexual harassment investigations were primarily conducted by DOC employees together with DOC investigations personnel, or with personnel from other agencies. Changes in management at the DOC affected decisions regarding: 1) who was responsible for conducting certain employee investigations, 2) the Department's Bureau of Investigations' organizational structure and responsibilities, and 3) the Department's relationships with other investigative agencies. During most of the audit period, the Bureau of Investigations reported to an Assistant Commissioner and the Administrator of Security, and conducted or assisted in investigations of inmates and personnel including criminal or administrative investigations of assaults, theft, alleged sexual assault, and staff misconduct including sexual harassment. A State Police liaison had an office at the Concord Men's Prison, and that position conducted criminal investigations into cases such as murder and inmate assaults on staff (sometimes Bureau personnel worked cases with the liaison), reviewed case material, worked with county attorneys, and addressed grand jury investigations.

Following a change in Commissioners during calendar year 1999, the Bureau of Investigations became the Bureau of Internal Affairs. The new Bureau conducted both employee and prison inmate administrative and criminal investigations, and the State Police liaison was removed.

Internal Affairs moved to DOC headquarters and reported to the Commissioner, and the Bureau sent cases to the Office of the Attorney General and to county attorneys.

Under the current Commissioner, the Bureau of Internal Affairs reverted back to the Bureau of Investigations, and subsequently was dissolved in November 2001. Investigators were moved out to the prison facilities and directed to report to the wardens. The primary focus of investigations personnel is inmate issues with no focus on employee sexual harassment or sexual misconduct. The State Police liaison returned to the Men's Prison in Concord to handle criminal investigations. The Human Resources Administrator receives complaints of employee misconduct and assigns DOC personnel who volunteered to be investigators. The Director of the Division of Personnel also may appoint non-DOC personnel to assist in the conduct of employee investigations.

Personnel reported some case allegations were sent for possible criminal investigation to the Office of the Attorney General's Bureau of Public Integrity. The Bureau of Public Integrity may investigate cases or refer cases back to the DOC. Personnel at the Attorney General's Office and the DOC reported the Bureau of Public Integrity declined to investigate some cases because of staffing issues. Also, the Office of the Attorney General may ask the State Police to investigate certain cases.

Our audit procedures revealed issues with DOC investigations. The Department lacks sufficient internal guidelines directing how and when the DOC will involve internal and external personnel in investigating allegations of employee misconduct, including documenting requests for investigators. Sexual harassment investigators receive little training, and investigation written procedures are inadequate. We believe the DOC's preliminary reviews of employee-related allegations should be clarified. Also, we found the Department is non-compliant with State sexual harassment investigation timelines.

#### **Observation No. 6**

***The DOC Should Improve Guidelines Regarding Responsibility For Investigating Allegations Of Employee Misconduct***

During the audit period of FY 1997 through FY 2001, both the DOC and external agencies conducted administrative and criminal investigations of DOC employees, including allegations of employee-related sexual harassment, undue familiarity, and sexual misconduct with inmates. However, the DOC lacks sufficient internal guidelines directing how and when the Department will involve internal and external personnel in investigating allegations of employee misconduct, including documenting requests for investigators.

Various personnel conducted administrative or criminal investigations of DOC employees during the audit period including: the DOC Bureau of Investigations (called Internal Affairs during early 1999 through mid-year 2001); DOC non-Investigations Bureau personnel; non-DOC State employees selected by the Director of the Division of Personnel; State Police, including a liaison from the Major Crime Unit; and the Office of the Attorney General, Bureau of Public Integrity.

The DOC's and the State's sexual harassment policies generally outline requirements including how to report a complaint and request an investigator, and investigation timelines. However, as

discussed in Observation No. 7, page 30, DOC personnel reported the Department lacks written procedures governing sexual harassment investigations, including documentation requirements. The DOC Human Resources Administrator reported the need to update DOC investigation policy.

Some DOC sexual harassment investigation files did contain documentation regarding DOC requests to Department personnel or the Division of Personnel for assignment of sexual harassment investigators. However, the DOC lacks internal guidelines or policy directing when and how it should seek State Police or Bureau of Public Integrity involvement to criminally investigate a DOC employee. Nor does it require documentation regarding a DOC request for criminal investigation assistance by an external agency and agency response to a request.

Investigations training material prepared by the NIC reports it is critical to establish and maintain a partnership with parties responsible for investigations before a need for assistance arises, which could be established by memoranda of understanding. The DOC Human Resources Administrator reported a goal to meet with the Office of Attorney General and the State Police to work out an agreement determining how employee allegations are handled.

### **Recommendation:**

**We recommend the Department develop protocols outlining how and when the DOC will involve internal and external parties in investigations of employee-related allegations including appropriate documentation of DOC requests for investigators. Also, the DOC and external agencies should consider whether to develop and apply memoranda of understanding regarding investigations of allegations of misconduct including DOC employee-related sexual harassment, undue familiarity, and sexual misconduct with inmates.**

### **Auditee Response:**

*We concur in part. The auditors noted that a variety of personnel have conducted staff investigations over the last several years. While this is accurate, the reasons for doing so are not independent decisions made by the NHDOC but reflect some of the inherent characteristics of the State system. Depending upon the nature of the investigation (criminal versus administrative, staff misconduct versus staff sexual harassment), a different investigative resource is required. For example, the State Personnel Office conducts sexual harassment investigations and the State Police or the Attorney General's Office conducts criminal investigations while NHDOC completes investigations of staff misconduct of a non-criminal, non-sexual harassment nature. Based on these policies, a variety of resources/investigators may be involved in an investigation in an effort to complete the most thorough and useful investigation.*

*The NHDOC has improved its staff investigation process by removing this responsibility from the Investigations Unit and assigning it to upper level managers. This restructuring by the NHDOC Commissioner has improved the integrity of the investigations and the written documentation. However, there are still areas for improvement with regard to formalizing the investigative process.*

*The current process involves a review of the allegation (fact-finding) by the unit manager to determine if there is sufficient information to pursue an investigation. If there is sufficient information to warrant further inquiry in the form of an investigation, the Division Director/Warden will contact the Human Resource Bureau and request that an investigation be initiated. The Human Resource Bureau will assign one or more management level employees who do not work directly with or supervise the subject employee. The assigned investigator(s) is expected to complete a thorough investigation, compile a written report and forward it to the decision-making authority for any further action. Within seven days of the decision to conduct an investigation, the Division Director/Warden or designee will advise the subject employee of the initiation of the investigation. This notification is required by the labor contract with NHDOC employees. The investigation should be completed within 45 days per the labor agreement.*

*If the allegation involves potential criminal conduct, the information is referred to the State Attorney General's Office (AG's Office). The AG's Office will then determine if the matter will be forwarded to the State Police for criminal investigation. The potential criminal conduct may require a departmental administrative investigation as criminal conduct is a violation of the rules, policies and procedures for the NHDOC. Under the current arrangement, the NHDOC might be obligated to advise the subject employee of the allegation within seven days of the initiation of the investigation even if the State Police are going to embark upon a criminal investigation. As noted by the auditors, premature notification of the subject of a criminal investigation about a pending criminal investigation may compromise the State Police investigation.*

*A weakness in this process is that all of the criminal justice partners have not formalized a process for effectively addressing the criminal and administrative investigations and how they will be dealt with when they overlap. Nor is there a tracking system in place to document requests for outside investigative assistance and/or the response for such a request.*

*As indicated in Observation No. 7, NHDOC will be meeting with our partners in the criminal justice community to establish procedures for conducting staff investigations, including criminal, sexual harassment and non-criminal cases. Once the procedures are in place, a tracking system will be established so each request for investigation will be documented along with the response from the agency contacted by NHDOC.*

*When the procedures are established with our criminal justice partners, the understanding of the agreements and protocols will be reduced to writing and signed by the affected agencies. This will clarify the roles of all involved and should alleviate much of the confusion and improve the timeliness of these investigations.*

**Observation No. 7**

***Standards For Sexual Harassment And Sexual Misconduct Investigations Need Improvement***

Investigators of alleged DOC sexual harassment receive little training and written investigation procedures are not sufficient. Department training practice and policy is not

aligned with the investigation training materials developed by the NIC.

The DOC Human Resources Administrator reported that sexual harassment investigators receive little training. One employee who conducted investigations reported attending a couple seminars, reading several books, and receiving training from the Attorney General's Office, but no annual training. An investigator reported DOC sexual harassment investigation personnel may have received a one-day training in early calendar year 2001. Our file review of DOC training records revealed a small amount of documented sexual harassment investigator training for personnel selected to conduct investigations: the files of two personnel contained documentation of training in calendar year 1996, but no refresher training.

An Assistant Attorney General and a past sexual harassment investigator reported personnel need to have expertise in the conduct of sexual harassment investigations. The Assistant Attorney General, DOC investigative personnel, and others reported the current lack of investigator training is problematic. Additionally, the Executive Director of the NHCHR reported in one case of alleged harassment, the DOC investigators appeared not to understand how to conduct a sexual harassment investigation. The DOC employee who filed the sexual harassment complaint with the DOC subsequently filed a harassment complaint with the NHCHR.

Furthermore, personnel from agencies outside the DOC may be assigned by the State's Director of the Division of Personnel to team with DOC personnel to conduct sexual harassment investigations. (The DOC is not responsible for investigation training of non-DOC personnel.) The Director reported a need to provide investigators initial and refresher training, and mentioned receiving reports that some investigators have asked inappropriate questions and written inflammatory reports.

We also question if DOC or non-DOC personnel are sufficiently trained on how to proceed should they uncover possible staff sexual or other criminal misconduct during an investigation. DOC investigative and State Police personnel reported administrative and criminal cases are handled differently, and sometimes there is a fine line between criminal and administrative cases. (In the past, this issue may have been somewhat offset because Bureau of Investigations personnel assisted in conducting some DOC sexual harassment investigation interviews in the mid-to-late 1990s. Investigative personnel now rarely conduct administrative investigations, and only when contacted by the Human Resources section.) The DOC Human Resources Administrator reported investigators could ask the Administrator how to proceed. The Administrator in turn could ask the Commissioner and the Attorney General. However, the Administrator reported there was no policy governing the situation, the DOC is struggling with determining if an investigation is criminal or administrative, and was unaware of the difference between the rights of the accused in administrative and criminal cases.

