



Department of Juvenile Justice
Administrative Procedure

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| Administrative Procedure: VOL I – 1.7 – 01 | Statutory Authority: Title 66 of the <u>Code of Virginia</u> §§ 66-21 and 66-3 PREA §115.134(a)-(d) |
| Subject: The Roles, Functions and Responsibilities of the Investigative Unit and Personnel Reporting Responsibilities | New Regulations: 6VAC35-71-70; 6VAC35-71-75; 6VAC35-41-100; 6VAC35-41-105 |
| | Old Regulations: 6VAC35-140-45; 6VAC51-1040 ACA # 4-JCF-3D-01; 4-JCF-3D-04, 4-JCF-3D-07; 4-JCF-3D-09 |

I. PURPOSE

To establish and clarify the responsibilities of the Department of Juvenile Justice (DJJ) when an allegation is made or a complaint is filed alleging a crime was committed within a juvenile correctional center or halfway house operated by DJJ

II. POLICY

The Investigative Unit comprised of the Internal Affairs and Gang Management Teams was established in November 2011 within the DJJ, with the overall responsibility to protect and preserve the integrity of the DJJ. The Investigative Unit's mission is preventing, detecting and exposing criminal activity, gang related activity, corruption, serious misconduct, sexual misconduct and/or mismanagement in relation to DJJ operations.

III. SCOPE

This procedure applies to all investigations conducted by the DJJ Investigative Unit, including administrative investigations and investigations of criminal activity affecting DJJ operations.

IV. DEFINITIONS

Circumstantial Evidence – Evidence that tends to prove a factual matter by proving other events or circumstances from which the occurrence of the matter at issue can be reasonably inferred.

Direct Evidence – Evidence that, if believed, immediately establishes the factual matter to be proved by it, without the need for inferences.

Fraud – The deliberate deception to procure unfair or unlawful gain. It includes an array of intentional irregularities and illegal acts performed by persons inside and outside of DJJ.

Preponderance of Evidence – The greater weight of the evidence required in a civil (non-criminal) lawsuit for the trier of fact (jury or judge without a jury) to decide in favor of one side or the other. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

The Roles, Functions and Responsibilities of the Investigative Unit and Personnel Reporting Responsibilities

Physical Evidence – Tangible evidence (e.g., weapon, document, or visible injury) that is in some way related to the incident that gave rise to the case.

Sexual Abuse – The Prison Rape Elimination Act provides the following definition of sexual abuse:

Sexual abuse of a resident by resident 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:

- 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;
- Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual abuse of a resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the resident:

- 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;
- Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- 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 staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;
- Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
- Voyeurism by a staff member, contractor, or volunteer.

Sexual Harassment - (1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one resident directed toward another; and (2) Repeated verbal comments or gestures of a sexual nature to a resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Substantiated Allegation – An allegation that was investigated and determined to have occurred.

Unfounded Allegation – An allegation that was investigated and determined not to have occurred.

Unsubstantiated Allegation – An allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

The Roles, Functions and Responsibilities of the Investigative Unit and Personnel Reporting Responsibilities

Voyeurism – An invasion of privacy of a resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring inmate resident to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of inmate resident performing bodily functions.

V. PROCEDURES

A. Initiating an Investigation

1. Referrals for investigations should be made using the supervisory chain of command. Once the Organizational Unit Head, Superintendent and/or Administrator on Call is made aware of a potential situation of an administrative, criminal, PREA, or other violation, he/she shall notify, as soon as practical, the Investigative Unit Manager and/or the Investigative Unit Supervisors.
2. The Investigative Unit Manager and/or Investigator Supervisors shall have the responsibilities to assign and/or conduct investigations regarding incidents that are reported and/or referred to the Investigative Unit. When required by law, or as otherwise appropriate to the circumstances, the Unit shall consult with the Virginia State Police (VSP), local law enforcement, respective Commonwealth's Attorney Offices and/or the Office of the State Inspector General (OSIG) for guidance and resources.
3. The Investigative Unit shall cooperate with local, state and federal agencies that are investigating criminal law violations and allegations of employee misconduct.
4. When the Investigative Unit receives an allegation, one or more investigators shall initiate an investigation as soon as practicable, but no later than two (2) business days after receiving the referral.
5. The Internal Affairs Team shall handle all investigations regarding allegations against staff to include administrative/procedure and criminal law violations.
6. Resident-on-resident and resident-on-staff incidents shall be referred to the Gang Management Team Supervisor for initial review. These incidents may be investigated by the Gang Management Team or be referred back to a DJJ supervisor, manager, or administrator at the facility for investigation utilizing applicable Investigative Unit procedures. Incidents shall be referred to the Virginia State Police for investigation, as appropriate.

