

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NEW YORK STATE POLICE
AND
THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES**

This Memorandum of Understanding (hereinafter, "MOU") is entered by and between the New York State Police ("State Police"), an office within the Executive Department, with its principal office at 1220 Washington Avenue, Building 22, Albany, New York, 12226-2252, and the Office for People With Developmental Disabilities ("OPWDD"), an office within the New York State Department of Mental Hygiene, with its principal office at 44 Holland Avenue, Albany, New York, 12229.

WITNESSETH:

WHEREAS, individuals with developmental disabilities have the right to live lives free from abuse and to receive the same protection against crime and response to crime as individuals who do not have developmental disabilities;

WHEREAS, OPWDD is charged with ensuring that individuals with developmental disabilities served in the OPWDD system receive high quality care and that the safety and well-being of the individuals served are of the highest priority; and

WHEREAS, OPWDD is charged with reporting abuse of any individual receiving services which may be a crime to law enforcement pursuant to New York State Mental Hygiene Law § 13.21 and OPWDD regulations at 18 NYCRR Part 624; and

WHEREAS, a mission of the State Police is to detect crime and other violations of law, pursue criminal investigations, and arrest criminals, in furtherance of protecting all citizens, including individuals with developmental disabilities at the locations set forth in Exhibit "A" hereto; and

WHEREAS, the State Police and OPWDD desire to ensure that OPWDD has appropriately identified those incidents of abuse which may be a crime and that such incidents

are reported to law enforcement; and

WHEREAS, this MOU is intended to set forth those actions that OPWDD and the State Police mutually agree should be referred to law enforcement for potential criminal investigation and the means by which the State Police will assist OPWDD in ensuring that law enforcement response to such referrals is appropriate.

WHEREAS, the State Police and OPWDD recognize that many crimes are reported to local law enforcement and desire to ensure that local law enforcement entities have an understanding of the obligation to report abuse which may be a crime of individuals with developmental disabilities; and

WHEREAS, the State Police and OPWDD desire to see that law enforcement respond to reports of potential crimes against individuals with developmental disabilities in the same manner as potential crimes against those without developmental disabilities; and

NOW THEREFORE, in consideration of the mutual rights and obligations set forth herein, the parties agree to the following:

I. Law Enforcement Notification Protocols.

A. OPWDD will require that each Director of Developmental Disabilities Services Offices and each Executive Director of a voluntary provider agency notify law enforcement when the following have occurred:

1. Any intentional hitting, slapping, pinching, kicking, hurling, strangling or shoving of an individual receiving services by a staff member, intern, contractor, consultant or volunteer of a DDSO or provider entity, except for those instances in which the action was taken to prevent injury to the individual receiving services or any other person, whether or not such action causes injury, may be a crime and must be reported to law enforcement.
2. Any intentional hitting, slapping, pinching, kicking, hurling, strangling or shoving of an individual receiving services by

another individual receiving services, where the individual who performs the abusive action intends to cause physical injury to the other individual and causes such physical injury, may be a crime and must be reported to law enforcement. Physical injury is defined as impairment of physical condition or substantial pain.

3. Any unauthorized or unnecessary use of restrictive personal intervention techniques, including the use of more physical force than is necessary for the safety of the individual receiving services, by a staff member, intern, contractor, consultant or volunteer, where the staff member, intern, contractor, consultant or volunteer knowingly acts in a manner likely to cause injury to the physical or mental welfare of the person receiving services, may be a crime and must be reported to law enforcement.
4. Any unauthorized or inappropriate use of restraint where the staff member, intern, contractor, consultant or volunteer knowingly acts in a manner likely to cause injury to the physical or mental welfare of the person receiving services may be a crime and must be reported to law enforcement. This includes the use of mechanical restraining devices or medication to control a person's behavior without the necessary permissions (see paragraph 624.4(c)(5)).
5. Any sexual abuse, as defined by 14 NYCRR Part 624.4(c)(2), between a person receiving services and an employee, intern, consultant, contractor or volunteer of an agency may be a crime and must be reported to law enforcement. An exception is made when "a person with a developmental disability who was a service recipient becomes an employee of a service provider organization

and already has a relationship with another service recipient of the same or another service provider organization.”¹

6. Any sexual contact between two persons receiving services in which one person receiving services uses force or coercion may be a crime and must be reported to law enforcement.
7. Any sexual contact between two persons receiving services, in which at least one person has not been determined to be capable of consenting to sexual contact may be a crime and must be reported to law enforcement. A sexual consent determination is completed to determine whether an individual is legally capable of consenting to sexual contact. If a sexual consent determination has not been completed for an individual, or if an individual’s condition has changed such that there is any question as to the individual’s ability to consent, clinical staff should be immediately consulted to complete a sexual consent determination. If a sexual consent determination cannot be completed within 24 hours, the agency must report to law enforcement as soon as it is evident that the sexual consent determination cannot be completed within that timeframe. If force or coercion is not involved, and both individuals have been determined to be capable of consenting to sexual contact no report would be made to law enforcement. In addition, if force or coercion is not involved, and both individuals have been determined to be incapable of consenting to sexual contact, no report would be made to law enforcement. If one person is determined to be capable of consenting to sexual contact,

¹ As used throughout this document, sexual abuse is defined in OPWDD regulations (paragraph 624.4(c)(2)) as sexual contact in specific circumstances. Sexual contact is defined as the “touching or fondling of the sexual or other intimate parts of a person, not married to the actor, for the purpose of gratifying the sexual desire of either party, whether directly or through clothing. Sexual contact also includes causing a person to touch anyone else for the purpose of arousing or gratifying personal sexual desires.”

and one person is determined to be incapable of consenting to sexual contact, a crime may have occurred and must be reported to law enforcement.

