

LBA Performance Audit Report Summary:

Department of Corrections, Sexual Harassment And Misconduct Audit Report –
October 2002

This performance audit evaluates how reasonable are current Department of Corrections (DOC) 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.

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.

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.

Observations

The report contains a total of 17 observations with recommendations as a result of our audit.

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 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.