B. PREA Investigations

All allegations of sexual abuse and sexual harassment as defined by the Prison Rape Elimination Act of 2003, 42 USC §§15601-09 (PREA), including third-party and anonymous reports, shall be immediately reported to the Investigative Unit and shall be investigated promptly, thoroughly and objectively.

1. Allegations of sexual abuse of a resident by a staff member, contractor, or volunteer and allegations of sexual abuse of a resident by another resident shall be referred to VSP under Memorandum of Agreement (MOA). All such referrals shall be documented.

The Roles, Functions and Responsibilities of the Investigative Unit and Personnel Reporting Responsibilities

- a. The Investigative Unit shall request that the VSP follow requirements of PREA including specialized training for investigators mandated under PREA.
 - b. The Investigative Unit shall only investigate those allegations of sexual abuse of a resident by a staff member, contractor, or volunteer and allegations of sexual abuse of a resident by another resident when the incident has been referred back to the Investigative Unit by the VSP.
 - c. The Investigative Unit shall not designate investigative authority on PREA related allegations to the JCC or the halfway house.
2. Allegations of sexual harassment of a resident by another resident shall be referred to the Gang Management Team Supervisor and shall be investigated by a unit member who has received specialized training as mandated by PREA. PREA specialized training requirements also apply if the allegation is referred back to a facility for investigation. To the extent the Investigative Unit is responsible for investigating allegations of sexual abuse, it shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. Such protocol shall be developmentally appropriate for residents.
3. Investigators shall:
- a. Gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data;
 - b. Interview alleged victims, suspected perpetrators, and witnesses; and
 - c. Review prior complaints and reports of sexual abuse involving the suspected perpetrator.
4. If an allegation involving a victim under the age of 18 meets the criteria for suspected child abuse or neglect, the Investigative Unit shall ensure that the suspected child abuse or neglect is reported to the child protective services as required by law.
5. Investigations shall not be terminated solely on the victim recanting the allegation nor due to the departure of the alleged abuser or victim from the employment or control of the facility or DJJ,
6. Credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and not determined by the individual's status as a resident or staff. Polygraph examinations of residents who allege sexual abuse shall not be conducted as a condition for proceeding with the investigation of the allegation.

C. Administrative Investigations:

1. Administrative investigations shall:
 - a. Include an effort to determine whether staff action or failure(s) to act contributed to the abuse.; and
 - b. Be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
2. Written reports shall be retained for as long as the alleged abuser is committed to or employed by DJJ or for five (5) years, whichever is longest.

The Roles, Functions and Responsibilities of the Investigative Unit and Personnel Reporting Responsibilities

D. Criminal Investigations

1. The Investigative Unit shall investigate allegations of criminal behavior affecting DJJ operations in accordance with a written agreement entered into with the VSP.
2. Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attached copies of all documentary evidence where feasible.
3. Written reports shall be retained for as long as the alleged abuser is committed to or employed by DJJ or for five (5) years, whichever is longest
4. Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.
5. No standard higher than a preponderance of the evidence shall be imposed in determining whether allegations of sexual abuse or sexual harassment are substantiated.

E. Reporting to Residents:

1. Following an investigation into a resident's allegation of sexual abuse DJJ shall inform the resident as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
2. If DJJ did not conduct the investigation, it shall request the relevant information from VSP in order to inform the resident.
3. Following a resident's allegation that a staff member has committed sexual abuse against the resident, DJJ shall subsequently inform the resident (unless the allegation is unfounded) whenever:
 - a. The staff member is no longer posted within the resident's unit;
 - b. The staff member is no longer employed at the facility;
 - c. DJJ learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
 - d. DJJ learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
4. Following a resident's allegation that he or she has been sexually abused by another resident, DJJ shall subsequently inform the alleged victim whenever:
 - a. DJJ learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
 - b. DJJ learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
5. All such notifications or attempted notifications shall be documented in the investigative report or as an addendum to the investigative report.
6. DJJ's obligation to report under this standard shall terminate if the resident is released from DJJ's custody.

