*Executive Office of Health and Human Services*

*Department of Developmental Services*

**POLICY TITLE: Policy of Zero Tolerance for Domestic Violence, Sexual Assault and Stalking**

**DDS POLICY #:2009-2**

**DATE ISSUED: 4/9/09**

**EFFECTIVE DATE: 4/9/09**

**COMMISSIONER’S SIGNATURE: Elin M. Howe, Commissioner**

**Policy:**

The Department of Mental Retardation (hereinafter "the Department") has a zero-tolerance policy for sexual assault, domestic violence, and stalking occurring within or outside the workplace. Effective immediately, it is the policy of the Department that all employees work in an environment free from all forms of sexual assault and domestic violence. Sexual assault and domestic violence undermine the integrity of the work place and the personal safety of the individual.

**Authority:**

Executive Order 491 establishes a zero tolerance policy for sexual assault, domestic violence and stalking and requires state agencies to issue written policies and to provide copies of the policy to all employees. The Executive Order applies to all individuals employed on a full-time or part-time basis by the Office of the Governor or any state agency under the Executive Department.

The Department adopts this policy in order to comply with the Executive Order.

**Definition of Domestic Violence:**

Chapter 209A of the Massachusetts General Laws defines domestic violence as a form of abuse among family or household members, which includes those individuals who are or have been involved in a substantive dating relationship. Abuse is defined as the occurrence of one or more of the following acts between family or household members:

* attempting to cause or causing physical harm; or
* placing another in fear of imminent serious physical harm; or
* causing another to engage involuntarily in sexual relations by force, threat of force, or duress.

**Family or household members are persons who:**

* are or were married to one another;
* are or were residing together in the same household;
* are or were related by blood or marriage;
* have a child in common regardless of whether they have ever married or lived together; or
* are or have been in a substantive dating or engagement relationship.

Chapter 209A provides a victim protection from an abuser through the issuance of a restraining order. Such an order may order the abuser to refrain from abuse, to vacate the home, to comply with temporary custody and support orders, and/or to have no contact with the victim at all times. Although Chapter 209A orders are civil in nature, violations of certain provisions are criminal in nature for which arrest is mandatory.

For the purposes of initiating disciplinary action against an employee accused of abuse, there must be a judicial finding of probable cause that the employee committed an act of abuse against a family or household member. The employer may require an employee who is an abuser to accept reassignment to a different geographic location, if the employer determines that such reassignment will help better ensure the safety of the victim or others in the workplace. While maintaining confidentiality to the extent practicable, agencies are encouraged to consult with appropriate legal staff, human resource/labor relations directors and/or domestic violence professionals for guidance in these matters.

**Definition of Sexual Assault and Stalking:**

"Sexual assault" includes any action causing another to engage in sexual relations by force, threat, or duress in violation of Chapter 209A or chapter 265 of the General Laws, or any other applicable law of the Commonwealth.

"Stalking" includes any pattern or series of acts, conduct or threats causing or intended to cause alarm or fear in violation of chapter 209A or chapter 265 of the General Laws, or any other applicable law of the Commonwealth.

The Commonwealth's view of sexual assault, domestic violence, and stalking reflects, but is not limited to, the following considerations:

* A man as well as a woman may be the victim of sexual assault, domestic violence, or stalking, and a woman as well as a man may be the abuser.
* The victim does not have to be the opposite sex from the abuser.

**Roles and Responsibilities:**

The Department shall:

* Ensure that each employee receives:
* A copy of the Department's policy and Executive Order No. 491.
* Notification of any changes to the policy as soon as administratively possible.
* Foster a climate in which victims can be comfortable disclosing abuse, including posting resource information where victims and abusers can go for assistance;
* Strongly encourage employees to report behavior which occurs in the workplace which they believe to be domestic violence, sexual assault or stalking;
* When appropriate, ensure written workplace safety plans are completed in response to reports of domestic violence, sexual assault, and stalking;
* When appropriate, while maintaining confidentiality to the extent practicable, work with victims in consultation with agency domestic violence coordinator(s), HR personnel, and/or Legal Counsel in addressing workplace safety and security plans that may impact victims and/or co-workers.
* Determine the nature of disciplinary action to be taken against employee abusers;
* Respect the privacy of victims and preserve confidentiality at all times, to the extent possible, in dealing with situations involving sexual assault, domestic violence or stalking;
* When notified of a restraining order in effect, utilize all reasonable efforts to address the employee's concerns about safety and report any workplace violations of such order to the police.

