

Town of Duanesburg Child Protection Policy

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I. Introduction

The Town of Duaneburg (the “Town”) is committed to protecting the safety and well-being of children who participate in and/or receive services from the Town’s Youth Services and/or Youth Recreation Program. This Policy is designed to provide Town employees with guidance on the basic tenets of professional conduct while working with youth, reporting of suspected cases of child abuse, and criminal background screening procedure and employment restrictions.

II. Definitions

Abused Child: A child whose parent or other person legally responsible for his or her care:

- inflicts or allows to be inflicted upon such child physical injury by other than accidental means that causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; or
- creates or allows to be created a substantial risk of physical injury to such a child by other than accidental means that would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health, or protracted loss or impairment of the function of any bodily organ; or
- commits, or allows to be committed, an act of sexual abuse against such child.

Covered Activity/Program: An activity or program sponsored by the Town for the duration of which the responsibility for custody, control and supervision is vested in the Town, Town-affiliated organization or vendor.

Covered Person: A person who is responsible for the custody, control, or supervision of children participating in the Covered Activity/Program and who is:

- an employee of the Town;
- an employee of a Town-affiliated organization;
- a vendor, licensee, permittee or other person, who is given permission by the Town to organize, operate and/or maintain a Covered Activity/Program; or
- an employee, agent or volunteer of a vendor, licensee, permittee or other person who is given permission by the Town to organize, operate and/or maintain a Covered Activity/Program.

Child: An individual under the age of seventeen years who is participating in a Covered Activity/Program.

Physical Abuse: Physical contact with a child by a covered person which is intended to cause, or causes, pain or physical injury including, but not limited to, punching, beating, shaking, throwing,

kicking, biting, burning, or directing a child, outside the norm of the supervised activity, to perform physical activity that is intended to cause physical injury to the child.

Neglected or Maltreated Child – A Child:

- whose physical, mental, or emotional condition has been impaired or is in danger of becoming impaired as a result of the failure of his or her parents or other person legally responsible for his or her care to exercise a minimum degree of care:
 - in supplying the child with adequate food, clothing, shelter, or education in accordance with provisions of Part One, Article 65 of the Education Law, or medical, dental, optometrical or surgical care though financially able to do so or offered financial or other reasonable means to do so; or
 - in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by using a drug or drugs; or by using alcoholic beverages to the extent that he/she loses self-control of his/her actions; or by any other acts of a similarly serious nature requiring the aid of the court; or
- who has been abandoned by his/her parent(s) or other person legally responsible for his/her care.

Sexual Abuse: As defined in Penal Law Articles 130 and 263, § 260.10, 260.25, engaging in a sexual offense with a child and/or encouraging or promoting sexual performance by a child which may include, but is not limited to: sexual misconduct, rape, criminal sex acts, forcible touching, persistent sexual abuse, sexual abuse, aggravated sexual abuse, course of sexual conduct against a child, facilitating a sex offense with a controlled substance, sexually motivated felony, predatory sexual assault against a child, sexual performance by a child, and/or any behavior which results in touching of the sexual or other intimate parts of a child for the purpose of sexual gratification of the child and/or adult, including touching by the child and/or adult with or without clothing.

Sex Offender: includes any person who is convicted of any of the offenses set forth in subdivisions 2 and 3 of §168-a of the Corrections Law as a sex offense.

Sex Offense: any offense that constitutes a “Sex Offense” or “Sexually Violent Offense” as defined in subdivisions 2 and 3 of § 168-a of the Corrections Law.

III. Basic Tenets of Professional Conduct When Working with Youth

The basic tenets of professional conduct when working with youth include:

- No Covered Person shall harm a child or participate in practices that are emotionally damaging, physical harmful, disrespectful, degrading, exploitative, or intimidating to children.

- No Covered Person shall participate in practices that discriminate against children by denying benefits, giving special advantages, or excluding them from programs or activities on the basis of their sex, race, national origin, religious beliefs, medical condition, disability, or the marital status/family structure, sexual orientation, or religious beliefs or other affiliations of their families.

IV. Prohibited Conduct

A Covered Person shall not:

- Be alone with a child in a rest room, locker room, shower, sleeping area or vehicle;
- Engage in physical abuse or sexual abuse of a child;
- Engage in the use of alcohol or illegal drugs, or be under the influence of alcohol or illegal drugs, during the Covered Activity/Program;
- Contact a child through electronic media, including social media, for the purpose of engaging in any prohibited conduct, including sexual conduct;
- Offer or make a gift to a child for the purpose of engaging in any prohibited conduct, including sexual conduct;
- Release a child from a Covered Activity without a written authorization from the child's parent or guardian.