DOC personnel reported there are no written procedures governing sexual harassment investigations, including documentation requirements. The Human Resources Administrator reported DOC investigation policy needs to be updated.

According to NIC training material, it is essential that agencies provide sexual misconduct pre-service and regular in-service training to staff having contact with prison facilities and inmates, to include explanations of agency internal investigative practices. Because training on the internal investigative process is often overlooked, employees may perceive the investigative

process as secretive, biased, and unfair. Staff may be unwilling to fully cooperate in investigations. Educating employees on the investigations process can: demystify the process; inform staff about their rights, obligations, and what to expect should staff become an investigation subject or witness; improve staff attitude that the process is unbiased; and increase appreciation that investigations actually help protect employees.

Material developed by the NIC also reported that it is unlikely an agency will be able to successfully pursue a staff criminal investigation after opening an administrative investigation because it is most likely criminal procedures and protections will have already been compromised in the administrative investigation. However, an agency can still administratively discipline staff for policy violations if a criminal investigation is declined by a prosecutor or guilt is not upheld by a court. NIC investigator training documentation recommends an agency base an investigation on the alleged event's most serious possible violation, and assign appropriate investigators.

### **Recommendation:**

**We recommend the Department ensure and document that DOC personnel who conduct employee investigations of alleged sexual harassment, sexual misconduct with inmates, or other areas receive sufficient initial and refresher training. We also recommend the DOC establish and follow sufficient written investigation procedures including investigation documentation requirements. Furthermore, the DOC should establish and document a protocol on who decides whether an investigation should proceed as a criminal or an administrative case.**

### **Auditee Response:**

*We concur. The current departmental policy for staff sexual harassment complaint investigations was written to reflect the State's policy for the investigation of sexual harassment allegations. The State policy requires an investigation be completed within 30 days of receipt of the complaint, however this standard is in conflict with the Department of Corrections sub-unit agreement with the Collective Bargaining Agreement.*

*We agree with the auditors findings that the process is cumbersome and confusing and we have worked with the NH Division of Personnel to address the issues surrounding extending the existing timelines in the State's policy to allow more flexibility in completing thorough investigations. Also, we concur that additional training is needed as well as further clarification of investigative procedures. The department will be taking steps to work with the Attorney General's Office, NH Division of Personnel and State Police to improve the manner in which investigations proceed and additional training for staff.*

## Observation No. 8

### ***DOC Fact Finding Process Needs Clarification***

The DOC conducts preliminary reviews to determine if employee-related allegations including allegations of sexual harassment are substantive enough to be formally investigated. However, DOC fact finding processes should be clarified. Observation No. 7, page 30, previously recommended the DOC establish and follow sufficient written investigation procedures.

The Commissioner stated all employee-related allegations will be investigated: some will have a formal investigation, some will undergo fact finding. Personnel who conducted investigations reported fact finding may be used to compile allegation-related background information such as the persons involved and the days an employee worked in a certain week. A warden reported fact finding could include statements from the complainant and the complainant's supervisor. The Human Resources Administrator stated fact finding is used to determine if events occurred, and could be a preliminary review to identify issues. A non-investigations employee reported fact finding occurred to obtain information sufficient to investigate a complaint. Investigative personnel reportedly were instructed to collect employee-related information, and if information indicated an employee might be guilty of an allegation, an investigation case was formally opened. Investigative personnel reported fact finding procedures are actually formal investigation procedures and that if the Bureau collected information during fact finding, it should be termed a formal investigation.

According to the Collective Bargaining Agreement, DOC bargaining unit employees are to be notified in writing within seven work days that the DOC has determined "an investigation of the facts or circumstances behind the complaint is to be undertaken." However, the Human Resources Administrator reported DOC wardens each respectively decide when the seven work day notification period starts, and staff are concerned about when an investigation is actually initiated.

Investigative personnel reported fact finding clouds a clear determination of when an actual investigation was initiated. Personnel reported fact finding has no set timeframe, and that it may take anywhere from a few hours, to a few days, to a few weeks.

### **Recommendation:**

**We recommend the Department review and formalize its fact finding practices, and provide guidance to management and employees to ensure the seven work day notification period for employee investigations is fairly and uniformly applied to all DOC personnel.**

### **Auditee Response:**

*We concur. As addressed in Observation No. 7, the fact-finding process is a review by an appointing authority of an allegation to determine if there is sufficient information to initiate an investigation. The appointing authority, i.e., Division Director/Warden, may delegate another supervisor to obtain further clarification and gather any additional information from the complainant, to determine if further inquiry into the allegation needs to be performed before*

*coming to a conclusion and taking corrective action. Also, the appointing authority may receive information, where a complaint has not been received. The appointing authority may seek additional information to determine if an investigation needs to occur. Fact-finding is an important aspect to determine whether a full investigation is needed. Once a staff member is put on notice that there is an investigation, it can lead to morale and perceptual issues so care must be taken.*

*Sexual Harassment complaints do not go through a fact-finding review, but are directed to the State Director of Personnel for investigation.*

*We agree that further review is needed to establish clear lines of communication when allegations are made about sexual misconduct and undue familiarity as to when investigations begin.*

*The Department will initiate steps to clarify the investigative process as previously addressed in Observation No. 7. Steps to clarify the investigative process will include reviewing the 7 workday notification of investigations, as well as conferring with the Attorney General's Office, NH Division of Personnel and State Police. Additional steps include contacting bargaining unit leadership, establishing and publicizing the process for investigations and ensuring that criminal investigations affecting NH DOC employees in the workplace are addressed uniformly and also consider NIC training for identified NH DOC managers and human resource staff.*

#### **Observation No. 9**

##### ***The DOC Is Non-Compliant With Sexual Harassment Investigation Timelines***

The State and DOC sexual harassment policies require a sexual harassment investigation be completed and written report issued within 30 days of receipt of a sexual harassment complaint. However, the DOC allows up to 45 work days or longer for employee investigations including sexual harassment investigations. Observation No. 7, page 30, previously recommended the DOC establish and follow sufficient written investigation procedures.

According to the State of New Hampshire Policy on Sexual Harassment issued by the Department of Administrative Services, Division of Personnel, "Investigations shall be completed and a written report issued within thirty (30) days of the receipt of the complaint." DOC Policy and Procedure Directive (PPD) 2.15 states, "Any sexual harassment complaints will be handled in accordance with the State's sexual harassment policy. See PPD 2.39." PPD 2.39 – Sexual Harassment, stipulates, "Investigations shall be completed and a written report will be submitted to the Commissioner within thirty (30) days of the receipt of the complaint." PPD 2.39 also requires the DOC ensure compliance with the New Hampshire Policy on Sexual Harassment. Neither the State nor DOC policy has language allowing timeline extensions for sexual harassment investigations. In addition, PPD 2.16 – Rules and Guidance for DOC Employees, explains failure to follow any and all DOC policies and procedures is a violation and may result in employee disciplinary action.

According to the Collective Bargaining Agreement, investigations of DOC bargaining unit employees are to be completed and a final report filed with the DOC Commissioner within 45



work days; the deadline may be extended by the Commissioner for “exceptional reasons.” DOC personnel reported, and our review of the DOC Human Resources investigations log indicated the DOC used the employee notification date to begin the 45-work day investigation period for employee investigations including sexual harassment investigations. The DOC Human Resources Administrator commented the DOC did not seek guidance from the Division of Personnel regarding sexual harassment investigation timelines.

The Director of the Division of Personnel reported the DOC should follow the State policy’s 30-day timeline for sexual harassment investigations, and the Collective Bargaining Agreement’s 45-work day timeline for DOC non-sexual harassment administrative investigations. According to the Director, there are no investigation extensions for sexual harassment investigations.

In effect, the DOC is substituting the Collective Bargaining Agreement employee investigation notification and timeline requirements for the sexual harassment investigation timelines required by State and DOC Sexual Harassment policies (see Table 3, page 35). Investigations that take longer than 30 days are non-compliant with State and DOC sexual harassment policy requirements.

**Table 3**

<b>Comparison Of DOC Investigation Timelines, And State And DOC Policy</b>			
	<b>STATE SEXUAL HARASSMENT POLICY (Division of Personnel)</b>	<b>DOC SEXUAL HARASSMENT POLICY (PPD 2.39)</b>	<b>DOC PRACTICE REGARDING SEXUAL HARASSMENT INVESTIGATIONS</b>
Investigation Length:	Up to 30 days	Up to 30 days	Up to 45 work days <sup>1</sup>
Investigation Timeline Begins When:	Complaint received	Complaint received	DOC notifies employee about investigation
Investigation Extension Allowed?	No	No	Yes – by the DOC Commissioner <sup>1</sup>
Written Report Due:	“within thirty (30) days of the receipt of the complaint”	“within thirty (30) days of the receipt of the complaint”	“within 45 work days” <sup>1</sup>
NOTE: <sup>1</sup> The Collective Bargaining Agreement states investigations of DOC bargaining unit employees are to be completed and a final report filed with the DOC Commissioner within 45 work days. The Commissioner may extend the deadline for “exceptional reasons.” Source: LBA analysis.			

**Recommendation:**

**We recommend the Department:**

- **be compliant with State and DOC sexual harassment policy investigation timelines,**

- seek guidance from the Division of Personnel about the DOC's interpretation of sexual harassment investigation timelines,
- seek to have the policies amended if the DOC finds that the 30-day timeline required by policy is unreasonable, and
- provide educational information to persons governed by the DOC sexual harassment policy to ensure personnel understand (1) the sexual harassment investigation period and (2) failure to follow policy and procedure is a violation that may result in disciplinary action.

