

MEMORANDUM OF SUPPORT

INDIVIDUALS ON PROBATION INCAPABLE OF CONSENTING TO SEXUAL CONDUCT WITH THEIR SUPERVISING OFFICER

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The New York State Coalition Against Domestic Violence (NYSCADV) urges the New York State Legislature to pass this legislation which would deem individuals on probation incapable of consenting to sexual conduct with their supervising probation officer. This protection, which already extends to individuals on parole, is critical to ensuring that those on probation are protected from relationships that could be coercive in nature, given the power dynamics at play between such individuals and their supervising officers.

The probation system is fraught with allegations of sexual misconduct. Yet we rarely talk about protections for justice-involved individuals from staff-perpetrated sexual misconduct while under community-based correctional supervision. Though few studies have been conducted specifically on custodial sexual misconduct in the context of probation in New York, data from sister systems (jails and parole) suggest the misuse of power permeates the system as a whole.

For example, data demonstrates that:

- more than 50% of women who are incarcerated have experienced violence in their past,¹
- transgender individuals are almost 10x more likely to be sexually assaulted when incarcerated²; and
- according to the Bureau of Justice Statistics for the 3-year aggregate period from 2016-2018 there were over 2,000 incidents of sexual victimization by staff against people in their custody³.

It is clear that justice-involved individuals facing any type of power inequity deserve protection from the system(s) they are legally bound to engage with for the foreseeable future. Specifically, this bill would amend the Penal Law to deem a person incapable of consent, during the period of their probation, to sexual conduct with an employee of a local probation department or agency who, as part of their employment, supervises the victim at the time of the offense or has supervised the victim and the victim is still under supervision of the local department or agency.

Individuals on probation should have the same protection as people on parole and neither should be subjected to potential state-sanctioned harm given the inherent power dynamics between a person on probation and their supervising officer.

ABOUT NYSCADV:

Established in 1978, NYSCADV is designated by the U.S. Department of Health and Human Services as the information clearinghouse, primary point of contact, and resource center on domestic violence for the State of New York. NYSCADV is responsible for supporting the development of policies, protocol, and procedures to enhance domestic violence intervention and prevention and also provides education and technical assistance to the network of primary-purpose domestic violence service providers statewide.

¹ Browne A, Miller A, Maguin E. Prevalence and severity of lifetime physical and sexual victimization among incarcerated women. *International Journal of Law Psychiatry*. 1999;22:301–322

² Letter from Lambda Legal et. al to U.S. Commission on Civil Rights (March 25, 2019)

³ <https://bjs.ojp.gov/library/publications/substantiated-incidents-sexual-victimization-reported-adult-correctional>

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