The Roles, Functions and Responsibilities of the Investigative Unit and Personnel Reporting Responsibilities

F. Theft / Fraud Investigations

If theft or fraud is alleged, the Investigative Unit may request appropriate internal or external personnel to assist with identifying weaknesses in financial and operating procedures that led to the loss.

G. Access to Records, Property and Personnel in the Course of Investigations

1. The Investigative Unit shall have unrestricted access to all DJJ records and property.
2. The Director of DJJ or the Director's designee shall intervene with any disputes regarding the release of information to investigators and his/her determination shall be final.
3. While in the course of an investigation, Investigative Unit personnel shall not be required to notify or seek approval of DJJ supervisors or management personnel before contacting individual employees and volunteers. However, in some circumstances when notification shall not jeopardize the investigation, Investigative Unit personnel may notify DJJ supervisors and management that an employee or volunteer has been contacted.
4. During the course of investigations, Investigative Unit personnel shall make every effort not to disrupt staff work routines, particularly when staff are involved in security positions and/or assigned to critical posts.

H. Investigative Findings

1. In addition to the findings of fact resulting to the investigation, the Investigative Unit may recommend improvements of identified weaknesses and may conduct additional reviews to identify similar weaknesses in other areas within DJJ.
2. The Investigative Unit shall not recommend disciplinary actions or other personnel actions. However, if the investigation confirms theft, fraud, abuse, sexual misconduct or other serious or illegal misconduct, the individuals who are found to be responsible may be subject to criminal, civil, or personnel actions.
3. Investigations involving possible policy, procedure, regulation, and/or criminal conduct shall be processed through the Investigative Unit Manager and forwarded for review to the Deputy Director of Operations and/or the Superintendent of the Division of Education for notice of action, if applicable. Any authorized criminal, civil, or personnel action shall be reported back to the Investigative Unit Manager.
4. The DJJ Human Resources (HR) Unit shall assist in the review of potential disciplinary actions to ensure compliance with DJJ HR procedures.
5. When designated by statute, regulation and/or Executive Order, the results of an investigation shall be provided to any federal, state, or local agency showing just cause.

I. Personnel Reporting Responsibilities

1. Reporting of Misconduct and Other Violations

The Roles, Functions and Responsibilities of the Investigative Unit and Personnel Reporting Responsibilities

- a. All DJJ employees, volunteers, and contractors (“personnel”) shall report any observed or suspected employee misconduct/sexual misconduct to include violations of statutes, the Prison Rape Elimination Act of 2003, 42 USC §§15601-09, Executive Orders of the Governor, personnel and fiscal policies of the Commonwealth, Board policies and standards, or DJJ directives to the Investigative Unit in accordance with established procedures. The commonly used reporting procedures are summarized in this Administrative Procedure.
 - b. When DJJ personnel become aware of alleged violations, they shall:
 - 1) Report the allegations through the chain of command according to required DJJ procedures to the Investigative Unit;
 - 2) Immediately gather information to help establish the facts and circumstances of the alleged violation(s); and
 - 3) Take immediate action to correct deficiencies with procedures and practices.
 - c. DJJ personnel shall report criminal activity and violations of the DJJ Code of Conduct as required in the Code of Conduct. The person receiving the report shall forward this information to the Investigative Unit for investigation as soon as practicable, but no later than the next business day.
 - d. Personnel within the Investigative Unit who have been certified as law enforcement officers by the Department of Criminal Justice Services (DCJS) shall have by law, the same powers as a sheriff or a law enforcement officer and have the authority to investigate allegations of criminal conduct and shall have the powers to arrest for violations of laws that affect the operations of DJJ.
2. The Reporting of Waste, Fraud, and Abuse of Government Resources
- a. To report suspected waste, fraud, or abuse of government resources, personnel shall notify their supervisor, contact the Investigative Unit Supervisor or Manager at the DJJ central number at 804-371-0700, 804-239-2090, 804-588-3884 or anonymously notify the State Waste, Fraud, and Abuse Hotline at 1-800-723-1615.
 - b. Examples of Fraud include:
 - 1) Offering or accepting bribes or kickbacks;
 - 2) Embezzlement (e.g., misappropriating money or property and falsifying records to cover up the act, thus making detection difficult);
 - 3) Self-dealing that results in the award of state business to an enterprise in which the state employee holds an interest;
 - 4) Receiving any benefit from a source other than the Commonwealth for just doing one's job;
 - 5) Using insider information for personal gain;
 - 6) Accepting anything of value that may reasonably be perceived as tending to influence one in the performance of his/hers official duties;
 - 7) Intentionally concealing or misrepresenting events or data; and
 - 8) Submitting claims for services or goods not actually provided to the DJJ or for reimbursement of expenses not actually incurred.

