



**Department of Juvenile Justice  
Residential Services  
Standard Operating Procedure**

<b>VOL IV – 4.1 – 1.03</b>	<b>Statutory Authority:</b> <a href="#">Title 66</a> and §§ <a href="#">18.2-64.2</a> , <a href="#">18.2-67.4</a> , and <a href="#">63.2-1509</a> of the <i>Code of Virginia</i> ; <a href="#">28 C.F.R. Part 115 PREA</a>
<b>Subject: PRISON RAPE ELIMINATION ACT (PREA)</b>	<b>Regulations:</b> <a href="#">6VAC35-71-60</a> ; <a href="#">6VAC35-71-70</a> ; <a href="#">6VAC35-71-75</a> ; <a href="#">6VAC35-71-150</a> ; <a href="#">6VAC35-71-160</a> ; <a href="#">6VAC35-71-170</a> ; <a href="#">6VAC35-71-550</a> ; <a href="#">6VAC35-71-555</a> ; <a href="#">6VAC35-71-840</a>
	<b>Other:</b> <a href="#">DHRM Policy 1.60 Standards of Conduct</a>
	ACA # 4-JCF-3A-02; 4-JCF-3D-01; 4-JCF-3D-02; 4-JCF-3D-04; 4-JCF-3D-07; 4-JCF-3D-08; 4-JCF-3D-09; 4-JCF-4C-50; 4-JCF-6D-06

### 1.03-1.0 PURPOSE

The Prison Rape Elimination Act of 2003 (Public Law No. 108-79) (PREA) was signed into law in 2003 to “provide for the analysis of the incidence and effects of prison rape in Federal, State and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.” Meeting the objectives of PREA is a priority of the Virginia Department of Juvenile Justice (DJJ). DJJ has zero tolerance for any incident involving the sexual abuse, sexual harassment, or rape of a resident. The purpose of this procedure is to ensure residents are protected from sexual abuse and sexual harassment and to outline DJJ’s approach to preventing, detecting, and responding to such conduct.

### 1.03-2.0 SCOPE

This procedure applies to all residents, DJJ employees, contractors, volunteers, visitors, and all persons who conduct business with DJJ. Sexual contact between residents and sexual contact between residents and employees, contractors, volunteers, and visitors is prohibited by §§ [18.2-64.2](#) and [18.2-67.4](#) of the *Code of Virginia*.

### 1.03-3.0 DEFINITIONS

#### General Definitions

*Abuse* – The improper use or treatment of an individual, a corrupt practice or application of policy or procedure that directly or indirectly affects an individual in an unjust manner, or any intentional act that causes physical, mental, or emotional injury to an individual.

*Administrator* – The superintendent or assistant superintendent and supervisory staff (e.g., shift commanders, watch commanders, etc.).

*Balanced Approach Data Gathering Environment (BADGE)* – An electronic case record on each juvenile beginning at the initial contact with the court service unit and continuing until the release from supervision. The system also serves to generate a variety of reports using the information collected on the residents.

*BADGE Incident Report (BADGE-IR)* – A report prepared through the BADGE incident reporting module that describes any event or situation that is severe in nature and may present a

risk to public safety or threatens or critically affects staff or residents. Incidents necessitating a BADGE-IR are divided into Critical Incidents (Level I and Level II) and Non-Critical Incidents for reporting purposes.

*Carnal Knowledge* – The acts of sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, and animate or inanimate object sexual penetration. (§ [18.2-64.2](#))

*Contact* – For the purposes of this procedure, contact may include being in the same enclosure with a resident (e.g., dayroom, resident room, courtyard, hallway, clinic, intake, etc.), being able to visually observe the resident (e.g., via live video feeds, one-way or two-way glass, etc.), or being able to converse with a resident (e.g., through talking or shouting, via intercom, etc.).