Auditee Response:

*We do not concur. The State's Policy does indicate that sexual harassment investigations shall be completed and a written report issued within thirty (30) days from the receipt of a complaint. The issues of timelines with the State's Policy have been an ongoing concern, as the State's investigations generally take longer than what is anticipated. The Department's Human Resource Administrator along with other state human resource representatives and the Director of State Personnel have had meetings to address several issues regarding the State's Sexual Harassment Policy. Recommendations have been made to amend the State's Policy. The recommendations include changing the timelines from 30 days to 60 days with allowance to request extensions for an additional 60 days. This would provide 120 days to complete an investigation, allowing sufficient time to do a complete and thorough investigation.*

*As noted in this observation, the Collective Bargaining Agreement, which includes the Department of Corrections sub-unit agreement, provides timeframes for investigations. This language was agreed to by the State, NHDOC and the SEA to ensure that any employee who was to be under investigation was promptly notified of allegations made against them, informing them of their rights and establishing a reasonable timeframe to complete an investigation. The State's Collective Bargaining Agreement is an agreement between the State of New Hampshire and the State's Employee Association and supersedes any policy.*

*Recommendations in this observation have been addressed as previously noted above and the Department will continue to work with the Director of the NH Division of Personnel to amend the State's Policy. Also, to clarify timeframes, the department will amend their Sexual Harassment policy to reflect the 45 workday timeline, as approved under the Collective Bargaining Agreement.*

### **2.3 Training**

Recurring training for employees about sexual harassment can minimize an agency's harassment-related liability or damages. The United States Equal Employment Opportunity Commission policy guidance on sexual harassment reports that an employer may reduce sexual harassment-related liability or damages through clear and regular communication of an explicit sexual harassment policy, and by showing it provided training to all employees. It can be equally important to inform non-employees about an agency's sexual harassment policy. As discussed in section 1.4, page 14, an employer may be liable for sexual harassment committed by non-

employees such as volunteers or contractors; the liability test applied is the same one applied towards allegations of co-worker harassment.

The DOC uses training, among other methods, to inform employees about sexual harassment. The New Hampshire State Policy on Sexual Harassment establishes minimum sexual harassment training standards for agencies. The State policy stipulates an agency must provide each recently hired employee with a copy of the policy, and require new hires read the policy and sign a statement that acknowledges the policy. The policy also requires all supervisory employees annually participate in training on sexual harassment and other forms of discrimination, including types of workplace behavior that are not tolerated. Moreover, agency supervisory employees are responsible for knowing the State's policy and giving similar training sessions on sexual harassment to other employees. DOC Policy and Procedure Directive 2.39 governs sexual harassment-related employee grievances, describes procedures and responsibilities for employees, supervisors, and others and requires employees know and comply with the State sexual harassment policy.

DOC employees receive initial sexual harassment and other training through the Police Standards and Training Council's Corrections Academy. During the audit period, the DOC's Bureau of Training was responsible for providing and documenting annual sexual harassment training for all employees.

Additionally, the DOC implemented a new supervisor sexual harassment training program early in January 2002. (The first class consisted of non-prison facility employees.) Current prison facility supervisory personnel will be scheduled for the training once the DOC prison wardens identify them. The DOC hopes that eventually all its estimated 250-300 supervisors will attend the new training, as well as personnel subsequently promoted to supervisory positions. The class size for each training cycle will be about 24 personnel.

Our review of DOC training efforts showed some improvement is needed. We found gaps in required sexual harassment training and training documentation for employees and management. Departmental pre-service and in-service training generally overlooked volunteers in the areas of sexual harassment, sexual misconduct, and undue familiarity with inmates. Staff pre-service and in-service training about sexual misconduct with inmates was insufficient, as was in-service training regarding staff undue familiarity with inmates.

**Observation No. 10**

***The DOC Needs To Ensure Sexual Harassment Training Occurs And Is Documented***

Not all DOC personnel received required annual sexual harassment training and information during the audit period of FY 1997 through FY 2001. The New Hampshire

Policy On Sexual Harassment requires all supervisory employees to attend sexual harassment training annually, and to meet with their respective employees to provide sexual harassment information including reporting procedures and penalties for sexual harassment.

During the audit period, the DOC's training section provided sexual harassment training to supervisory and non-supervisory prison and non-prison personnel, and documented in training files the personnel who attended. However, we found gaps in training and documentation:

- For calendar year 2000, supervisor-only training was held mid-December 2000 due to changing Commissioners, training personnel, and training plans. Personnel reported not all supervisors received the required training during calendar year 2000; our review of related attendance rosters confirmed this. Furthermore, only one prison facility provided the training section with documentation attesting non-supervisory staff either were present for or read a sexual harassment briefing. None of the training files we reviewed contained any documentation for annual sexual harassment training for calendar year 2000.
- Our file review of 30 DOC personnel training files (not including calendar year 2000) revealed no documentation for sexual harassment training for ten employees for one year each, and no documentation for two years for two employees each.
- We conducted a separate file review of management training folders, which also showed gaps in documentation for sexual harassment training for the audit period. We reviewed training folders for 12 management personnel including the Commissioner, current wardens, the Director of the Division of Administration, the Director of Industries, the Human Resources Administrator, and the DOC central office attorney. All but one folder (not including calendar year 2000) lacked at least one piece of documentation for sexual harassment training, two had no documentation, and another had documentation for only one year. Additionally, the names of six of the eleven management personnel employed during calendar year 2000 were not present in that year's sexual harassment training attendance rosters.

The Commissioner reported setting the tone for a zero tolerance sexual harassment policy, and that supervisors are key to enforcing this policy. However, the zero tolerance message and concurrent preventive efforts may be diluted when management, supervisory, and non-supervisory personnel do not always receive required sexual harassment training and information. If supervisory personnel do not consistently attend sexual harassment training, then their ability to effectively communicate and apply policy to their subordinates may be compromised.

Furthermore, lack of sexual harassment documentation related to personnel and training may expose the DOC to legal risk. The United States Equal Employment Opportunity Commission (EEOC) policy guidance on sexual harassment states an effective sexual harassment prevention program includes an explicit sexual harassment policy that is clearly and regularly communicated to employees. The EEOC also reports in the case of proven sexual harassment by a supervisor, the employer may raise an affirmative defense to liability or damages, in part by proving the employer exercised reasonable care to prevent any harassment. EEOC guidance maintains that reasonable care for an employer may include providing training to all employees. Without adequate training documentation, the DOC may not be able to substantiate that employees received training, or that the DOC took reasonable care to prevent sexual harassment.

**Recommendation:**

**We recommend the DOC ensure all personnel annually receive required sexual harassment information and training, and documentation accurately reflects personnel sexual harassment training histories.**

**Auditee Response:**

*We concur in part. The NH Department of Corrections has provided sexual harassment training for all their employees since 1995. Workshops for supervisors that included sexual harassment have been provided periodically since 1995. Supervisory personnel as well as correctional line staff have participated in sexual harassment training that has been offered through our Correctional Academy program since 1990. Annual in-service sexual harassment training has been provided consistently since 1995. Recognizing the need to develop training for supervisors, the department along with the assistance of the Human Rights Commission has developed a lesson plan specifically for supervisors. The first training session was piloted and presented to supervisors within the Division of Field Services in January, 2002. The development of this course is part of the department's ongoing training efforts to provide necessary training to its supervisors and managers.*

*Also, noting that the tracking and subsequent documentation process in the department has been inconsistent, the department's Training Bureau has developed a database that tracks employee participation in training. This database is a new tool to ensure that supervisors meet the required annual training. With this database in place, the department will be able to notify not only line employees of required annual training, but supervisory personnel as well and will aide in developing reports to communicate to supervisory personnel of those employees who have or have not participated in required training.*

*The establishment of our database files began in the later part of 2001, and upon review of those records the department trained 763 employees. From January, 2002 to date, the department has provided sexual harassment training to 607 of its employees. Also, on July 15, 2002, the Executive Staff Team, which includes Wardens, Directors, Human Resource Administrator and Staff Attorney will be participating in sexual harassment training.*

*Communicating the State's Policy on Sexual Harassment to our employees as well as the department's policy is essential in preventing sexual harassment in the work place. To ensure that this is communicated on an annual basis, the department has initiated steps to begin attaching these policies to employees annual performance evaluation forms and will be requiring that supervisors review them with their employees at the time of an annual performance review. With the above noted policies becoming part of an employee's performance evaluation, this will provide documentation histories to demonstrate that the policy has been reviewed and discussed with the employee, by that employee's supervisor.*

## Observation No. 11

### ***DOC Volunteer Training Needs Improvement***

Training for the Department's prison facility volunteers needs improvement. Department policy calls for a structured volunteer program

that recruits, selects, orients, trains, and supervises volunteers, who in turn may provide inmate services within the State's prison facilities. We found Departmental pre-service and in-service training generally overlooked volunteers in the areas of sexual harassment, sexual misconduct, and undue familiarity with inmates.

Our interviews with the Commissioner, wardens, ranking uniformed officers of prison facilities, and facility supervisors of volunteer activities revealed negligible focus on volunteer training regarding facility sexual harassment and sexual misconduct with inmates. Volunteers do receive some initial orientation information about undue familiarity with inmates. No interviewee disclosed volunteers receive any in-service training regarding sexual harassment, sexual misconduct, or undue familiarity with inmates. Furthermore, one supervisor of volunteer activities reported not all volunteers who were required to attend orientation actually attended; the volunteers still were permitted to interact with inmates.

The Commissioner and wardens generally were unaware of what information was provided in volunteer training. One facility's warden reported volunteers are provided a handbook, yet the supervisors for volunteer activities reported there is no volunteer handbook. Additionally, wardens were unsure if volunteer orientation required volunteers to read and sign a form acknowledging understanding of the Department's sexual harassment policy.

The NIC reports agencies should provide documented sexual harassment and sexual misconduct pre-service and in-service training for staff and all other persons who have contact with prison facilities and inmates including volunteers. The NIC also reported a criminal justice agency may be held responsible for sexual harassment by a non-employee over which the agency has control. Insufficient initial and follow-on training for volunteers may increase the likelihood of volunteer incidents of sexual harassment, undue familiarity with inmates, and sexual misconduct with inmates.