8. Any sexual contact between a person receiving services and a person not receiving services who is not an employee, intern, consultant, contractor or volunteer of an agency, where the person receiving services has not been determined to be capable of consenting to sexual contact may be a crime and must be reported to law enforcement. A sexual consent determination is completed to determine whether an individual is legally capable of consenting to sexual contact. If a sexual consent determination has not been completed for an individual, or if an individual's condition has changed such that there is any question as to the individual's ability to consent, clinical staff should be immediately consulted to complete a sexual consent determination. If a sexual consent determination cannot be completed within 24 hours, the agency must report to law enforcement as soon as it is evident that the sexual consent determination cannot be completed within that timeframe. If force or coercion is not involved, and the individual receiving services has been determined to be capable of consenting to sexual contact no report would be made to law enforcement. If the person receiving services is determined to be incapable of consenting to sexual contact, a crime may have occurred and must be reported to law enforcement. However, an exception is made if force or coercion is not involved, and both individuals have been determined to be incapable of consenting to sexual contact. No report would be made to law enforcement in that situation.
9. Engaging in a pattern of conduct (more than an isolated incident of misconduct) which may include the use of verbal threats, screaming, taunting or shouting at a person receiving services by a

staff member, intern, contractor, consultant or volunteer, with the intent of causing ridicule, humiliation, scorn, contempt, pain or dehumanization to an individual or individuals receiving services which causes emotional pain to such individual(s) may be a crime and must be reported to law enforcement.

10. Any situation in which a staff member, intern, contractor, consultant or volunteer knowingly acts, or fails to act, in a manner likely to be injurious to the physical or mental welfare of an individual unable to care for himself or herself may be a crime and must be reported to law enforcement.
11. Any instance in which an individual dies in a manner in which the cause of death is unknown, or in which the individual is not under the care of a physician and the death is not due to natural causes must be reported to law enforcement.
12. Theft and property crimes against individuals receiving services.

B. Developmental Disabilities Services Offices Directors must contact the law enforcement entities to which they report crimes to develop procedures for reporting the above incidents to law enforcement. These procedures must include such matters as the process for reporting incidents, the procedures for investigating incidents and the identification of specific persons to act as a liaison with the law enforcement entity.

C. If a matter reported to law enforcement under the notification protocols does not result in prosecution, the matter will be timely referred back to OPWDD for any action it deems appropriate.

II. State Police Liaison. The State Police will designate a member of the State Police Bureau of Criminal Investigation Special Victims Unit to serve as a liaison with OPWDD (“State Police liaison”) on State Police matters.

A. The State Police liaison will assist OPWDD in reviewing cases of abuse that do not fit into the definitions of possible criminal acts set forth in Section I of this MOU but for which there is concern as to whether law enforcement should be notified, and in determining whether law enforcement should be notified.

B. The State Police liaison will facilitate and participate in meetings with local State Police units to assist in the development of procedures for reporting in accordance with Section I (M) of this MOU.

C. The State Police liaison, at the request of local law enforcement, will review incidents which fit the criteria outlined in Section I of this MOU, but which have not occurred at sites set forth in Exhibit "A" attached hereto, for which the State Police are not the responding entity and answer inquiries from the responsible local law enforcement entity on the obligations of Directors of DDSOs and Executive Directors of voluntary providers to report those cases described in Section I of this MOU and to request appropriate follow-up.

III. Training

A. The State Police will ensure that notification is provided to State Police members with responsibility for investigating crimes at those locations set forth in Exhibit "A" attached hereto, within 90 days of the execution of this MOU, concerning the reporting requirements outlined in Section I of this MOU.

B. OPWDD will provide recruit and in-service training to recruits and other members at the State Police Academy regarding the challenges of interviewing witnesses and investigating crimes committed against individuals with developmental disabilities and the programs of OPWDD.

IV. General Provisions

A. Nothing herein shall be deemed to restrict or impair the statutorily authorized jurisdiction of the either party.

B. This MOU shall become effective on August 15, 2011.

C. The parties agree to use any information obtained under this agreement only as necessary to properly discharge the obligations provided hereunder.

D. Exhibits may be changed at any time by agreement in writing between the State Police and OPWDD.

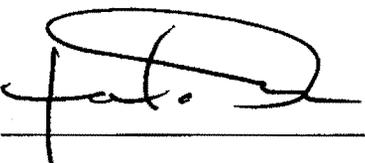
E. This MOU may not be altered, amended or modified except by a written instrument signed by the duly authorized representative of both parties.

F. Either party may terminate this MOU upon 60 days' written notice to the other party.

G. Six months after the effective date of this MOU, the parties will evaluate the reporting to law enforcement pursuant to these protocols to ensure that appropriate incidents are being reported to law enforcement, and may revise these protocols accordingly.

THEREFORE, the foregoing is accepted and agreed to by:

On Behalf of the
New York State Police:

By: 

Date: 8/4/11

On Behalf of the
Office for People With
Developmental Disabilities:

By: 

Date: 8/5/11