*Contractor* – A person who provides services on a recurring basis pursuant to a contractual agreement with DJJ (e.g., medical professionals employed through a contract, providers). [28 CFR § 115.5]

*Employee* – A person who works directly for the agency or facility. [28 CFR § 115.5]

*Exigent Circumstances* – Any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility. Per the PREA Resource Center, a typical staff shortage is not an exigent circumstance. [28 CFR § 115.5]

*Fraternization* – An employee association with residents, or their family members, outside of employee job functions that extends to unacceptable, unprofessional and prohibited behavior. This includes conversations, contact, personal or business dealings between an employee and residents or their family members that are unnecessary, not a part of the employee's duties, and related to a personal relationship or purpose rather than a legitimate correctional purpose. Examples include but are not limited to non-work related visits between residents and employees; non-work related relationships with family members of residents; discussing employee personal matters (marriage, children, work, etc.) with residents; engaging in romantic or sexual relationships with residents; hugging a resident (including side-hugs and back hugs), kissing or blowing a kiss to a resident, or saying 'I love you' to a resident, even if the intent is not romantic or sexual in nature.

*Full-Body X-Ray Scanning System* – A radiographic imaging system used to detect contraband concealed on or about a person (e.g., body scanner).

*Gender Identity* – A person's internal sense of being male or female, regardless of the person's sex assigned at birth.

*Gender Nonconforming* – A person whose appearance or manner does not conform to traditional societal gender expectations. [28 CFR § 115.5]

*Institutional Incident Report (IIR)* – A report completed by staff in a facility that describes an incident in accordance with VOL IV-4.1-1.01 (Incident Reports).

*Intersex* – A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development. [28 CFR § 115.5]

*Medical Practitioner* – A health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of their professional practice. For purposes of this procedure, a “qualified medical practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims. [28 CFR § 115.5]

*Mental Health Professional* – A physician, psychiatrist, psychologist, social worker, nurse, or other advanced degree professional that is designated as a mental health professional by the Behavioral Services Unit (BSU). These professionals will be qualified by virtue of education, credentials, and experience, and are permitted by law to evaluate and care for patients within the scope of their professional practice. “Mental health professional” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims. For this agency, mental health professionals are also referred to as the Behavioral Services Unit (BSU). [28 CFR § 115.5]

*Ombuds Program* – Created to monitor living conditions within DJJ’s Juvenile Correctional Centers (JCCs), serving as an “early warning system” when problems are identified. It also provides a way for parents and staff to privately report any areas of concern, including allegations of sexual harassment or sexual abuse in accordance with the Prison Rape Elimination Act (PREA) of 2003.

*Ombuds Program Number* – The number (833-941-1370 [toll free], 804-323-0888) provided to any third-party reporter or staff to report any incident of sexual abuse of a resident.

*Pat-Down (Frisk) Search* – A brief visual and manual search consisting of running of the hands over the clothed body of a resident by an employee to determine whether the individual possesses contraband. Those being searched may be asked to remove outside clothing such as sweaters, jackets, shoes, etc. [28 CFR § 115.5]

*Peer Educators* – Residents who apply for and are selected as instructors of the VADJJ PREA Peer Education Class.

*Physical Evidence Recovery Kit (PERK)* – The kit administered by specially trained professional medical practitioners to collect forensic evidence for criminal investigations of sexual assaults and other sexual violations. PERK examinations should be administered within 120 hours of an alleged incident of sexual intercourse.

*PREA Hotline* – The toll-free telephone number maintained by the PREA Unit to allow residents to report sexual abuse or sexual harassment by dialing #55 from any resident telephone system phone.

*Professional Relationship* – For the purposes of this procedure, a staff, contractor, or volunteer relationship with residents and their family members maintained through well-defined professional boundaries and the highest ethical standards of honesty, integrity, and impartiality pursuant to the Department of Juvenile Justice’s Code of Ethics (Attachment #1 to VOL I-1.2-08 Code of Ethics), VOL I-1.2-01 Staff Code of Conduct, and [DHRM Policy 1.60 Standards of Conduct](#).

*Rape* – The *Prison Rape Elimination Act of 2003*, 34 U.S.C. § 30309 defines rape as “the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person, forcibly or against that person’s will; or not forcibly or against the person’s will, where the victim is incapable of giving consent because of their youth, or their temporary or permanent mental or physical incapacity; or achieved through the exploitation of the fear or threat of physical violence or bodily injury.”

*Security Series Staff* – Staff who have completed *Basic Skills for Direct Care Staff* and whose primary job responsibilities are for maintaining the safety, care, and wellbeing of residents, implementing the structured program of care and the behavior management program, and maintaining the security of the facility.

*Staff* – For purposes of this procedure, staff refers to all employees.

*Strip Search* – A search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia. [28 CFR § 115.5] At no time during a strip search will the person conducting the search have physical contact with the individual being searched.