### **Recommendation:**

**We recommend the Department ensure and document volunteers receive initial and refresher information regarding sexual harassment, sexual misconduct, and undue familiarity with inmates.**

### **Auditee Response:**

*We concur. The department's orientation for volunteers has included a check off list of information that is provided to volunteers entering the respective facility that includes some elements of conduct and interaction with inmates. However, this information does not specifically address sexual harassment, sexual misconduct or undue familiarity with inmates.*

*A committee has been formed to review the current Citizen Involvement and Volunteer policy to incorporate language regarding the volunteer's responsibility to adhere to established departmental policies regarding the above. Also, this committee will be developing a database to track volunteers and to develop methods to ensure that through the initial orientation volunteers are informed and are provided training regarding sexual harassment and conduct working with the inmate population and that ongoing communication regarding sexual harassment, sexual misconduct or undue familiarity with inmates is provided.*

**Observation No. 12**

***Staff Sexual Misconduct Training Needs Improvement***

Uniformed and non-uniformed prison facility personnel who come into contact with inmates should receive additional training about sexual

misconduct with inmates. Department training practice and policy is not aligned with the recommendations of the NIC.

The NIC reports agencies should provide sexual misconduct pre-service and regular in-service training to staff having contact with prison facilities and inmates. The NIC recommends the training include explanations of the agency's zero tolerance sexual misconduct policy as well as agency internal investigative practices. Observation No. 14, page 44, reports the Department lacks a sexual misconduct policy. Interviews with the Commissioner, wardens, the human resources administrator, training personnel including the training director, and prison facility personnel including senior ranking uniformed officers generally informed us sexual misconduct receives negligible focus when employees attend the Corrections Academy, and the Department's training section conducts no annual sexual misconduct training.

We interviewed various senior and non-senior uniformed and non-uniformed personnel at three prison facilities, who reported as follows:

- at only one of the three prison facilities does the most senior correctional officer require correctional officer supervisors to periodically inform subordinates about sexual misconduct;
- only three of the 21 (14%) non-senior uniformed and non-uniformed prison facility personnel we interviewed reported receiving any supervisor trainings or briefings about sexual misconduct issues; and
- six of the 21 non-senior personnel reported being supervisors; of those six, only one supervisor (17%) reported providing sexual misconduct briefings or trainings to subordinates.

Policy and Procedure Directive (PPD) 4.1, Department of Corrections Training Policy/Program, provides guidance regarding minimum training requirements. We note the minimum standards for the eight-week pre-service Corrections Academy Curriculum do not specifically mention staff sexual misconduct with inmates; it did include sexual harassment. Annual in-service training requirements listed within PPD 4.1 do not list sexual misconduct training.

The NIC reports agencies should provide documented sexual misconduct pre-service and in-service training for staff who have contact with prison facilities and inmates. Insufficient initial

and follow-on training for staff may increase the likelihood of incidents of sexual misconduct with inmates.

**Recommendation:**

**We recommend the Department ensure and document prison facility personnel receive pre-service and annual in-service training regarding sexual misconduct with inmates.**

*Auditee Response:*

*We concur. The current information and training provided to all new employees include reading materials approved by the American Correctional Association. The courses are, “Working in Jails and Prisons” and “Games Criminals Play”. The Corrections Academy also provides a course on “Anatomy of a Set-Up”. The training introduces employees to the penal environment and focuses on making the employee aware of inmate conduct and motivations inmates may have when interacting with staff. However, it does not specifically address professional boundaries between staff members and inmates as it relates to sexual misconduct.*

*Departmental policy PPD 2.16 Rules and Guidance for Employees, as provided in Observation No. 14, will be formally amended including language to make it clear, sexual misconduct is a departmental violation. This policy is provided to new employees upon their first day of employment. During the review of the policy, the employees are informed that any violations would subject them to possible disciplinary or criminal action.*

*To provide more specific information related to sexual misconduct, the New Hampshire Department of Corrections will be taking steps to address additional training needs by:*

- 1. Evaluating the training program currently in place to determine whether information can be included to address sexual misconduct and professional boundaries between staff and inmates. If not, develop a new training curriculum on sexual misconduct and include this training in the new hire orientation and offer sexual misconduct training during the Department’s annual in-service training program.*
- 2. Work with Police Standards and Training representatives to develop training that can be provided to academy participants focusing on the NH Department of Corrections expectations regarding staff-inmate interactions and zero-tolerance of sexual misconduct.*

**Observation No. 13**

***Staff Training Regarding Undue Familiarity With Inmates Needs Improvement***

Uniformed and non-uniformed prison facility personnel who come into contact with inmates should receive additional training about undue familiarity with inmates. Department training

practice and policy is not aligned with training material developed for the NIC.

Training material developed for the NIC reports staff undue familiarity with inmates – also known as over-familiarity between staff and inmates, unprofessional relationships with inmates,



unauthorized behavior, or conduct unbecoming an officer – can include the following improper activities between a staff member and an inmate: use of first names, small favors, letter writing, and exchange of photographs. The NIC also reported unchecked cases of undue familiarity between staff and inmates often led to serious issues including the introduction of contraband and staff sexual misconduct. DOC personnel including senior correctional officers, non-senior uniformed and non-uniformed personnel, and investigation personnel reported undue familiarity can lead to staff sexual misconduct.

Various uniformed and non-uniformed prison personnel, including senior correctional officers, reported observing uniformed and non-uniformed staff, as well as a former Assistant Commissioner being unduly familiar with inmates. Our review of investigation files also confirmed there were founded cases of staff undue familiarity with inmates.

DOC Policy and Procedure Directive (PPD) 7.32, Inmate/Staff Relations, requires staff always be cautious to avoid becoming unduly familiar with inmates. PPD 2.16, Rules and Guidance for DOC Employees, lists “Undue Familiarity with Persons Under Departmental Control and Their Families,” as a policy violation, and prohibits the following behaviors between staff and persons under DOC control or their families: staff undue familiarity, staff allowing persons to be unduly familiar with staff, staff maintaining off duty contact with persons without the Commissioner’s written permission, and not reporting in writing to Investigations when a friend or family member becomes a person under DOC control. PPD 2.16 also lists as policy violations correspondence with and extending favors to persons under departmental control or their families, and giving to or accepting items from such persons.

Training material developed for the NIC reports agencies should provide an explicit policy of zero tolerance for staff sexual misconduct including clearly identified prohibited behaviors and a strong commitment to staff training. NIC training documents also recommend related documented pre-service and in-service training for staff who have contact with prison facilities and inmates. Personnel reported relevant pre-service instruction is provided through the Police Standards and Training Academy Correctional Officer courses. However, interviews with DOC personnel including senior and non-senior correctional officers, non-uniformed personnel, the Training Director, and the Human Resources Administrator revealed personnel do not receive annual training on undue familiarity with inmates.

Insufficient follow-on training for staff may increase the likelihood of incidents of undue familiarity and sexual misconduct with inmates.

### **Recommendation:**

**We recommend the Department ensure and document prison facility personnel receive annual in-service training regarding undue familiarity with inmates. The Department may wish to consider providing this training as a part of staff sexual misconduct training.**

Auditee Response:

*We concur. As noted in Observation No. 12, new employees receive a copy of our Policy and Procedure directive that lists undue familiarity with inmates as a departmental violation. Also, new employees are required to take correspondence courses that have been approved by ACA that provides them information on working in jails and prison and games criminals' play. However, professional boundaries and interactions with inmates regarding undue familiarity and sexual misconduct are silent.*

*The Department will be taking steps to address this by reviewing the current curriculum and include training that addresses expectations regarding professional boundaries between inmates and staff that can be included in sexual misconduct training and have the training part of the Department's annual in-service training program.*

## **2.4 Rules And Policy**

RSA 21-H requires the Commissioner to adopt administrative rules, including ones relative to the management and operation of State correctional facilities and other facilities under the Commissioner's control, and the activities of visitors to Department institutions and facilities. The Commissioner must establish written standards governing the behavior and responsibilities of inmates. Also, the Department develops and applies Policy and Procedure Directives (PPDs) that convey requirements and guidance enforceable on DOC personnel and others, including visitors and volunteers. Our audit procedures revealed areas related to policies and rules that require improvement.

### **Observation No. 14**

***The DOC Lacks Policy Prohibiting Staff Sexual Misconduct With Inmates***

The DOC lacks policy informing staff about prohibitions to and the consequences of staff sexual misconduct with an inmate. The Department's Policy and Procedure Directive 2.16, Rules and Guidance For DOC Employees, states sexual harassment or sexual misconduct as defined by the State of New Hampshire Sexual Harassment policy is prohibited. Our review of the State policy showed reference to employee sexual harassment, not employee sexual misconduct with an inmate. Additionally, the employee handbook refers to the employee sexual harassment policy, but does not address employee-inmate sexual conduct.

State statutes specify that a person who has supervisory authority over an incarcerated person, uses that authority to coerce the incarcerated person to submit, and:

- subjects the incarcerated person to sexual contact is guilty of a misdemeanor of sexual assault;
- subjects the incarcerated person to sexual contact and causes the incarcerated person serious personal injury is guilty of felonious sexual assault; and
- engages in sexual penetration with an incarcerated person is guilty of felonious aggravated sexual assault. Statute specifies consent of the victim shall not be a defense.

The NIC reports state agencies should have explicit zero tolerance policies that:

- clearly “define, prohibit, and delineate penalties for sexual misconduct involving staff and inmates.”
- identify in detail acceptable and unacceptable behaviors; prohibitions against sexual contact, sexual abuse, and sexual harassment should explicitly identify prohibited behaviors.
- must apply to “all employees, to contractors, to volunteers, and to any other individuals who have access to facilities and to inmates.”

According to the NIC, unaddressed sexual misconduct may lead to litigation.