Employees shall:

* Ensure that they do not participate in any form of domestic violence, sexual assault, or stalking either within or outside the workplace;
* Cooperate in the investigation of alleged domestic violence, sexual assault, and stalking by providing information they possess concerning such matters;
* Report behavior in the workplace which they believe to be sexual assault, domestic violence, or stalking to their supervisor, or the police when appropriate.

**Protection to domestic violence, sexual assault, and stalking victims:**

The Department recognizes that victims of domestic violence, sexual assault, and stalking may suffer from physical, mental, emotional, and sexual abuse. In an effort to afford victims of domestic violence, sexual assault, and stalking the ability to protect themselves and their families, and to ensure the safety of all employees the, Department has established the following policies:

* An employee who is a victim of domestic violence, sexual assault or stalking or whose children are victims and the employee is not the abuser shall be entitled to up to fifteen (15) days of paid leave per calendar year for the purposes of counseling, obtaining medical treatment, attending legal proceedings, or carrying out other necessary activities resulting from domestic violence, sexual assault, or stalking.
	+ The fifteen (15) days of paid leave will not be charged to sick, vacation or personal leave accrual.
* An employee who is a victim of sexual assault, domestic violence, or stalking and/or whose children are victims and the employee is not the abuser may be granted up to six (6) months of unpaid leave, where the employee requests such leave as a result of domestic violence, sexual assault or stalking. Leave accruals and insurance benefits shall be handled in the same way as is done for any other type of leave without pay. Upon the employee's return from leave, the agency shall restore the employee to the same position or to an equivalent position, with equivalent employment benefits, pay, and other terms and conditions of employment, provided that the employee has not been displaced from his/her position in the interim due to a reduction in force.
* Due to the emergency nature of leave requests, the employee may not be able to provide such documentation. However, when appropriate, the Department may request the following documentation:
	+ A judicial finding of domestic violence, such as a 209A restraining order or pending criminal charges;
	+ Signed letter from a district attorney's office, police department, or district, probate, or superior court;
	+ Signed affidavits from third parties having knowledge of the abuse.
* To the extent possible, all documentation submitted shall be kept in a secure and confidential manner so as to respect the employee's right to privacy.
* A victim of domestic violence, sexual assault, or stalking is strongly encouraged to notify the Department of the existence of a restraining order protecting the employee. Upon such notification, the Department shall make all reasonable efforts to enforce the restraining order in the workplace. Such efforts may include:
* Notifying security personnel of the identity of the person against whom the order is issued (defendant);
* Providing security personnel with a photograph or other identifying information, such as motor vehicle information;
* After notifying the employee, having the employee's calls screened;
* Moving the employee's workstation away from an unsecured entrance.
* If the Department becomes aware that an active restraining order protects an employee, the Department may offer that employee a reassignment to a different geographical location. Where the victim has requested reassignment, the Department shall give the request top priority.
* The Department shall immediately notify the police if a violation of a restraining order occurs at the workplace.
* The Department shall provide the information contained at the attached link <http://www.janedoe.org/safety.htm>including the state-wide Safe-Link Hotline emergency hotline number to employees who are victims of domestic violence, sexual assault and/or stalking to assist them in finding available services. The Safe-Link Hotline is as follows:
	+ 1-877-785-2020 (English)
	+ 800-223-5001 (Spanish)

**Procedures for Investigating and Disciplining Abusers:**

The Department is mandated to take all instances of sexual assault, domestic violence, and stalking seriously. The following are guidelines for disciplining abusers:

* The Department shall immediately report any incident of domestic violence, sexual assault or stalking that occurs in the workplace, including violation of 209A restraining orders, to the appropriate law enforcement authorities.
* The Department must follow existing provisions in the collective bargaining agreements when disciplining abusers.
* Departmental employees are encouraged to consult with appropriate legal staff, human resource/labor relations directors and or domestic violence professionals for guidance in these matters.
* All investigations of domestic violence, sexual assault, or stalking policy violations within the workplace will be conducted in a manner to protect the confidentiality of the victim, the alleged abuser and all witnesses. All parties involved in the proceedings will be advised to maintain strict confidentiality.
* Acts of domestic violence, sexual assault, or stalking, regardless of where they occur, will not be tolerated and may result in discipline, including, but not limited to:
	+ An oral warning or reprimand;
	+ A written warning or reprimand to be placed in a personnel file;
	+ Required completion of a certified batterer intervention program;
	+ Suspension or termination; or
	+ Any combination of the above.
* Incidents of domestic violence, sexual assault, or stalking resulting in the conviction of a felony within the past five years, may be used as a factor in hiring determinations.
* As with all other such actions, disciplinary actions taken against abusers become part of their work history and will be considered when selecting employees for promotion, new work assignments and other types of personnel actions.