V. Required Conduct and Reporting

A Covered Person shall:

- Take all reasonable measures to prevent physical and sexual abuse of a child, including immediately removing a child from physical abuse, sexual abuse or prohibited conduct, as defined herein, which has the potential to occur during the Covered Activity/Program.
- Report immediately any suspected physical abuse or sexual abuse of a child to the New York State Police Department at (518) 630-1700 and notify his/her supervisor of such reporting.
- Call the State Central Registry (the "Registry") at 1-800-342-3720 and provide the information witnessed or secured. If the Registry does not accept the call, the Covered Individual shall contact his/her supervisor and a Child Protective Supervisor at (518) 388-4273 and ask for guidance.
- Complete the Child Abuse Intake Reporting Form (attached) to obtain and provide as much critical information as possible for law enforcement.
- Forward the Child Abuse Intake Reporting Form to Child Protective Services (see attached Child Abuse Reporting Form for instructions).

This procedure is not intended to replace the responsibilities of mandated reporters and other reporting requirements that may apply.

Covered Persons are only responsible to report to the appropriate authorities what they saw and/or were told and should not investigate the matter further.

VI. Employment Sex Offender and Criminal Background Screening Procedure

The Town will require all individuals to submit for review a Schenectady County Civil Servant Employment Application (attached). To the greatest extent permitted by law, the Town will comply with the Schenectady County Employment Sex Offender and Criminal Background Screening Procedure (attached) prior to permitting any Covered Person to participate in a Covered Activity/Program. The Town's implementation of the Schenectady County Employment Sex Offender and Criminal Background Screening Procedure shall be at the direction of the Town Supervisor or his/her designee.

CHILD ABUSE REPORTING FORM

Worker Name: _____ Date: _____ Unit: _____

Name of person reporting information: _____

Phone number: _____

Address: _____

Name of person who observed alleged incident: _____

Phone number: _____

Address: _____

Relationship to the subject: _____

Name of the subject (if known): _____

Name and age of the child(ren) if known: _____

Address: _____

Do you know if this person has a current caseworker or services from the Department of Social Services? If yes, detail: _____

When did it occur (date and time)?: _____

Who was involved?: _____

Where did it occur?: _____

Where are the children now?: _____

Describe concerns: _____

Actions taken:

- State Police called:
 - o Time/date: _____ Locale: _____

- State Central Registry called: 1-800-342-3720
 - o Time/date: _____
 - o Accepted: _____ Rejected: _____
 - o If rejected, why?: _____

- If necessary, discussed with supervisor:
 - o Time/date: _____

Worker signature: _____

Supervisor signature: _____

Fax to Child Protective Intake at (518) 382-1256. Original goes to your supervisor.

SCHENECTADY COUNTY
EMPLOYMENT SEX OFFENDER AND
CRIMINAL BACKGROUND SCREENING PROCEDURE

I. Purpose

The purpose of this procedure is two-fold:

1. First, eliminate the hiring of individuals who are designated as a “Sex Offender” as that term is defined in Correction law §168(1), to the full extent permissible under the law, and eliminate the hiring of individuals who have committed crimes which would render them unfit to be hired for a particular position.
2. Two, terminate the employment of any individual, who while employed by Schenectady County is convicted of a crime which results in that individual being designated as a “Sex Offender” as that term is defined in Correction law §168(1), or other serious crimes which render them unfit to continue in employment.
3. This policy recognizes that Criminal Background checks are already being performed for nursing home employees, pursuant to the Public Health Law, and for Sheriff’s Department employees.

II. Screening of Sex Offenses and Sex Offenders

For the purpose of this policy, a Sex Offender includes any person who is convicted of any of the offenses set forth in subdivisions 2 and 3 of the §168-a of the Corrections Law as a sex offense. Those sections provide:

Corrections Law §168-a.

2. “Sex Offense” means: (a)(i) a conviction of or an attempt to commit any of the provisions of sections 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, 250.50 and 255.25 or article two hundred sixty-three of the penal law, or section 130.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or sections 230.04, where the person patronized is in fact less than seventeen years of age, 230.05 or 230.06 or subdivision two of section 230.30, section 230.32 of the penal law, or (ii) a conviction of or a conviction for an attempt to commit any of the provisions of section 235.22 of the penal law, or (iii) a conviction of or a conviction for an attempt to commit any provisions of the foregoing sections committed or attempted as a

hate crime defined in section 485.005 of the penal law or as a crime of terrorism defined in section 490.25 of such law; or

(b) a conviction of or a conviction for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law, provided the victim of such offense is less than eighteen years of age; or

(c) a conviction of or a conviction for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law regardless of the age of the victim and the offender has previously been convicted of: (i) a sex offense defined in this article, (ii) a sexually violent offense defined in this article, or (iii) any of the provisions of section 130.52 or 130.55 of the penal law, or an attempt thereof; or

(d) a conviction of (i) an offense in any other jurisdiction which includes all of the essential elements of any such crime provided for in paragraph (a), (b) or (c) of this subdivision or (ii) a felony in any other jurisdiction for which the offender is required to register as a sex offender in the jurisdiction in which the conviction occurred or (iii) any of the provisions of 18 U.S.C. 2251, 18 U.S.C. 2251A, 18 U.S.C. 2252, 18 U.S.C. 2252A, or 18 U.S.C. 2260, provided that the elements of such crime of conviction are substantially the same as those which are a part of such offense as of the date on which this subparagraph takes effect.

