



Juvenile Justice Services (JJS) Policies and Procedures (P&P)

Title Prison Rape Elimination Act (PREA) Compliance – JJS PREA Investigations

Category Safety and Emergency Operations

Procedure # P.05.24 D

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1 Overview Statement (Policy/Regulation)

- 1.1 This Procedure confirms JJS's compliance with the Federal Prison Rape Elimination Act (PREA) and its ongoing commitment to prevent, detect, and respond to all allegations of sexual misconduct – including sexual abuse and harassment.
- 1.2 JJS is committed to providing a safe and secure environment, free from all forms of sexual misconduct and retaliation, for clients and employees. To that end, JJS has zero tolerance for sexual misconduct and maintains comprehensive procedures regarding prevention, detection, and response to such conduct.
- 1.3 All sexual contact between employees and clients; contractors, volunteers, or student interns and clients; and clients and clients, regardless of consensual status, is prohibited and subject to disciplinary action and possible criminal prosecution.

- 1.4 All JJS employees, contractors, volunteers, and student interns are required to report any suspected or witnessed sexual misconduct.

2 PREA Definitions

- 2.1 **Sexual Misconduct** is an umbrella term that defines all incidents of Sexual Abuse or Sexual Harassment. Examples of sexual misconduct include:
- (1) Requests for sexual favors, sexual acts, or sexual contact.
 - (2) Influencing, promising or threatening a client's safety, custody or security level, including recommendations for court actions, privacy, housing, privileges, work detail, or program status in exchange for sexual favors.
 - (3) Promise of protection in exchange for sexual favors.
 - (4) Statements, comments, or innuendo made directly or indirectly concerning the sexual orientation or perceived sexual orientation of any person.
 - (5) Employees having intimate or close relationships with a client, defined as any relationship beyond the boundaries of a professional relationship.
 - (6) Employees engaging in intimate conversation or correspondence with a client.
 - (7) Employees exchanging personal information with clients such as letters, pictures, phone numbers, home addresses, social media, and email addresses.
 - (8) Viewing an unclothed client or watching a client perform bodily functions for reasons unrelated to official duties.
 - (9) Any verbal, non-verbal, or physical conduct which is sexual in nature or sexually suggestive.
 - (10) Creating an intimidating, hostile, or offensive environment by engaging in or permitting sexually offensive behavior or language that is directed at or observable by clients or others.
 - (11) Kissing, hugging, fondling, or other touching of an individual's breast, genital, anus, or other intimate area either directly or through clothing for sexual arousal, gratification, abuse, or assault of either party.
 - (12) Rape, sexual assault, sexual intercourse, oral sex, anal sex, and vaginal sex.
 - (13) Sex or penetration with any object or body part.
- 2.2 **Sexual Abuse of client by another client** includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:
- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 - (2) Contact between the mouth and the penis, vulva, or anus;
 - (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
 - (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, excluding contact incidental to a physical altercation.
- 2.3 **Sexual Abuse of a client by an employee, contractor, volunteer, or student intern** includes any of the following acts, with or without consent of the client:
- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 - (2) Contact between the mouth and the penis, vulva, or anus;