The Roles, Functions and Responsibilities of the Investigative Unit and Personnel Reporting Responsibilities

- c. Upon receiving an allegation of theft or fraud or abuse from the Waste, Fraud, and Abuse Hotline, the Investigative Unit Manager and/or Investigator Supervisor shall immediately notify the Director and implement an appropriate plan of action to include circumstances that would require that notification be made to the OSIG and/or the VSP, pursuant to *Code of Virginia* § 2.1-155.3. [Note: Per recodification of Title 2.1 in 2002, the new Code citation is § 30-138.]
- d. Personnel who report theft, fraud, abuse, or other misconduct in good faith shall be protected from retaliation.
- e. Generally allegations of fraud, waste, and abuse will be investigated by the State Office of the State Inspector General. However, the Investigative Unit may investigate such matters when specifically authorized by the Office of the State Inspector General.

3. Reporting Allegations of Child Abuse

- a. When there are allegations of abuse or neglect of a resident under the age of 18, the *Code of Virginia* § 63.1-248.3 requires that the DJJ JCC/CSU having custody of said resident promptly notify the Department of Social Services (DSS). Allegations of sexual abuse, in addition to notifying DSS, shall be reported to the VSP. Following notification to DSS, the JCC Superintendent, halfway house director or either's designee shall notify the Investigative Unit Manager and/or Investigator Supervisor as soon as practicable, but no later than the next business day.
- b. All instances of alleged abuse of a resident, (i) whether or not the DSS decides to investigate the allegation and (ii) whether or not the resident is under the age of 18, shall be reported through the DJJ's incident reporting process. The Investigative Unit shall be forwarded all serious incident reports and pertaining documentation in relation to the alleged abuse.

J. Assignment of Investigations

The Investigative Unit may assign the investigation of incidents to other DJJ personnel who have been designated by the investigative unit to conduct such investigations. In such cases, the Investigative Unit shall identify the specific person assigned the investigation and assign a case number. The designated investigator, upon completion of the investigation, shall submit a report to the Investigative Unit Manager or Supervisor, whichever assigned the case. The report shall include the finding of the investigation (substantiated, unfounded, or unsubstantiated) and shall include all relevant documents.

K. Reports from Local, Regional, and Contract Programs

The Deputy Director of Operations shall ensure that the Investigative Unit receives copies of all serious incidents reported by local, regional, and contract programs in accordance with standards or contract terms. Although DJJ has no authority over the operation and security of detention homes, any local, regional, or contract program may ask the Investigative Unit for assistance or advice at any time.

VI. RESPONSIBILITY

The Investigative Unit Manager, JCC Superintendent, and Halfway House Director shall be responsible for ensuring this procedure is implemented and followed.

**The Roles, Functions and Responsibilities of the Investigative Unit and Personnel Reporting
Responsibilities**

VII. INTERPRETATION

The Investigative Unit Manger and Deputy Director of Operations shall be responsible for the interpretation of this administrative procedure.

VIII. CONFIDENTIALITY

All procedures and bulletins are DJJ property and shall only be used for legitimate business purposes. Any redistribution or the documents or information contained in the procedures or bulletins shall be in accordance with applicable state and federal statutes and regulations and all other DJJ procedures. Any unauthorized use or distribution may result in disciplinary and/or criminal action, as appropriate and applicable.

IX. REVIEW DATE

This procedure shall remain in effect until rescinded or otherwise modified by the appropriate authority.

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| Approved by: <i>Mark G. Stoch</i> | Date: <i>8-7-13</i> |
| Effective Date: August 7, 2013 | Office of Primary Responsibility: Investigative Unit; Division of Operations |
| Supersedes: This Procedure shall replace Directive 04-801 issued 12-30-00 and 03-007 | Forms: MOA between DJJ and VSP |