(e) a conviction of any of the provisions of subdivision two, three or four of section 250.45 of the penal law, unless upon motion by the defendant, the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that registration would be unduly harsh and inappropriate.

3. "Sexually violent offense" means: (a) (i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 130.35, 130.50, 130.65, 130.66, 130.67, 130.70, 130.75 and 130.80 of the penal law, or (ii) a conviction of or a conviction for an attempt to commit any of the provisions of sections 130.53, 130.65-a and 130.90 of the penal law, or (iii) a conviction of or a conviction for an attempt to commit any provisions of the foregoing sections committed or attempted as a hate crime defined in section 485.05 of the penal law or as a crime of terrorism defined in section 490.25 of such law; or

(b) a conviction of an offense in any other jurisdiction which includes all of the essential elements of any such felony provided for in paragraph (a) of this subdivision or conviction of a felony in any other jurisdiction for which the offender is required to register as a sex offender in the jurisdiction in which the conviction occurred.

III. Screening Through the Application Process

Currently, the application asks in #10 c, d, e and f the following questions:

10. c. Did you ever receive a discharge from the Armed Forces of the United States which was other than "Honorable" or which was issued under other than honorable circumstances?

d. Have you ever been convicted of any crime (felony or misdemeanor)?

e. Have you ever forfeited bail bond posted to guarantee your appearance in court to answer any criminal charge?

f. Are you now under charges for any crime?

At the earliest stage possible any individual who has answered any of those questions in the affirmative shall have their application set aside for further investigation prior to an offer of employment being made. The Civil Service Commission shall amend forthwith the qualifications for all positions to include passing a criminal background check. All appointments made prior to passage shall be provisional until such qualification is met. All applications in all instances shall be forwarded to the Department Head. Any application in which the individual answers affirmatively to #10 c, d, e and f and is under consideration for hire shall be forwarded to the attention of the County Manager, Director of Human Resources and County Sheriff.

IV. Screening Through the Full Criminal Background Check Including Fingerprints

Prior to the County making any offer of employment, an applicant must have submitted a criminal background check which includes a NYS DCJS fingerprint check through the Sheriff's Office, or for prospective employees at the Glendale Nursing Facility, through the New York State Department of Health, who shall continue to follow the procedure in place for those employees, and not be screened through this process. This is a 5-step process and is specifically authorized by Civil Service Law §50(4). Necessary steps shall be taken once the results of the criminal background check are received by Civil Service. Commencement of employment may not begin until the background check is completed and determined to be acceptable.

Step One: Applicant shall be fingerprinted at Sheriff's Department upon request of Department Head. Applicant will be given instructions outlining the available fingerprinting times.

Step Two: The Sheriff's Department shall fingerprint the applicant for hire and the fingerprints will be electronically forwarded to the New York State Department of

Criminal Justice Services for the purpose of obtaining a full criminal background check. The Sheriff's Department shall bill the requesting Department \$94.25 per applicant.

Step Three: Upon receipt of the results of the full criminal background check, the Director and/or Deputy Director of Human Resources will review the results using their specified eJusticeNY accounts.

Step Four: If the criminal background check is passed, the Department of Human Resources shall certify the individual as having passed the criminal background check and the individual is eligible to be hired.

Step Five: If the criminal background check is failed, the Department of Human Resources shall forward this information to the County Civil Service Commission, the County Manager and the County Attorney. Where appropriate and necessary, the County Civil Service Commission shall consider disqualification of individuals who fail the criminal background check and disqualify an applicant or eligible pursuant to Civil Service Law §50(4). As set forth in that section:

“No person shall be disqualified pursuant to this subdivision unless he has been given a written statement of the reasons therefore and afforded an opportunity to submit facts in opposition to such disqualification.”

If an individual chooses to challenge a proposed disqualification, the Civil Service Commission shall appoint a hearing officer to conduct a hearing, or shall hear the matter itself and determine whether or not the individual should be disqualified. The County Attorney or his designee shall present the evidence supporting the proposed disqualification, and the applicant shall be afforded a full and fair opportunity to make an explanation and to submit facts in opposition to such disqualification. A stenographic record shall be made of such hearing, and a determination rendered upon the evidence presented.

The disqualification determination shall be made taking into consideration Correction Law §753 which provides:

§753. Factors to be considered concerning a previous criminal conviction; presumption

1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:

(a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted on one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license or employment sought.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

(h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

For individuals not covered by Civil Service Law §50(4) the County Manager shall fully consider the results of the criminal background check.

V. Termination of Employment Of Individuals Who Are Convicted of A Sex Offense While Employed By Schenectady County

Any individual who is employed by Schenectady County and who commits and who is designated a "Sex Offender" as defined in Correction Law 168(1) shall be subject to immediate termination, but afforded their full rights under the Civil Service Law §75 and §76; a collective bargaining agreement if applicable; and §30 of the Public Officers Law.