- (3) Contact between the mouth and any body part where the employee, contractor, volunteer, or student intern has the intent to abuse, arouse, or gratify sexual desire;
 - (4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the employee, contractor, volunteer, or student intern has the intent to abuse, arouse, or gratify sexual desire;
 - (5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or buttocks, that is unrelated to official duties or where the employee, contractor, volunteer, or student intern has the intent to abuse, arouse, or gratify sexual desire;
 - (6) Any attempt, threat, or request by a staff member, contractor, volunteer, or student intern to engage in the activities described in (1)-(5) of this definition;
 - (7) Any display by an employee, contractor, volunteer, or student intern of his or her uncovered genitalia, buttocks, or breast in the presence of a client; and
 - (8) Voyeurism by an employee, contractor, volunteer, or student intern.
- 2.4 **Voyeurism** by an employee, contractor, volunteer, or student intern is a kind of sexual abuse that is an invasion of privacy of a client by employees for reasons unrelated to official duties, such as peering at a client who is using a toilet to perform bodily functions; requiring a client to expose buttocks, genitals, or breasts; or taking images of all or part of a client's naked body or of a client performing bodily functions.
- 2.5 **Sexual Harassment of a client by another client** is repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one client directed toward another.
- 2.6 **Sexual Harassment of a client by an employee, contractor, volunteer, or student intern** is verbal comments or gestures of a sexual nature, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.
- 2.7 **Substantial Threat** is a report that a client is subject to substantial risk of imminent physical and/or sexual abuse (defined in PREA statute as an "emergency grievance").
- 2.8 **Preponderance of Evidence Standard** is a burden of proof standard whereby an allegation is proven by evidence to be more likely than not a fact.
- 2.9 **Substantiated** an allegation that was investigated and, based on the Preponderance of Evidence Standard, was determined to have occurred.
- 2.10 **Unsubstantiated** an allegation that was investigated and, based on the Preponderance of Evidence Standard, the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
- 2.11 **Unfounded** means an allegation that was investigated and determined not to have occurred.

3 Purpose

- 3.1 The purpose of this Procedure is to outline process and requirements of JJS PREA investigations that are *not* investigated by the Office of the Inspector General (OIG) Special Investigator.

- 3.2 This Procedure may reference other procedures and documentation that confirm PREA compliance.

4 Reports to the JJS Facility Confidential Reporting Line

- 4.1 Employees are required and clients are trained to report any and all substantial threats; allegations of physical abuse, sexual abuse, sexual exploitation, sexual harassment, and neglect; and room confinement complaints to the JJS Facility Confidential Reporting Line.
- 4.2 Reports to the JJS Facility Confidential Reporting Line can be made in three ways:
Call 1-855-563-5065;
Email JJS.Confidential@state.nm.us; and
Use a kiosk, an interactive device that provides another confidential method for reporting.
- 4.3 Reports to the JJS Facility Confidential Reporting Line are privileged and are not monitored, in the same manner as clients have telephone access to their attorneys (which may include reasonable limitations based on security needs and the need to avoid disruption in programming). Clients are permitted to make such reports in a location that preserves confidentiality.

5 Screening Reports

- 5.1 Per CYFD Stand Alone Procedure (SAP), the Protective Services (PS) Screener receives all incoming reports to the JJS Facility Confidential Reporting Line.
- 5.2 If the PS Screener determines that the allegation meets the screening criteria, the screened-in referral is forwarded to the OIG.
- 5.3 If the PS Screener determines that the allegation does not meet the screening criteria, based on the type of allegation and its location, the screened-out referral is forwarded to the appropriate office for assignment, investigation, and/or remediation.
- 5.4 Additionally, all PREA-related reports are forwarded to the JJS PREA Coordinator.

6 Tracking

When the assigned PREA investigator (in some cases, a grievance officer) receives a referral for investigation, they complete a JJS PREA Investigation Form to record all information pertaining to the investigation.

7 Law Enforcement Involvement

In some instances, investigations assigned to the PREA investigator may also have been reported to law enforcement. The PREA investigator cooperates with law enforcement and, if requested, conducts a joint investigation or suspends the PREA investigation to allow for law enforcement to complete its investigation. The PREA investigator notifies those being interviewed that, as part of the investigation, information is shared with law enforcement. Any materials reviewed or collected as part of the investigation are provided to law enforcement upon request. The PREA investigator documents the information that was provided, the date the information was provided, and to whom the information was provided.