**Recommendation:**

**We recommend the Department develop and distribute a detailed zero tolerance policy prohibiting and listing the consequences of sexual misconduct with an inmate by any Department employee, contractor, volunteer, and other individual who has access to State facilities and to inmates.**

**Auditee Response:**

*We concur in part. We concur with the recommendation by the Audit team that we specifically have a zero tolerance policy regarding staff, employee, contractor, and volunteer sexual misconduct with an inmate and listing consequences. We have amended Policy 2.16 to reflect that the department has a zero tolerance policy toward sexual harassment and misconduct. We specifically prohibit these behaviors by supervisory, non-supervisory, volunteers, contractors, or others at DOC facilities. We reiterate that sexual conduct with inmates is a criminal act and forbidden. We list specific conduct between staff and inmates which is also forbidden.*

**Observation No. 15**

***Inmate Manual Needs Improvement***

Prison facility inmate manuals need to be updated. Inmate manuals provide rules and regulations that set out detailed inmate behavioral and programmatic expectations. However, our review showed current facility manuals are calendar year 1998 editions that contain some outdated content, need clarification, or are incomplete.

For example, current inmate manuals contained references to tobacco including rules about purchasing cigarettes, and smoking in designated smoking rooms and in bed. However, New Hampshire State prisons have been tobacco-free since 1999.

Manuals inform inmates that certain sexually-related behaviors are punishable infractions, including:

- 8-B. Engaging in sexual contact with another.
- 9-A. Sexually assaulting any person.

- 10-B. Requesting, demanding, threatening or in any way inducing another person to engage in any sexual activity or any other forbidden contact.

It is unclear if rule 8-B refers only to sexual contact between inmates, or includes non-inmates such as uniformed and non-uniformed staff, volunteers, contractors, and visitors. Furthermore, State statutes specify that a person who has supervisory authority over an incarcerated person, and has sexual contact with the incarcerated person, is guilty of sexual assault. However, prison inmate manuals lack language about statutorily prohibited staff sexual contact with inmates.

We also note one facility's manual clearly states inmates who become or attempt to become unduly familiar with staff are guilty of an infraction; however, undue familiarity is not defined in the manual. Furthermore, another facility's manual lists no infraction regarding inmate undue familiarity with prison staff.

The NIC reports state agencies should provide inmates basic sexual misconduct information and ensure inmates are aware of relevant policies and state law prohibiting sexual misconduct. The NIC recommends inmates understand sexual misconduct related-penalties including those for false allegations.

Inmate good conduct and adherence to Department rules and regulations factor into inmate sentence and classification reviews; unclearly written manual rules and regulations may adversely affect inmates.

The Department is statutorily responsible for the safekeeping of inmates. The Commissioner is statutorily required to establish written standards regarding inmate behavior and responsibility, and exercises general supervisory and appointing authority over all department personnel.

### **Recommendation:**

**We recommend the Commissioner ensure each prison facility's respective inmate prison manual is reviewed and updated.**

### **Auditee Response:**

*We concur. Currently, each facility is in the process of reviewing their inmate manuals to ensure that information contained includes policy language as addressed in our response in Observation No. 14 and Observation No. 17 so current policy language and institutional changes are reflected in the document.*

*Upon completion of those inmate manuals they will be reviewed to ensure that language is consistent regarding policy changes.*

**Observation No. 16**

***The DOC Needs To Display Educational Posters***

The New Hampshire Policy On Sexual Harassment requires conspicuous and continuous workplace display of sexual harassment educational posters that communicate the State’s opposition to sexual harassment and the right to report sexual harassment. However, our inspections of DOC prison facilities disclosed the DOC does not display the required posters. All DOC personnel including prison wardens are required to know Sexual Harassment Policy and Procedure Directive (PPD) 2.39; Attachment 1 of PPD 2.39 is the New Hampshire Policy on Sexual Harassment.

The Human Rights Commissioner reported the Human Rights Commission has posters and information about where posters should be located.

**Recommendation:**

**We recommend the DOC obtain and display educational posters communicating the State’s opposition to sexual harassment, in accordance with the State policy on sexual harassment.**

**Auditee Response:**

*We do not concur. The NH Department of Corrections has posters that have been obtained from the NH Human Rights Commission that are posted throughout the Department’s facilities. The posters prohibit discrimination in the workplace and sexual harassment is listed.*

*To confirm the above, we contacted each site and they confirmed that the above noted posters are and have been on their bulletin boards. Also, upon speaking to the Human Rights Commission, there are no educational posters solely addressing sexual harassment. The Division of Personnel has also confirmed that there are no other educational posters available except what is provided by the Human Rights Commission.*

*However, to ensure that sufficient information is posted, we will be sending out a notice to all facilities informing them that they are to post the Department’s policy on Sexual Harassment along with the State’s Policy at each work site.*

**Observation No. 17**

***Rules And Policy Regarding Inmate Visitation Need Clarification***

The Department should review and clarify the rules and policy regarding inmate visitation, including the boundaries of volunteer physical contact with inmates. Administrative rules and Department policies conflict. Prison facility personnel are unclear about the personal behavior boundaries for volunteers. Uniformed personnel reported volunteers hug or otherwise touch inmates, and some correctional officers categorized the behavior as undue familiarity with inmates. One facility’s Major reported that Department policy allows volunteers to hug inmates at the beginning and end of a session, and a Supervisor of Volunteer Activities reported religious program volunteers usually hug inmates before and after a service or retreat.

Department policy and information provided to volunteers indicate volunteers are an entity distinct from the general public, with specific rules and guidance including not to have physical contact with inmates. Policy and Procedure Directive (PPD) 2.24, Citizen Involvement and Volunteers, states it is not applicable to general public members who interact with inmates through the regular visitation process, prohibits approved volunteers from being on the visiting list of inmates, and states approved volunteers must acknowledge in writing to obey all Department policies. PPD 2.16, Rules and Guidance, lists as a violation undue familiarity with a person under departmental control. Furthermore, the Personal Safety Checklist provided to volunteers states, “Don’t allow an inmate to touch you,” and “Don’t touch an offender casually.”

PPD 7.9, Visiting Policy, establishes a policy and procedure for inmate visitations and to “foster relationships with family and community volunteers.” This PPD was cited by a prison facility’s Major as allowing volunteers to hug inmates. We note PPD 7.9 lacks any reference to the administrative rule governing inmate visitation (Cor 305.02), and contradicts the administrative rule in a number of areas:

- Cor 305.02 stipulates under what circumstances contact is allowed between visitors and inmates. However, PPD 7.9 differs in that it provides for only, and mentions no time limit on, hugging and kissing at the beginning and end of visits. It also restricts all visitors, not just those over 16, to handholding during visits.
- Cor 305.02 stipulates an allowance of five visitors plus approved family members; PPD 7.9 allows inmates a total of 20 visitors, and inmates serving a minimum term of 20 years “may add family members to their visiting list without regard to the 20-visitor limit.”
- Cor 305.02 only allows visits to inmates hospitalized in the community in case of life threatening illness or injury, verified by a treating physician. PPD 7.9 allows visits to inmates in outside hospitals granted with the warden’s approval.

### **Recommendation:**

**We recommend the Department:**

- **review and clarify volunteer policies especially in the area of volunteer physical contact with inmates;**
- **review and clarify visitation policies to ensure they are consistent with administrative rules, including referencing PPD 7.9 – Visiting Policy – to Cor 305.02; and**
- **inform affected personnel including supervisors of any changes.**

### **Auditee Response:**

*We concur. We have reviewed and modified the visiting policy so that it is consistent with the administrative rules. We have been meeting with the volunteer coordinators at all prison sites and are developing a handbook and additional uniform training for all volunteers. These changes will be passed to staff at briefings.*

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF CORRECTIONS  
SEXUAL HARASSMENT AND MISCONDUCT**

**OTHER ISSUES AND CONCERNS**

In this section we present an issue and concern we encountered during our audit not categorized as a formal observation yet we consider noteworthy. The Legislature may consider this issue and concern deserving of further study or action.

*Some Supplemental Job Descriptions Not Current*

Some DOC supplemental job descriptions of investigation and training personnel are not current or accurate. Personnel we interviewed reported supplemental job position titles and duties did not match their actual titles and duties. We also noted:

- DOC investigator position titles included “Internal Affairs”; however, the Internal Affairs Bureau was disbanded and the unit and personnel reorganized in calendar year 2000.
- One trainer’s supplemental job description accountabilities matched the duties the position performed last in mid-calendar year 1998, and differed greatly from the position’s current duties.
- Even though the minimum qualifications were changed and the position was reclassified in September 2001, the date of last amendment for the Human Resource Administrator’s supplemental job description was July 15, 1998.

Administrative rules require supplemental job descriptions:

- be developed and updated by either the appointing authority or the supervisor assigned to oversee the position;
- list duties specific to the respective individual position; and
- be used for future employee performance evaluations.

The Human Resources Administrator reported:

- the Commissioner was planning to reclassify the DOC investigator positions but change was slow;
- the trainer’s supplemental job description had not been amended since the position’s duties changed; and
- supplemental job descriptions generally are reviewed when positions become vacant and the DOC is recruiting, even though supplementals are supposed to be reviewed during annual performance evaluations; Human Resources conducts no spot checking of supplementals.

The Commissioner is statutorily responsible for general supervisory and appointing authority over all employees, subject to applicable personnel statutes and rules. A letter from the Division of Personnel’s Supervisor of Classification, in response to the Commissioner’s request for reclassification of the Human Resource Administrator position, shows the Commissioner reported the Human Resources Administrator position has oversight responsibility for all human resources activities and is viewed as an expert in those matters including personnel rules.