*Substantiated Allegation* – An allegation that was investigated and determined to have occurred. [28 CFR § 115.5]

*Transgender* – A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person’s assigned sex at birth. [28 CFR § 115.5]

*Unfounded Allegation* – An allegation that was investigated and determined not to have occurred. [28 CFR § 115.5]

*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. [28 CFR § 115.5]

*Volunteer* – An individual who donates time and effort on a recurring basis to enhance the activities and programs of DJJ.

## **Definitions Related to Sexual Abuse**

*Sexual Abuse* includes:

- a. Sexual abuse of a resident by another resident; and
- b. Sexual abuse of a resident by a staff member, contractor, or volunteer. [28 CFR § 115.6]

*Sexual Abuse of a Resident by another 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:

- a. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- b. Contact between the mouth and the penis, vulva, or anus;
- c. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and

- d. 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. [28 CFR § 115.6]

*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:

- a. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- b. Contact between the mouth and the penis, vulva, or anus;
- c. 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;
- d. 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;
- e. 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;
- f. Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (a) through (e) of this section;
- g. Any display by a staff member, contractor, or volunteer of their uncovered genitalia, buttocks, or breast in the presence of a resident, and
- h. Voyeurism by a staff member, contractor, or volunteer. [28 CFR § 115.6]

*Sexual Harassment* includes:

- a. 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
- b. Any 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.

*Voyeurism by a Staff Member, Contractor, or Volunteer* – An invasion of privacy of a resident by staff for reasons unrelated to official duties, such as peering at a resident who is using a toilet in their cell to perform bodily functions; requiring a resident to expose their buttocks, genitals, or breasts; or taking images of all or part of a resident’s naked body or of a resident performing bodily functions. [28 CFR § 115.6]

## **1.03-4.0 GENERAL PROCEDURES**

### **1.03-4.1 Zero Tolerance Policy**

1. All staff, contractors, and volunteers shall maintain a professional relationship with residents and their family members at all times to provide security and protect staff, contractors, volunteers, and residents, including protecting residents from civil rights violations. Employees who violate this requirement are subject to disciplinary action under [DHRM Policy 1.60 Standards of Conduct](#).
2. DJJ prohibits and will not tolerate any fraternization or sexual misconduct, including sexual abuse and sexual harassment, between staff, contractors, volunteers, and residents, or

between residents. DJJ actively works to prevent, detect, report, and respond to any violation. [28 CFR § 115.311(a)]

3. Any behavior of a sexual nature between employees and residents is prohibited. Employees shall be subject to a disciplinary action under [DHRM Policy 1.60 Standards of Conduct](#) and shall be subject to prosecution under the *Code of Virginia*. All staff, contractors, and volunteers shall report any suspicion of fraternization or sexual misconduct between staff, contractors, volunteers, and residents. Staff are not only required to report, but also may be subjected to disciplinary actions if they do not. [28 CFR § 115.311(a)]
4. Any behavior of a sexual nature by residents is prohibited and subject to disciplinary action in accordance with VOL IV-4.1-1.16 (Resident Discipline) and may result in criminal charges. [28 CFR § 115.311(a)]
5. Consensual sexual activity among residents shall not be permitted. If residents engage in this type of activity, the resident(s) shall be subject to disciplinary action in accordance with VOL IV-4.1-1.16 (Resident Discipline). [28 CFR § 115.311(a)]

#### **1.03-4.2 Contracting with Other Entities for Confinement of Residents**

1. If DJJ contracts for the confinement of its residents with private agencies or other entities, including other government agencies, DJJ shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards. [28 CFR § 115.312(a)]
2. Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards. The Agency PREA Coordinator or designee shall conduct such monitoring. [28 CFR § 115.312(b)]

#### **1.03-4.3 Hiring and Promotion Decisions**

1. In accordance with 28 CFR § 115.317 and VOL I-1.2-04 (Background Investigations):
  - a. DJJ shall not hire or promote anyone who may have contact with residents, and shall not enlist the services of any contractor who may have contact with residents, who:
    - i. Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);
    - ii. Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
    - iii. Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(ii) above.
  - b. DJJ shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with residents.

