



New Mexico Children,
Youth & Families Department

**CYFD STAND-ALONE PROCEDURE, fourth version (SAP 04): OFFICE OF THE INSPECTOR
GENERAL INVESTIGATIONS IN JUVENILE JUSTICE SERVICES FACILITIES**

1. ISSUING AGENCY: Children, Youth and Families Department (CYFD)

2. SCOPE: Office of the Inspector General (OIG); Protective Services Division (PS); Juvenile Justice Services Division (JJS); Employee Relations Bureau (ERB); clients currently and previously housed in JJS secure facilities, JJS juvenile reintegration centers (JRCs), and contracted facilities; and clients' families.

3. EFFECTIVE DATE: September 1, 2019

4. OBJECTIVE: To implement this Procedure that encourages JJS facility clients and clients' families, and directs others (including employees, contractors, volunteers, and student interns) to report to a CYFD PS employee substantial threats; allegations of physical abuse, sexual abuse, sexual exploitation, sexual harassment, and neglect; and room confinement complaints. To implement this Procedure that ensures that those allegations reported to CYFD PS employees are promptly and professionally investigated.

5. DEFINITIONS:

5.1 "Client" refers to a person who is or was committed to the custody or under the supervision of JJS. Clients include individuals who are up to the age of 21 if they still are in custody or under supervision.

5.2 "Employee Relations Bureau" or "ERB" refers to the organizational unit within CYFD responsible for personnel matters.

5.3 "Facility", as used in this Procedure, refers to a facility or a JRC operated by, or on behalf of, JJS for purposes of housing and providing care for clients committed to the custody or under the supervision of JJS.

5.4 "Grievance" refers to a complaint about programming, services, or care provided to clients.

5.5 "Juvenile Justice Services" or "JJS" refers to the organizational unit within CYFD that staffs, manages, and operates juvenile justice facilities.

5.6 "Neglect" of a client by an employee, contractor, volunteer, or student intern may include, but is not limited to, failing to provide proper subsistence, medical, educational, and/or other care necessary for the client's well-being or failing to protect a client from foreseeable harm.

5.7 "Office of General Counsel" or "OGC" refers to the organizational unit within CYFD that advises and provides legal services to CYFD's Cabinet Secretary.

5.8 "Office of the Inspector General" or "OIG" refers to the organizational unit within CYFD responsible for conducting investigations of screened-in referrals.

5.9 "Office of Quality Assurance" or "OQA" refers to the organizational unit within JJS of CYFD that monitors, audits, inspects, reports, and makes recommendations on care and treatment of clients in secure facilities. Additionally, the OQA Director supervises the JJS grievance officers assigned to secure facilities.

5.10 "OIG Special Investigator" or "Special Investigator" refers to the person who has been designated by the Inspector General (IG) to receive and investigate screened-in referrals.

5.11 "OIG Investigation" refers to the process by which the Special Investigator collects and reviews information concerning screened-in referrals to determine whether there is a factual basis to the allegations.

5.12 "Physical Abuse" of a client by an employee, contractor, volunteer, or student intern may include, but is not limited to, any of the following:

1. Suspected non-accidental injuries that may include evidence of visible or non-visible signs of injury like skin bruising, bleeding, burns, fractures of any bones, subdural hematoma, or soft tissue swelling;
2. Excessive and/or inappropriate physical acts used on a client that may include excessive and/or inappropriate discipline, excessive force during a restraint, kicking, hitting with an object, biting, slapping, and any kind of corporeal punishment; and
3. Death of a client suspected to be the result of physical abuse.

5.13 "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.

5.14 "Protective Services" or "PS" refers to the organizational unit within CYFD that staffs the JJS Facility Confidential Reporting Line and provides the Screener who receives and evaluates reported allegations.

5.15 "Referral" or "Screened-in Referral" refers to a report that the PS Screener refers to the OIG for investigation. The referral includes the name of the client victim and alleged perpetrator(s), the type of allegation (physical abuse, sexual abuse, sexual exploitation, sexual harassment, neglect, or a room confinement complaint), a description of the incident, date and time of the incident, location, names of potential witnesses, and the existence and location of any other pertinent information.