**Recommendation:**

**We recommend the DOC ensure supplemental job descriptions are current and accurate, in compliance with Division of Personnel rules.**

*Auditee Response:*

*We concur in part. The NH Department of Corrections attaches supplemental job descriptions to an employee's annual performance evaluation form for the employee and the supervisor to review at the time of the annual performance meeting. When the employee evaluation is returned the evaluation along with attachments are filed in the employee personnel record. This process establishes a chronological history of supplemental job descriptions in the employee record. A review of the supplemental at that time may not require changes to the document unless a supervisor provides notice that changes are needed.*

*Established supplemental job descriptions are maintained in an electronic file within the Department's Bureau of Human Resources and are updated as needed. Supplemental job descriptions are reviewed through the above described process and amended as needed. Also, if an appointing authority or full-time employee believes that a revision to the supplemental might affect the classification of the position and should have the option to request a determination from the Director of Personnel. This review is provided if the revision is a permanent work assignment which affects 10 percent of the total working time of the position.*

*Also, a review occurs when a position becomes vacant. This review takes place prior to the position being posted. The Human Resources Administrator and the respective supervisor review the supplemental job description prior to a recruitment announcement. At that time, the supplemental may or may not be amended. If changes are not needed, the amendment date is not changed.*

*The Internal Affairs Investigator supplemental job descriptions were not changed initially when the reporting structure changed. However, a vacant Internal Affairs Investigator supplemental job description was submitted to the State for reclassification to Corrections Sergeant. This was approved on May 29, 2002. Also, subsequent to that change, the Commissioner has met with the employees who have been impacted by the reorganization and has asked them to provide an amended supplemental job description and to submit completed job questionnaires so a reclassification request can be submitted to the Director of State Personnel. By the end of July, this package will be submitted to the State Director of Personnel for further review.*

*The training position was originally assigned to the Lakes Region Facility as an Institutional Staff Development Coordinator. It was subsequently assigned to the department's central Training Bureau to coordinate and assist the Training Supervisor and coordinate training activities at various facility locations. The supplemental was amended on June 24, 2002 and a copy is in the employee's personnel file.*

*The Human Resource Administrator (Administrator III) supplemental job description was amended on September 6, 2001 based upon the approval of the Director of Personnel and was*



*updated in the Bureau's electronic database. A copy of that supplemental job description has been placed in the employee's personnel file.*

*In the future, the Department of Corrections Bureau of Human Resources will send out periodic reminders to supervisors to ensure that they submit any recommended changes to an employee's supplemental job description to the Bureau along with an amended supplemental. Once these supplemental job descriptions are amended a copy will be sent to the employee to review and sign with a request to return the document back to the department's Human Resource Bureau so it can be placed in the employee's file.*

*Also, the NH Department of Corrections has developed a basic supervisory training program this past year, which includes training on performance evaluations. This training is focused on how a supervisor works with an employee to identify and discuss performance expectations. The department will also begin to incorporate information on how to review and amend supplemental job descriptions.*

**THIS PAGE INTENTIONALLY LEFT BLANK**

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF CORRECTIONS  
SEXUAL HARASSMENT AND MISCONDUCT**

**CONCLUSION**

The Department of Corrections, through its programs and almost 1,100 uniformed and non-uniformed personnel, provide services related to the legislatively required custody, safekeeping, control, treatment, and rehabilitation of inmates. The DOC, through its Commissioner and management, is responsible for monitoring and overseeing personnel compliance with applicable statutes, rules, and policies. Our observations and recommendations reflect the status of management safeguards against instances of sexual harassment and sexual misconduct within the State prisons.

State law and State and Department policy prohibit harassment on the basis of sex. State statutes also prohibit correctional employee sexual misconduct with an inmate. The Department was unable, due to record keeping and tracking mechanisms, to efficiently, effectively, or accurately report information to DOC management and the Legislature regarding the numbers of allegations and proven cases of prison personnel-related misconduct including sexual harassment and sexual misconduct. We found the Department made progress to reduce the occurrence and State liability for, and manage instances of, employee-on-employee sexual harassment. However, our analyses indicate the DOC needs further improvement including the areas of prison employee professional culture, investigations, and training for staff and volunteers. DOC safeguards against sexual misconduct need improvement through increased management attention including the areas of training, investigations, and rules and policy.

Although DOC prison uniformed and non-uniformed employees, and prison volunteers are among the agency's most significant assets, the negative behaviors of just a few Department personnel, or others who come into contact with employees and inmates, can be far reaching. Sexual harassment and sexual misconduct may adversely impact programs, personnel, and inmates, as well as create State financial liability and diminish employee and public confidence in the Department. While each employee is responsible for following written DOC rules and procedures, the DOC cannot control every action and behavior of its employees and others over which it has responsibility. The DOC can minimize the risk of sexual harassment and sexual misconduct, and the consequences of such misbehavior to itself and the State, through prudent management and oversight. Our analysis indicates the Department has already made improvements toward safeguarding against instances of sexual harassment and sexual misconduct within the State prisons. We hope additional, important improvements will be forthcoming.

**THIS PAGE INTENTIONALLY LEFT BLANK**

**APPENDIX A**

**DOC COMMISSIONER'S LETTER TO THE FISCAL COMMITTEE**



JEANNE SHAHEEN  
GOVERNOR

*State of New Hampshire*

DEPARTMENT OF CORRECTIONS

OFFICE OF THE COMMISSIONER

105 PLEASANT ST., MAIN BLDG., 4TH FLOOR  
P.O. Box 1806  
CONCORD, NH 03302-1806  
(603) 271-5600  
FAX (603) 271-5643

PHIL STANLEY  
COMMISSIONER

September 19, 2002

Fiscal Committee of the General Court:

The performance audit of the Department of Corrections recently completed by the Legislative Budget Assistant is very thorough and contains many excellent suggestions for improvement. The Department of Corrections has already implemented significant changes in personnel practices, training, and record keeping with regard to sexual harassment and sexual misconduct. In general, the Department of Corrections concurs with the findings of the performance audit report. There are some areas where we feel that the Department of Corrections should be given additional acknowledgement for progress made, which was not highlighted in the performance audit report.

First, I think it is important to put into context the historical perspective of the Department of Corrections leading up to the performance audit report. The New Hampshire Department of Corrections has been undergoing substantial change over the last ten years in sexual harassment and sexual misconduct prevention, both in training and personnel action. Ten years ago there was not training in this critical area. The New Hampshire Department of Corrections was a male dominated organization where harassment and intolerance of women in the work place existed. The organizational culture within the Department of Corrections needed change in this area. Previous commissioners instigated training and personnel actions including sanctions for staff who engaged in this behavior. When I became the commissioner of the Department of Corrections in May of 2000 I was advised that sexual harassment was a primary issue that needed to be addressed. I was advised that there was significant concern from the legislature over the frequency of sexual harassment complaints and the cost, in terms of settlement amounts, to individuals who complained about the departments handling of sexual harassment issues. In the past two years, I believe that significant progress has been made in the administration of personnel issues, including sexual harassment complaints. Direct action taken in the past two years to deal with concerns in this area have included the following:

- a. The Commissioner directed the administrator of the bureau of human resources to report directly. It was determined that if the department required change in the handling of personnel issues, direct action was needed. This has resulted in a comprehensive overhaul of how the department conducts personnel investigations, and delivers sanctions for staff misconduct.
- b. The relationship between the Department of Corrections and Personnel Appeals Board was reviewed and corrected. The overriding philosophy prior to the Commissioner's arrival was that the Department of Corrections would take personnel actions and if the Personnel Appeals Board

TTY/TDD: 1-800-735-2964

PROMOTING PUBLIC SAFETY THROUGH INTEGRITY, RESPECT, PROFESSIONALISM

overturned that action, then that was “their decision”. It was decided that was not an appropriate response. The Department of Corrections needed to take appropriate actions with regard to personnel issues, upfront in the investigation and sanctions stage and that we would make decisions that would stand the test of time with the Personnel Appeals Board. In the past two years, there has been no decision reached in a personnel matter relating to a sexual harassment complaint that has been overturned by the Personnel Appeals Board.

- c. The personnel investigations process was completely overhauled. Personnel investigations had been largely the responsibility of the bureau of internal affairs. Internal affairs was reorganized to the bureau of investigations and redirected their efforts toward inmate activities. At the same time, senior managers within the Department of Corrections were trained in personnel investigations. The practice prior to the current Commissioner was that personnel investigations would be conducted much as criminal investigations. That is not appropriate since very few staff misconduct issues result in criminal charges. The investigations process needed to be thorough and professional, but not oriented towards criminal prosecution. If criminal behavior was suspected, then outside investigation help would be requested. Senior managers are capable of performing the majority of personnel investigations. They were trained by staff from the State Police and as staff misconduct issues are raised, they are assigned to senior management staff for investigation as appropriate.
- d. There was a legislative concern that significant tax dollars were being spent on monetary settlements for sexual harassment complaints. In the past two years there have been no sexual harassment complaints, where there has been a completed investigation, which resulted in a settlement cost to the state.
- e. Technical assistance was requested from the National Institute of Corrections which resulted in a technical assistance report that recommended specific improvements in the Department of Corrections’ handling of sexual harassment and sexual misconduct issues.
- f. As a result of the technical assistance report, a task force of representatives from state government outside the Department of Corrections were appointed to advise the Commissioner with regard to specific steps for improvement in the handling of sexual harassment and sexual misconduct issues.
- g. Universal supervisor training (40 hours) is being required of all management and supervisory staff within the Department of Corrections. This is the first state agency which has required this level of training for management staff.
- h. Labor management relations have improved significantly over the past two years. Regular meetings were not occurring. They are now scheduled quarterly. Meeting minutes are jointly reviewed and signed. The Commissioner has received letters of support from the Union on key issues.

The above steps have been taken to provide quick, efficient response to allegations of sexual harassment and sexual misconduct issues. These issues have been consistently discussed at Executive Staff meetings.

The incidence of this behavior, while of concern, has not shown a marked increase. The LBA itself points out that of 31 alleged cases of sexual harassment within all state agencies from October 1990 through July 2001, there were two from the Department of Corrections. This represents 6.5% of all complaints.

The audit of the Department of Corrections with regard to sexual harassment and sexual misconduct is an appropriate tool to improve operations. However, sufficient credit must be acknowledged for the changes that the Department of Corrections has accomplished in the past two years. It is definitely an area in which the Department of Corrections can be criticized over not only the past five years, but for many decades before that. Corrections organizational cultures are in a state of dramatic change over the past twenty years. This is true not only of New Hampshire, but across the country. Training and professionalism have continued to grow, but there is still room for improvement. I am proud of the 1,200 employees of the New Hampshire Department of Corrections. Together we are making significant changes and providing for public safety. That is the primary message that this report should convey.

