



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

**Title** Prison Rape Elimination Act (PREA) Compliance – Responding to Allegations

**Category** Safety and Emergency Operations

**Procedure #** P.05.24 C

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### 1 Overview Statement (Policy/Regulation)

- 1.1 The purpose of this Procedure is to confirm 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 an allegation that a client is subject to substantial risk of imminent physical and/or sexual abuse (defined in PREA statute as an "emergency grievance").

### 3 Purpose

- 3.1 The purpose of this Procedure is to outline JJS's response to substantial threats and all allegations of sexual misconduct.
- 3.2 This Procedure may reference other procedures and documentation that confirm PREA compliance.

### 4 Clients Reporting Allegations

- 4.1 JJS encourages clients who are victims of or witnesses to any substantial threats or sexual misconduct to make a report. Clients can make reports in several ways:
  - Notify any employee, contractor, volunteer, or student intern;
  - Call the JJS Facility Confidential Reporting Line (1-855-563-5065);

Email [JJS.Confidential@state.nm.us](mailto:JJS.Confidential@state.nm.us);

Use a kiosk, an interactive device that provides another confidential method for reporting.

Write a confidential letter to the PREA Reporting Office in Las Cruces, NM;

Call the Statewide Central Intake (SCI) Hotline;

Email and/or call the JJS PREA Coordinator;

Request Medical or Behavioral Health (BH) services; or

Submit a grievance.

Anyone may report allegations of sexual misconduct in facilities using these methods.

- 4.2 All reports of sexual misconduct are considered credible and must be promptly, thoroughly, and objectively investigated regardless of these possible or any other circumstances:
- The allegation was made anonymously;
  - The allegation was made by third parties;
  - The client named is no longer in custody;
  - The employee named is no longer employed by CYFD;
  - The client reporter has made false allegations previously;
  - The source of the allegation recants the allegation;
  - The employee receiving the allegation does not believe the allegation is true; and/or
  - The client reporter has developmental and/or cognitive disabilities.

## **5 Reporting Allegations**

- 5.1 All employees, contractors, volunteers, and student interns must immediately report abuse and neglect, including any and all substantial risk, suspicion, information, or knowledge of sexual misconduct.
- 5.2 Additionally, all employees must immediately report and document any allegations received by third parties made verbally, in writing, or anonymously.
- 5.3 To report any allegations of sexual misconduct, employees, contractors, volunteers, and student interns must notify the Officer in Charge (OIC) immediately.
- 5.4 These additional methods may be used to report allegations of sexual misconduct after notifying the OIC:
- Notify a JJS supervisor;
  - Report to the JJS Facility Confidential Reporting Line;
  - Write a confidential letter to the PREA Reporting Office in Las Cruces, NM;
  - Call the Statewide Central Intake (SCI) Hotline; and
  - Email and/or call the JJS PREA Coordinator.
- 5.5 If a client victim is reporting directly to an employee, that employee's first responsibility is to keep the client safe by following the first responder protocol.

## **6 First Responder Protocol**

- 6.1 Any employee, contractor, or volunteer may be required to act as a first responder. A first responder may witness sexual abuse, be notified by a client victim and/or client witness of sexual abuse, or be assigned by the OIC. A first responder must take the following actions:
- Call for back-up;



Ensure the victim is safe and away from the alleged perpetrator;  
Assign an employee to stay with the victim until a BH clinician arrives;  
Assign an employee to stay with the alleged perpetrator until potential physical evidence is secured;  
Initiate an emergency unit-wide room confinement, per P.21.18;  
Escort the client victim to Medical and initiate possible transport to a SANE facility;  
Secure, but do not disturb, any other potential physical evidence;  
Notify the OIC and the Facility PREA Compliance Manager (FPCM); and  
Do not initiate an investigation.

- 6.2 If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the victim not destroy physical evidence by washing or wiping, brushing teeth, urinating, defecating, drinking, eating, smoking, chewing gum, and/or changing clothes. Take steps to ensure that the alleged perpetrator does not take any actions that may destroy physical evidence.