5.16 "Room Confinement Complaint" refers to a report by or on behalf of a client alleging solitary confinement, segregation, isolation, and/or prohibited room confinement.

5.17 "Screened-out Referral" refers to an allegation that the PS Screener does not refer to OIG for investigation but rather refers to JJS administration for assignment, investigation, and/or remediation.

5.18 "Screener" refers to the PS employee who receives and evaluates reported allegations. This individual is responsible for staffing the JJS Facility Confidential Reporting Line and has sufficient training and experience to properly evaluate the reported allegation. The Screener is the Constituency Manager for PS or, when back-up is needed, a designated PS employee with appropriate qualifications.

5.19 "Sexual Abuse" of a client by an employee, contractor, volunteer, or student intern may include, but is not limited to, 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; contact between the mouth and the penis, vulva, or anus;
2. 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;
3. 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;
4. 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;
5. Any attempt, threat, or request by an employee, contractor, volunteer, or student intern utilizing power, influence, or authority to develop a sexual relationship with a client or perpetrate a sexual act on a client;
6. Any display by an employee, contractor, volunteer, or student intern of uncovered genitalia, buttocks, or breast in the presence of a client; and
7. Voyeurism by an employee, contractor, volunteer, or student intern means an invasion of privacy of a client 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.

5.20 "Sexual Exploitation" of a client by an employee, contractor, volunteer, or student intern may include, but is not limited to, any of the following acts:

1. Allowing, permitting, or encouraging a client to engage in prostitution;
2. Allowing, permitting, encouraging, or engaging a client in obscene or pornographic photographing; and
3. Filming or depicting a client for obscene or pornographic commercial purposes.

5.21 "Sexual Harassment" of a client by an employee, contractor, volunteer, or student intern may include, but is not limited to, verbal comments or gestures of a sexual nature, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, and obscene language or gestures.

5.22 "Substantial Threat" refers to a report that a client is subject to substantial risk of imminent physical abuse and/or sexual abuse. In the Prison Rape Elimination Act (PREA), this is defined as an emergency grievance.

5.23 "Substantiated" means an allegation that was investigated and, based on the Preponderance of Evidence Standard, was determined to have occurred.

5.24 "Unsubstantiated" means 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.

5.25 "Unfounded" means an allegation that was investigated and determined not to have occurred.

6. METHODS TO REPORT:

6.1 Making a Report: Reports to the JJS Facility Confidential Reporting Line can be made in three ways:

1. Call 1-855-563-5065;
2. Email JJS.Confidential@state.nm.us; and
3. Use a kiosk, an interactive device that provides another confidential method for reporting.

6.2 Confidentiality of Reports: 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.

7. PS INTAKE AND SCREENING:

7.1 Receiving: The Screener checks the JJS Facility Confidential Reporting Line (voicemails and emails) at least once every 24 hours.

7.2 Pre-Screening: If a report indicates a substantial threat or that a client is at risk of ongoing abuse, the Screener immediately (within 24 hours of receipt) notifies the facility Superintendent/Officer in Charge (OIC) or the JRC Program Manager/OIC so that safety can be assured. The Screener provides the name of the client victim and any other individuals(s) allegedly involved in the incident. If appropriate, the Screener may additionally notify law enforcement.

7.3 Screening: The Screener documents all received reports on the "JJS Facility Referral Form."

7.3.1 Within one business day of receipt, the Screener uses the "JJS Facility Screening Tool" to determine whether any received allegations meet the screening criteria: physical abuse, sexual abuse, sexual exploitation, sexual harassment, neglect, and/or a room confinement complaint.

7.3.2 If the Screener determines that the allegation meets the screening criteria, the "JJS Facility Referral Form" is scanned and emailed to OIGreferral@state.nm.us, using the employee email system. The IG is responsible for ensuring that the email address for referrals is reviewed each business day.