Sincerely,

A handwritten signature in black ink, appearing to read 'Phil Stanley', with a long horizontal flourish extending to the right.

Phil Stanley  
Commissioner

**THIS PAGE INTENTIONALLY LEFT BLANK**



## APPENDIX B

### DOC SEXUAL HARASSMENT TASK FORCE REPORT

DRAFT

May 1, 2002

Mr. Phil Stanley, Commissioner  
NH Department of Corrections  
P. O. Box 1806  
Concord, NH 03302-1806

RE: Sexual Harassment Task Force Report

Dear Commissioner Stanley:

In October of 2001, you established this Task Force to review and identify what specific action the Department needed to take as a result of the NIC Technical Assistant Report provided by Dr. Mary West. This report evaluated the charges of employee sexual harassment in the New Hampshire Department of Corrections and the Department's response to such charges.

The sexual harassment task force members included an employee representative for the State Employee's Association, State Division of Personnel, NH Human Rights Commission, Commission on the Status of Women, a Legislator, and a NH Department of Corrections Administrator.

Based upon our review of Dr. West's report, we provide you the summary of the NIC recommendation, our review, our recommended action and a summary of implementation timeframes.

1. **RECORD KEEPING:** The NIC report recommended that the Department develop a computerized database to provide regular status reports to the executive team. This database would assist the department not only to track sexual harassment cases but other areas of financial risk.

**TASK FORCE REVIEW:** The Department of Corrections maintains a data base that provides status reports to the Executive Team on worker's compensation statistics provided by Liberty Mutual Risk Management. Also, the DOC maintains an integrated disability management system that tracks employee injuries and FMLA, which is maintained on an Excel spread sheet.

Since, Dr. West's report the Department's Bureau of Human Resources has developed a log that tracks all employee investigations. This log is inclusive of any sexual harassment complaint investigations. The reporting log documents the disposition of any action taken by management, such as counseling or disciplinary action. A comprehensive Sexual Harassment report was also developed and serves as a database, which is maintained and updated in Microsoft Word. Currently only those formal and written complaints of sexual harassment pursuant to the Department's and State's Sexual Harassment policy are reported/tracked. There is no mechanism in place that tracks other work place behaviors that could potentially create a financial risk to the Department.

**RECOMMENDED ACTION:** Since EEOC complaints could potentially pose a financial risk to the Department and to the State, EEOC complaints should be included in the Department's database for tracking. Tracking would include nature of the complaint and disposition. Also, it is recommended that procedures for reporting to upper levels of management be developed so the Human Resources Administrator and the Commissioner have a better sense of how lower-level risky behaviors are being handled by lower level supervisors.

2. **CENTRAL RECORD KEEPING:** The HR department should be responsible, by policy, for the database and tracking of complaints. All complaints would go immediately to Human Resources who would then be responsible for keeping the Commissioner and Staff Attorney informed.

**TASK FORCE REVIEW:** Since the NIC report the Bureau of Human Resources has been assigned the responsibility to track all employee investigations. Upon notification of a sexual harassment complaint, or a request to initiate an employee investigation from a Director or Warden, the Human Resource Administrator will assign an investigator and/or coordinate the assignment of investigators on sexual harassment complaints with the Director of State Personnel. Employee investigations are recorded on a tracking sheet and include the assignment date, nature of the complaint, completion date and disposition. The Human Resource Administrator monitors complaints under investigation to ensure compliance with Departmental and State policies, as well as the Collective Bargaining Agreement. Also, in regards to sexual harassment complaints, the Human Resource Administrator notifies the Commissioner of Corrections when a complaint is received and informs the staff attorney.

Sexual Harassment complaints received by the DOC Human Resource Administrator are subsequently reported to the Director of State Personnel and assignment of investigators is made and investigated. However, other employee behaviors, those that could potentially result in sexual harassment complaints, if not corrected, are not tracked nor have a central office-reporting requirement.

**RECOMMENDED ACTION:** The Department of Corrections should develop a policy and procedure that requires the reporting of any complaints on employee behaviors that could potentially result in a sexual harassment complaint, should the behavior continue. Unit personnel shall report to Human Resources whenever they receive an informal complaint/notice or observe risky behavior, which they decide to handle at the unit level. A description of the behavior, who complained, identity of person engaging in behavior, date of occurrence, and action taken, should be included in such a report. Given the nature of employee movement that occurs throughout the Department, this centralized tracking will assist the Department in monitoring employee conduct and aid them in taking corrective action.

3. **CENTRAL REVIEW OF CHARGES AND PROPOSED DISPOSITION:** Prior to administering corrective action and/or disciplinary sanctions it is recommended that the departmental attorney and the administrator of Human Resources review the document for technical accuracy, progressive discipline, appropriateness of the sanction and consistency. This would also allow a risk assessment in the case of appeal to the PAB.

**TASK FORCE REVIEW:** The Department's Human Resource Administrator is contacted whenever the Commissioner, Warden or Director determines that disciplinary action may be warranted. Facts and circumstances are reviewed as well as what sanctions should be imposed. Prior to issuance of any discipline, the Human Resource Administrator and Staff Attorney reviews the disciplinary letters for technical accuracy and evaluates information to determine the appropriate level of discipline.

**RECOMMENDED ACTION:** Practice is currently in place. No recommended action.

4. **LEGISLATIVE COMMUNICATION:** Develop effective communications between the Office of Commissioner Stanley and the Legislative oversight Committee. A formal process for meeting to share issues concerns and expectations should be developed. Commissioner Stanley should take the lead in this process.

**TASK FORCE REVIEW:** Commissioner Stanley has instituted quarterly meetings with the Legislative Committee providing an avenue for this committee to review departmental issues and

identify mutual expectations. Steps have been initiated to ensure open communication between the Legislative Committee and the NH Department of Corrections.

RECOMMENDED ACTION: No recommended action.

5. PERSONNEL APPEALS BOARD: Commissioner Stanley and his executive staff are recommended to take a proactive approach in educating and informing the PAB as to the correctional environment. Conversely, the PAB can educate the NHDOC regarding their concerns regarding employment issues. An initial key step would be tours of one or more of the prisons.

TASK FORCE REVIEW: Commissioner Stanley has extended an invitation to the Personnel Appeals Board to tour at the NHSP-Men. Also, the Department of Corrections has initiated steps to ensure that appropriate representation is present at any Personnel Appeals Board hearing. This representation would include the respective Warden or Division Director that issued the employee discipline and the Human Resource Administrator. Having this representation present will allow the Directors/Wardens to speak specifically to the facts and reasons for the issuance of discipline in relation to their facility and practices. Also, the Human Resource Administrator can be available to testify on any departmental practices or technical policy issues.

Providing appropriate representation at the PAB hearings should continue to be primary when preparing the Department's case to go in front of the Personnel Appeals Board. This will provide a forum for open communication and provide the PAB the opportunity to seek specific answers related to how the Department arrived at their decisions when issuing discipline.

RECOMMENDED ACTION: Steps have been taken to address the NIC recommendation. However, providing training for supervisors and Wardens regarding the NH Division of Personnel Rules will allow supervisors to have a full understanding of the tools they have in place. Mastery of those rules will give them confidence that their actions can withstand scrutiny in the event of a PAB appeal.

6. POLICY AND CONSEQUENCES OF NON-COMPLIANCE: It is critical for the Department of Corrections to have a philosophy and policy on sexual harassment that is effectively communicated to all staff. Consequences should be addressed in such a policy and be enforced consistently with due regard for the totality of the employment relationship of both the alleged offender and the alleged victim.

TASK FORCE REVIEW: With the review of the Department of Correction's Sexual Harassment Policy, along with the State's published Sexual Harassment Policy, it became increasing clear, that the reporting of sexual harassment was not only a concern for the Department but the State as well. Reporting other forms of harassment is an area that needs attention. Due to these concerns, the NH Division of Personnel is currently in the process of rewriting their Sexual Harassment Policy and issuing a Professional Conduct Policy for State employees. The policy not only speaks to sexual harassment, but unlawful discrimination and other forms of harassment, which would be unacceptable conduct in the work place. This policy includes what possible discipline may occur for infractions.

Currently, the NH Department of Corrections Policy provides the specific information to their employees about roles and responsibilities and procedures in reporting complaints. The Department has also published a pamphlet on "What is Sexual Harassment", that has been distributed to its employees and is provided to new hires.

RECOMMENDED ACTION: Section (b) in the Department's Policy and Procedure Directive 2.39 regarding the supervisor's responsibility in reporting sexual harassment complaints should be

amended to clarify the supervisor's responsibility in reporting sexual harassment complaints and potentially adverse behaviors within the Department of Corrections to the Human Resource Administrator. Also, since it is the expectation that NH Department of Corrections supervisors' model appropriate behaviors, it is recommended that supervisors' job descriptions include this language and in addition make supervisors accountable and responsible in reporting suspected harassment and dealing appropriately with it. Sexual Harassment training should also ensure that the zero tolerance aspect of the policy gets out to all employees, especially supervisors.

7. **NON-RETALIATION:** The Consultants strongly recommend that formal process for protecting staff who make accusations of sexual harassment be developed and effectively implemented.

**TASK FORCE REVIEW:** Currently, supervisor's who notify the Human Resource Administrator of sexual harassment complaints may or may not provide information to employees about what they should expect and what their rights are or make any referral to the Employee Assistance Program. The Department currently does not have a formal notification process that is issued to the complainant or the accused that communicates the employees rights or what steps will be taken to investigate the complaint. However, the Department has a notification process in place for those employees who will be investigated due to possible policy violations.

**RECOMMENDED ACTION:** A standardized notification letter should be developed and issued to the complainant as well as the alleged harasser when the Department is notified of a sexual harassment complaint. The notification should include language that the Department has received a complaint, what steps will be taken to investigate, informing the employee of their rights and responsibility as outlined in the Department's policy. Also included in this notification should be a referral to the Employee Assistance Program and a no retaliation notice.

8. **CENTRALIZED INVESTIGATION:** The Commissioner should appoint a staff person to be in charge of investigating sexual harassment complaints. This individual should be located in the headquarters of the NHDOC and report directly to the Commissioner. HR should immediately notify this person of any allegations.