### **7 Officer in Charge (OIC) Notification**

- 7.1 When the OIC receives notification of an allegation of a substantial threat or sexual misconduct, they are responsible for coordinating an immediate response:
- Notify law enforcement, if appropriate;
  - Notify the facility Superintendent or the Juvenile Reintegration Center (JRC) Program Manager (PM);
  - Issue a Possible High-Profile Case (PHPC), which includes JJS PREA Coordinator notification;
  - Report to the JJS Facility Confidential Reporting Line;
  - Notify the Deputy Director for Facilities or Field Services;
  - Assign the victim a BH clinician as an in-house advocate; and
  - Complete or assign employee(s) to complete any necessary documentation (e.g., DIRs, SIRs).
- 7.2 The OIC may initiate an administrative investigation; however, if the allegation seems to be criminal, law enforcement must be notified.

### **8 PREA Coordinator Notification**

- 8.1 When the PREA Coordinator receives notification of an allegation of sexual misconduct, they must take the following actions:
- Initiate a PREA Case File Checklist and PREA Incident Log; and
  - Confirm that law enforcement and the JJS Facility Confidential Reporting Line have been notified.
- 8.2 The PREA Coordinator monitors all allegations, including third-party and anonymous allegations, to ensure prompt, thorough, objective investigations by the appropriate investigative body.

### **9 Calls to the JJS Facility Confidential Reporting Line**

- 9.1 Per CYFD Stand Alone Procedure (SAP), the Protective Services (PS) Screener receives all reports to the JJS Facility Confidential Reporting Line. If the caller alleges any risk of on-going abuse or substantial threat, the PS Screener immediately alerts the facility Superintendent/OIC or the JRC PM/OIC.

9.2 Then, per SAP, the PS Screener follows the guidelines for screening all reports.

### **10 Investigations**

- 10.1 Per SAP, the OIG Special Investigator conducts an investigation of all allegations screened in by the PS Screener.
- 10.2 Per SAP, the JJS administration ensures all screened-out allegations are assigned, investigated, and/or remediated.
- 10.4 In cases of substantial threats, the facility Superintendent/OIC or JRC PM/OIC meets with the client within 48 hours. The client explains the substantial threat and the resolution sought, and the facility Superintendent/OIC or JRC PM/OIC communicates the immediate action taken to address the substantial threat. The facility Superintendent/OIC or JRC PM/OIC and the client sign and date/time the JJS Facility Referral Form.

### **11 Debriefings**

- 11.1 The facility Superintendent or JRC PM and the FPCM debrief all PREA violations and allegations (substantiated and unsubstantiated). The PREA Investigator, Youth Care Specialists (YCSs), medical providers, and BH clinicians are 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;
  - Recommend potential policy and procedure modifications to the P&P Manager that might better protect clients; and
  - Prepare a report with recommendations for the facility Superintendent and the PREA Coordinator.

### **12 Follow-up Communications**

- 12.1 The PREA Coordinator notifies the reporter and/or client victim of the status of the allegation, per SAP.
- 12.2 The PREA Coordinator provides the client victim a letter reporting any criminal and/or administrative findings. Administrative findings may include the outcome of the investigation and any systemic changes JJS made to support greater safety for clients, but the letter does not include any employment action.
- 12.3 Regardless of whether an allegation against an employee is substantiated or unsubstantiated, the PREA Coordinator will inform the client victim whenever the following circumstances arise:
  - The perpetrator is no longer working on the client's living unit;
  - The perpetrator is no longer employed in JJS; and/or



The perpetrator has been indicted and/or convicted of a sexual abuse or charges related to sexual abuse in the facility.