8 Investigating

- 8.1 The PREA investigator, in coordination with the facility Superintendent or Juvenile Reintegration Center (JRC) Program Manager (PM) and the PREA Coordinator, initiates the investigation within 2 working days of receiving a referral.
- 8.2 An Investigation may include the following components:
- The interview of the victim(s);
 - The interview of the alleged perpetrator(s);
 - The interview of any individual who witnessed the alleged incident(s), or who may provide additional information;
 - The interview of the medical provider who conducted the examination or evaluation and a review of any medical documentation concerning the alleged incident(s);
 - A review of any electronic data, in digital format, on video, or otherwise recorded concerning the alleged incident(s);
 - A review of any other material or documentation that pertains to the alleged incident(s), including JJS policies, procedures, and directives; and
 - Protocols that oblige Department of Justice standards (especially standards for interviewing victims of sexual abuse).
- 8.3 PREA investigators do not have authority to impose criminal sanctions or employee disciplinary actions; therefore, they do not cite Miranda or Garrity warnings.
- 8.4 All interactions with victims and witnesses are conducted in a manner that takes into consideration any special needs, abilities, age, and maturity. The interview is conducted in a language that the client uses and understands.
- 8.5 Clients may request that another CYFD employee of their choosing be present during the interview.
- 8.6 Client interviews are conducted in a place within the facility that maintains the client's privacy, not in the client's living unit, and out of the sight of other clients. To protect the safety of those involved, the PREA investigator may request facility management assistance to reserve time and space for interviews.

9 Internal Staffing

- The PREA investigator staffs the progress of all open investigations with the PREA Coordinator. The purpose of the staffing is to:
- Review the progress of the investigation;
 - Ensure the thoroughness of the investigation;
 - Strategize to address any challenges; and
 - Review decisions, including the finding(s) of the investigation.

10 Findings

- 10.1 Within 5 working days of receiving a referral, the PREA investigator makes a finding of "substantiated", "unsubstantiated", or "unfounded" for each allegation contained in the referral/investigation.

- 10.2 The PREA Coordinator may grant an extension for completion based upon good cause. Any extension granted and the basis for the extension is documented in writing.
- 10.3 Completion of the JJS PREA investigation entails completing the JJS PREA Investigation Form, which must be approved by the PREA Coordinator.

11 Debriefing

The facility Superintendent or JRC PM and the Facility PREA Compliance Manager (FPCM) debrief all PREA violations and allegations (substantiated and unsubstantiated). The PREA investigator, Youth Care Specialists (YCSs), medical providers, and Behavioral Health (BH) clinicians may be present to consider and initiate follow-up actions:

- Assess the motivation and possible causes of the incident, and consider these factors: race; ethnicity; gender identity; LGBTQI+ (lesbian, gay, bisexual, transgender, questioning, or intersex) identification, status, or perceived status; gang affiliation; or group dynamics at the facility;
- Alert the PREA team of appropriate debriefing and training needs for involved employees at the facility level;
- Consider any physical plant or monitoring technology modifications that might better protect clients;
- Review staffing patterns and make appropriate adjustments to keep employees and clients safer; and
- Recommend potential policy and procedure modifications to the P&P Manager that might better protect clients.

12 Additional Allegations and Follow-up

- 12.1 Any new or additional allegations discovered during an investigation are reported by the PREA Investigator to the Screener, who completes a new "JJS Facility Referral Form" and follows the same process as required for any new allegations: receiving, screening, logging, and reporting.
- 12.2 If during an investigation employee misconduct previously not reported or investigated is identified, the PREA investigator notifies the facility Superintendent or the JRC PM, who may make a referral to ERB.
- 12.3 If during an investigation a client perpetrator is identified, the PREA investigator notifies the appropriate facility employee, who may issue a Disciplinary Incident Report (DIR).

13 Consequences of Noncompliance

- 13.1 All JJS employees are required to cooperate with investigations.
- 13.2 An employee who fails to follow this Procedure may be subject to disciplinary action in accordance with the CYFD Code of Conduct.

14 Additional Documentation and Forms

JJS PREA Investigation Form

15 Issue Date

September 1, 2019

16 Effective Date

October 1, 2019

17 Rescinded Directives

- 17-002 Reissue – PREA Emergency Grievances: JJS Substantial Threats, 07/05/2017
- 16-010 (2) Reissue – PREA Complaint Grievance Procedure Additions for JRCs, 11/23/2016
- 16-003 Reissue – PREA Complaint Grievance Procedure, 11/23/2016

18 Statutory Authority

Prison Rape Elimination Act of 2003, 42 USCA 15601 et seq.

19 Applicable Policy (Regulation)

NMAC 8.14.5.24 Safety and Emergency Operations (Prison Rape Elimination Act)

20 Authorizing Signatures



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