**TASK FORCE REVIEW:** All complaints received by the DOC Human Resource Administrator are reported to the State Director of Personnel. Upon notification, the State Director of Personnel assigns an investigator or a team of investigators. These investigators may be external from the agency, or may include one investigator from the agency and one external investigator.

While reviewing issues surrounding employee behaviors that may result in another employee filing a complaint, the task force felt that employee behavior, such as unprofessional conduct and/or any other forms of harassment, if not addressed, could generate future complaints of sexual harassment. Currently, those behaviors may be handled at the facility level by counseling the employee however, no report or documentation is directed centrally to the Department in order to monitor employee conduct if conduct should rise to a sexual harassment complaint or disciplinary action.

**RECOMMENDED ACTION:** "Risky Behaviors" if not corrected lead to low employee moral and potential liability. It is recommended that a central complaint reporting mechanism be developed to track these behaviors, and corrective action, in an attempt to prevent any reoccurrence.

9. **STANDARDIZED INVESTIGATIONS:** When cases of sexual harassment are reported, the investigation process should be standardized and prompt. Investigations should be confidential, if possible given facts and circumstances. However the rights of all parties should be investigated with

a minimum of publicity. The interview process needs minimal structure, if possible separate the complainant from alleged perpetrator, accused should generally be moved.

**TASK FORCE REVIEW:** Sexual harassment complaints are reported to the Human Resource Administrator who notifies the Commissioner of Corrections and reports the complaints directly to the State Director of Personnel. The respective Warden/Director who makes the report to the Human Resource Administrator, also removes the alleged harasser from the work location either by reassignment or suspension with pay pending the completion of the investigation.

A consistent and standardized approach in investigating sexual harassment cases is currently in place as well as the removal of the alleged harasser from the work place.

**RECOMMENDED ACTION:** To lesson influence of “culture” of the Department on how evidence is perceived, it is recommended that sexual harassment complaints be investigated from someone outside of Corrections, but include a second member on the investigations team, from Corrections, to provide perspective on that culture.

10. **CONSEQUENCES OF SEXUAL HARASSMENT:** While every case is different, there seems to be inconsistencies between Administrative Rules and disciplinary sanctions imposed by the appointing authorities. Inequities also exist between the offense and sanctions imposed. If there were appropriate reasons documentation did not reveal them. Consultants recommend appointing authorities make every effort to review the employee’s employment history, precedent-setting cases, and sample letters before making final decisions.

**TASK FORCE REVIEW:** Sections 1, 2 and 3 of this report will aid the Department in documenting sanctions and provide a tool for review in determining sanctions imposed for a particular offense. The identified sections in this report demonstrate to the Task Force that the Department has taken steps to improve their tracking of employee complaints. Also, with some clarification to the Department’s sexual harassment policy in reporting complaints, the Department has begun to take steps to ensure that consistent notification to the Human Resource Administrator takes place. With the central reporting and the involvement of the Staff Attorney in reviewing disciplinary action prior to issuance, we feel the practice is in place and addresses the consultants concerns.

**RECOMMENDED ACTION:** No recommended action.

11. **COMMISSIONER REVIEW OF PROMOTIONS:** The Commissioner on a temporary basis should approve all promotions following the HR review of misconduct and performance documentation. The NH DOC should establish minimum qualifications, which exclude individuals whose background includes disciplinary action(s) from applying for or receiving promotions, for at least one year.

**TASK FORCE REVIEW:** The Department has a selection, promotion and retention policy that is currently under revision, requires that any employee to be selected for a position of a labor grade 18 and above needs to have the Commissioner’s approval. Also, Division Directors and Wardens are to ensure that personnel files are reviewed prior to making recommendations or approving candidates for promotion.

**RECOMMENDED ACTION:** Due to potential liability, adverse affects on employee moral, and the expectation that supervisors exhibit model behavior, the Department should include a statement in their policy that restricts employees, who have had discipline issued for those offenses related to unprofessional conduct or sexual harassment, from applying for promotion. The statement should be included on job announcements and included in the new hire orientation and training.

12. EXECUTIVE DEBRIEFING: A debriefing with the executive staff of the NHDOC on all cases of sexual harassment both won and lost is a process that would provide ongoing information needed to continually refine the process that the department employs with these cases.

TASK FORCE REVIEW: Historically, there has been no review or debriefing of sexual harassment cases amongst the executive team.

RECOMMENDED ACTION: It would be beneficial to establish a regular debriefing with the Executive Staff to review any court decisions on DOC sexual harassment cases. To review (1) where the Department was on the issue; (2) how they may have gotten there; (3) how to improve or what went well and (4) identify possible training needs. This will allow the Department to critique their policy and practices to evaluate if what they have in place works or does not work in preventing any further sexual harassment complaints.

13. TRAINING: Consultants recommend that the HR department develop appropriate competencies required of appointing authorities and train to those competencies. Create curricula with the Commission on Human Rights who have offered their assistance. Training should include: (a) measure of competencies before credit is received for the training; (b) leadership training after promotion; (c) train that includes expectations regarding interaction between rank; (d) an explanation of the difference between sexual harassment and unprofessional conduct.

TASK FORCE REVIEW: Since the NIC report, the Department of Corrections has been aggressive in their efforts in developing a Basic Supervisor Training Program to provide senior supervisors and new supervisors the tools and training needed to deal effectively with employee performance. This training has been modeled after the State's Certified Public Supervisor Program and is consistent with current training offered by the NH Division of Personnel. Also, with the assistance from the Director of the Human Rights Commission, the Department has developed a supervisor training on sexual harassment. This includes the legal responsibility of the supervisor, what steps to take when receiving a complaint of sexual harassment and what employee behaviors should be addressed in preventing sexual harassment in the work place. The Department also has revised their general sexual harassment curricula with assistance from the Director of the Human Rights Commission.

RECOMMENDED ACTION: On-going training in this area is very important and it is recommended that the Department include a pre-test/post test measure of competencies before anyone receives credit for the training.

14. REVIEW OF CONTROLLING LAWS AND REGULATIONS: A review of the NH Manual and Sexual Harassment, Statute of the NH Commission for Human Rights and Administrative Rules of the NH Division of Personnel are more than sufficient. NH DOC policies and procedures 2.16 and 2.39 are similarly complete. However, statement number 2.39 I.V. 4 seems vague and inconsistent with instruction from the Equal Employment Opportunity Commission.

TASK FORCE REVIEW: The Department's policy along with the NH Division of Personnel policy is in compliance with federal and state laws.

RECOMMENDED ACTION: To clarify that an employee can file concurrently with the NHDOC and the EEOC, it is recommended that section IV.A4 of the Department's policy be amended.

15. INVITATION: (No recommended action)

The Task Force recognizes the Department's efforts and positive changes in addressing the concerns of the NIC report. In three of the areas we reviewed, the Department has already taken action and no further recommendations were made.

In the remaining areas, we propose the following timeframes based upon approval of the recommendation: #1, 6, 9, 11, 14 (2 months), # 5, 7, 13 (3 months), #2, 8, 12 recommended action may require more discussion with Department heads, SEA and State Personnel in developing policy and implementation (6 months).

Respectfully submitted,

Sexual Harassment Task Force Committee,

Signed:

\_\_\_\_\_  
Lisa Currier, HR Adm.  
Dept. of Corrections.

\_\_\_\_\_  
Katherine Daly, Dir.  
Human Rights Comm.

\_\_\_\_\_  
Theresa de Langis, Ph.D.  
Exec. Dir., Comm. Status  
of Women

\_\_\_\_\_  
Thomas Manning, Dir.  
NH Div. Of Personnel

\_\_\_\_\_  
Michael Shaw, Steward.  
SEA Representative

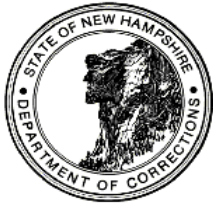
\_\_\_\_\_  
David Welch, Rep.  
NH Legislature

**THIS PAGE INTENTIONALLY LEFT BLANK**



APPENDIX C

DOC COMMISSIONER'S INTRA-DEPARTMENTAL MEMO  
REGARDING LETTERS OF WARNING



DEPARTMENT OF CORRECTIONS  
STATE OF NEW HAMPSHIRE  
P. O. BOX 1806  
CONCORD, NH 03302-1806

INTRA-DEPARTMENT MEMORANDUM

*Office of the Commissioner*

<b>TO:</b>	Warden's / Directors	<b>DATE:</b>	December 6, 2001
<b>FROM:</b>	Phil Stanley, Commissioner	Phone:	271-5603
		Fax:	271-5643
<b>SUBJ:</b>	<b>Letters of Warning</b>		
<b>CC:</b>	Lisa Currier		

\*\*\*\*\*

This is a subject that we have talked about before, but it continues to come up. Who has the authority to issue a Letter of Warning? In my view, the only staff authorized to issue a Letter of Warning is a Warden, a Director, or the Commissioner. Unless you are absent for a period of time longer than a week, I would not expect this authority to be delegated. Letters of Warning need to be done in a consistent fashion and need to be reviewed by Human Resources before delivery to the individual in question. Also, statements are sometimes made at the time of issuing a Letter of Warning to the effect that "this will be pulled within a year" or some other indication of the time limit that a Letter of Warning will remain in an individual's personnel file. No such comments should be made verbally or in writing. Any decision to withdraw a Letter of Warning from a staff members personnel file will need to be reviewed by the individual who has written the letter and the Commissioner. I will tell you ahead of time that my standard for removal of a Letter of Warning is very conservative. In my view, a Letter of Warning is a serious description of misconduct on the part of the staff. We should not issue them lightly, and we should not remove them quickly. A Letter of Warning is a disciplinary action. If we do not feel strongly that a Letter of Warning is in order as a consequence for some behavior, then we need to find an alternate form of communicating to a staff member that they need to correct their behavior.

If there is any concern with regard to these instructions, please do not hesitate to contact me.

---

Phil Stanley, Commissioner

**THIS PAGE INTENTIONALLY LEFT BLANK**