- 12.4 Additionally, if an allegation against another client has been made, the PREA Coordinator will inform the client victim (for the duration of the commitment) if the perpetrator has been indicted and/or convicted of a sexual abuse in the facility.
- 12.5 If an allegation is unfounded or unsubstantiated, the alleged perpetrator (employee) may request a letter from the PREA Coordinator indicating such.
- 12.6 The PREA Coordinator notifies the client victim's parents/guardians promptly of an allegation.
- 12.7 Within 5 calendar days in cases of substantial threats, the facility Superintendent/OIC or JRC PM/OIC documents JJS's final decision as to whether the client was subject to substantial risk of imminent abuse (physical and/or sexual) and, if so, the action taken to address the substantial threat. The facility Superintendent/OIC or JRC PM/OIC communicates JJS's final decision to the client.

### **13 Protection from Retaliation**

- 13.1 During the 90 days after an allegation of sexual misconduct, the PREA Coordinator ensures that the victim, reporters, and any others who cooperated in the investigation – clients, employees, contractors, volunteers, and student interns – are protected from retaliation.
- 13.2 To protect from retaliation, JJS employs multiple measures that may include housing transfers for clients, non-client contact assignments for employees, and additional support services for anyone who fears retaliation for reporting sexual misconduct and/or participating in investigations.
- 13.3 Client monitoring includes periodic, documented status checks.
- 13.4 The monitoring may continue after 90 days if the PREA Coordinator believes there is a continued risk of retaliation.

### **14 Data Collection and Reports**

- 14.1 The PREA Management Analyst compiles all facility PREA statistics from a variety of sources, including:
  - PS Screener documentation;
  - JJS PREA Investigation Form;
  - Search Logs;
  - Unannounced Rounds Logs;
  - Serious Incident Reports (SIRs); and
  - Disciplinary Incident Reports (DIRs).
- 14.2 The PREA Coordinator compiles all agency PREA statistics from a variety of sources, including:
  - OIG exit staffing information;
  - Office of Quality Assurance (OQA) Quarterly Report; and
  - Reports generated from FACTS.

- 14.3 The PREA Coordinator reports the aggregate data (with personal identifiers removed) in several ways, including:  
CYFD website;  
Performance-based Standards (PbS) reporting forms; and  
Department of Justice (DOJ) requests.
- 14.4 The PREA Coordinator ensures that the agency's PREA statistics and compliance documentation are compiled and published annually.
- 14.5 In addition to publishing the agency's PREA statistics and compliance documentation, the PREA Coordinator publishes relevant contracts, agreements, and Memoranda of Understanding (MOUs) with rape crisis centers, SANE clinics, law enforcement, and other community partners that ensure PREA compliance, especially as they relate to investigations.
- 14.6 The PREA Coordinator retains all copies of administrative and criminal investigation reports, maintains a confidential record of all follow-up communications and attempted notifications related to PREA incidents, and ensures all documentation relating to PREA violations and allegations are securely and confidentially maintained for at least 10 years.
- 14.7 The PREA Coordinator retains all copies of administrative and criminal investigation reports for as long as the alleged abuser is employed by CYFD plus 5 years, if that is longer than the 10-year record retention requirement of section 14.6.

### **15 Consequences of Noncompliance**

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

### **16 Additional Documentation and Forms**

PREA Case File Checklist and PREA Incident Log  
JJS Facility Referral Form  
JJS PREA Investigation Form  
Search Logs  
Unannounced Rounds Logs

### **17 Issue Date**

September 1, 2019

### **18 Effective Date**

October 1, 2019

### **19 Modified Procedure**

P.5.23 Protection from Harm, 12/15/10

### **20 Replaced Procedure**

P.5.24 C PREA Compliance – Responding to Allegation, 09/01/2017



**21 Statutory Authority**

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

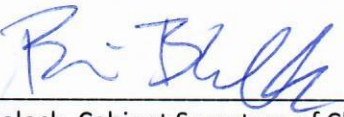
**22 Applicable Policy (Regulation)**

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

**23 Authorizing Signatures**

  
\_\_\_\_\_  
Tamera Marcantel, Juvenile Justice Services Deputy Director for Facilities

  
\_\_\_\_\_  
Nick Costales, Juvenile Justice Services Deputy Director for Field Services

  
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Brian Blalock, Cabinet Secretary of Children, Youth and Families Department