7.3.3 If the Screener determines that the allegation does not meet the screening criteria and the incident occurred in a JJS secure facility, the "JJS Facility Referral Form" is scanned and emailed to JPTC.grievance@state.nm.us, YDDC.grievance@state.nm.us, or CNYC.grievance@state.nm.us (based on the location of the incident), using the employee email system. The OQA Director is responsible for ensuring that the email addresses for facility grievances are reviewed each business day.

7.3.4 If the Screener determines that the allegation does not meet the screening criteria and the incident occurred at a JRC, the "JJS Facility Referral Form" is scanned and emailed to the JRC Superintendent.

7.3.5 If the Screener determines that the allegation does not meet the screening criteria and the incident occurred at a contracted facility (i.e., San Juan Detention Center), the "JJS Facility Referral Form" is scanned and emailed to the Deputy Director for Facilities.

7.3.6 If the identity and contact information of the reporter is known, the Screener notifies the reporter that the allegation has been received and will be reviewed.

7.4 Record-Keeping: The Screener logs all calls, voicemails, emails, and actions taken on every report received and keeps such records available for the PS and JJS Directors' Offices.

7.5 Review, Acceptance, and Confirmation of Receipt: OIG employees review the "JJS Facility Referral Form" and send a confirmation email to the Screener acknowledging receipt of any screened-in referral.

7.6 Reports by or Relating to Discharged Clients: A client or someone acting on a client's behalf may make a report after the client has been discharged from a facility or JRC. Reports made by former clients or on their behalf are handled by the same process outlined in this Procedure.

8. CROSS-REPORTING/NOTIFICATIONS:

8.1 Screened-in Referral: The Screener reports all screened-in referrals to law enforcement and the JJS Director by emailing the scanned "JJS Facility Referral Form".

8.2 All Allegations: The Screener reports all allegations to the appropriate Deputy Director (based on the location of the incident) by emailing the scanned "JJS Facility Referral Form".

8.3 PREA-Related Allegations: The Screener reports all PREA-related allegations to JJSPREA.Coordinator@state.nm.us by emailing the scanned "JJS Facility Referral Form".

9. JJS INVESTIGATION: JJS administration ensures all screened-out allegations are assigned, investigated, and/or remediated.

10. OIG INVESTIGATION: The Special Investigator conducts an investigation of all screened-in referrals.

11. CONDUCTING THE OIG INVESTIGATION:

11.1 Initiation: The Special Investigator, in coordination with the facility Superintendent or the JRC Program Manager, arranges face-to-face contact with the client victim within two business days of receiving a referral.

11.2 Coordination with Law Enforcement: The Special Investigator cooperates with law enforcement and, if requested, conducts a joint investigation or suspends the OIG investigation to allow for law enforcement to complete its investigation. The Special Investigator notifies those being interviewed that, as part of the investigation, information may be shared with law enforcement. Any materials reviewed or collected as part of the investigation are provided to law enforcement upon request. The Special Investigator documents the information that was provided, the date the information was provided, and to whom the information was provided.

11.3 OIG Investigating: All investigations may include the following components:

1. The interview of the client victim(s);
2. The interview of the alleged perpetrator(s);
3. The interview of any individual who witnessed the alleged incident(s), or who may provide additional, relevant information;
4. The interview of the medical provider who conducted the examination or evaluation and a review of any medical documentation concerning the alleged incident(s);
5. A review of any electronic data, in digital format, on video, or otherwise recorded concerning the alleged incident(s);
6. A review of any other material or documentation relevant to the alleged incident(s), including JJS policies, procedures, and directives; and
7. Protocols that oblige Department of Justice standards (especially standards for interviewing victims of sexual abuse).
8. Special Investigators do not have authority to impose criminal sanctions or employee disciplinary actions; therefore, they do not cite Miranda or Garrity warnings.

11.4 Conducting Interviews of JJS Clients: All interactions with client victims and client witnesses are conducted in a manner that takes into consideration any special needs, abilities, age, and maturity. The interview is conducted in a place within the facility that maintains the client's privacy. The interview is

conducted in a language that the client uses and understands. Clients may request that another CYFD employee of their choosing be present during the interview.

11.5 Conducting Interviews of Employees, Contractors, Volunteers, and Student Interns: All interviews are coordinated with facility management. The interviews may also be coordinated with law enforcement, when appropriate. Interviews are conducted in a confidential manner and in the individual's primary language. All CYFD employees are required to cooperate with investigations.

11.6 Retaliation Prohibited: The Special Investigator notifies every CYFD employee who is interviewed that retaliation against current or former clients, employees, contractors, volunteers, or student interns for reporting any allegations or room confinement complaints, submitting grievances, or providing information during the course of an investigation is a violation of this Procedure and the CYFD Code of Conduct and may be grounds for discipline up to and including termination.

11.7 Additional Allegations: Any new or additional allegations discovered during an OIG investigation are reported by the Special 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.

11.8 Investigation Summary: The Special Investigator makes a finding of "substantiated", "unsubstantiated", or "unfounded" for each allegation contained in the OIG investigation and provides this and other information in the "JJS Facility Investigation Summary."

11.9 Completion of the OIG Investigation: The Special Investigator's investigation is completed within a reasonable timeframe, not to exceed 30 calendar days of receipt of the referral. The IG may grant an extension for completion based upon good cause. Any extension granted and the basis for the extension is documented in writing and approved by the IG. Completion of the Special Investigator's investigation entails completing the "JJS Facility Investigation Summary(s)", which the IG approves. Regardless of any time extensions, the investigation and exit staffing is completed within 90 calendar days of the initial referral.

12. STAFFING:

12.1 OIG Staffing: The Special Investigator staffs the progress of each open investigation with the IG to:

1. Review the progress of the investigation;
2. Ensure the thoroughness of the investigation;
3. Strategize to address any challenges; and
4. Review decisions, including the finding(s) of the investigation.

12.2 CYFD Staffing: The Special Investigator schedules an exit staffing at the conclusion of the OIG investigation. The following administrators are invited:

1. JJS Director;
2. JJS Deputy Director for Facilities or Field Services (as appropriate);

3. JJS Deputy Director for Administration;
4. JJS OQA Director;
5. IG;
6. JJS PREA Coordinator (as necessary); and
7. A representative from the OGC.

12.3 Outcomes: Administrators consider and initiate follow-up actions that may include:

1. Review the evidence against the employee(s), and potentially initiate an ERB investigation;
2. Alert the PREA team of appropriate debriefing and training needs for involved employees at the facility level;
3. Review the evidence against the contractor(s), volunteer(s), or student intern(s) and take appropriate action(s).
4. Consider any physical plant or monitoring technology modifications that might better protect clients; and/or
5. Recommend potential policy or procedure modifications to the P&P Manager that might better protect clients.

13. DOCUMENTATION:

13.1 Distribution: The Special Investigator provides a copy of each completed "JJS Facility Investigation Summary" to the administrators listed above (12.2).

13.2 Document Retention: Documentation is retained and may be evaluated for trending and accountability purposes.

13.2.1 The PS Screener retains all documentation on all reports to the JJS Facility Confidential Reporting Line for at least 10 years.

13.2.2 The Special Investigator retains all documentation on all screened-in referrals for at least 10 years.

14. NOTIFICATION: The PS Director notifies the JJS Director and the IG immediately if there is a change in the identity and/or contact information of the Screener.

15. CONFIDENTIALITY: Information obtained during the course of an OIG investigation is confidential and is released only as allowed by law. "JJS Facility Screening Tool(s)", "JJS Facility Referral Form(s)", "JJS Facility Investigation Summary(s)", and all other relevant forms, notes, and documentation are confidential and not subject to public inspection or disclosure.

16. **PROVISION EFFECT:** This SAP 04 wholly supersedes SAP 03, dated September 1, 2016.

17. **AUTHORIZED SIGNATURE:**



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

9/24/19

Date