- c. Before hiring new employees who may have contact with residents, DJJ shall:
  - i. Perform a criminal background records check;
  - ii. Consult applicable child abuse registries (i.e., complete a Department of Social Services/Child Protective Services (DSS)/CPS) Request for Search of the Central Registry); and
  - iii. Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.
- d. DJJ shall also perform a criminal background records check, and consult applicable child abuse registries, before enlisting the services of any contractor who may have contact with residents.
- e. DJJ shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with residents or have in place a system for otherwise capturing such information for current employees.
- f. DJJ shall also ask all applicants and employees who may have contact with residents directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. All employees have a continuing affirmative duty to disclose any such misconduct.
- g. Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.
- h. Unless prohibited by law, DJJ shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

#### **1.03-4.4 PREA Coordinator and Facility PREA Compliance Manager**

1. DJJ shall designate an upper-level, agency-wide PREA Coordinator to develop, implement and oversee agency efforts to comply with the PREA standards in all JCCs. [28 CFR § 115.311(b)]
2. The Deputy Director of Policy in conjunction with the Agency PREA Coordinator shall designate a Facility PREA Compliance Manager to coordinate the facility's efforts to comply with the PREA standards. The Facility PREA Compliance Manager shall have regular contact with the Agency PREA Coordinator and the superintendent of the JCC. [28 CFR § 115.311(c)]

#### **1.03-4.5 Facility Upgrades and Technologies**

1. When designing or acquiring any new facility or in planning any substantial expansion or modification of existing facilities, DJJ shall consider the effect of designs, acquisitions,

expansions, or modifications on DJJ's ability to protect residents from sexual abuse. [28 CFR § 115.318(a)]

2. When installing or updating any video monitoring system, electronic surveillance system, or other monitoring technology, DJJ shall consider how such technology may enhance DJJ's ability to protect residents from sexual abuse [28 CFR § 115.316(b)].

## **1.03-5.0 TRAINING AND EDUCATION**

### **1.03-5.1 Employee, Volunteer and Contractor Training**

1. All DJJ employees who may have contact with residents shall be trained on the following:
  - a. The zero-tolerance policy for sexual abuse and sexual harassment;
  - b. How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
  - c. The right of residents to be free from sexual abuse and sexual harassment;
  - d. The right of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
  - e. The dynamics of sexual abuse and sexual harassment in juvenile facilities;
  - f. The common reactions of juvenile victims of sexual abuse and sexual harassment;
  - g. How to detect and respond to signs of threatened and actual sexual abuse and how to distinguish between consensual sexual contact and sexual abuse between residents;
  - h. How to avoid inappropriate relationships with residents;
  - i. How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents;
  - j. The role of staff as a first responder should a resident disclose sexual abuse as detailed in the *First Responders' Duties* Section below;
  - k. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities; and
  - l. Relevant laws regarding the applicable age of consent. [28 CFR § 115.331(a)]
2. Such training shall be tailored to the unique needs and attributes of the residents of juvenile facilities and to the gender of the residents in each facility. The employee shall receive additional training if the employee is reassigned from a facility or unit that houses only male residents to a facility or unit that houses only female residents, or vice versa. [28 CFR § 115.331(b)]
3. DJJ shall provide each employee who may have contact with residents refresher training on DJJ's current sexual abuse and sexual harassment policies and procedures every year. [28 CFR § 115.331(c)]
4. DJJ shall train security series staff in how to conduct cross-gender pat-down searches and searches of transgender and intersex residents in a professional and respectful manner, and in the least intrusive manner possible consistent with security needs. [28 CFR § 115.315(f)]
5. DJJ shall train all volunteers and contractors who have contact with residents on their responsibilities under DJJ's sexual abuse and sexual harassment prevention, detection, and response policies and procedures. The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with



residents, but this training shall include, at a minimum, notification of DJJ's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report any such incidents [28 CFR § 115.332(a) and (b)]. The appropriate level and type of training of volunteers and contractors who have contact with residents may be determined based on the following table:

<b>Services Provided/Level of Contact with Residents</b>	<b>Minimum Training Level/Type</b>
Incidental Contact with Residents (e.g., construction crews)	<ul style="list-style-type: none"> <li>• Written materials</li> </ul>
Supervised Contact with Residents (e.g., interpreters, volunteers, interns)	<ul style="list-style-type: none"> <li>• Written materials</li> </ul>
Unsupervised Contact with Residents (e.g., medical professionals, contract employees, etc.)	<ul style="list-style-type: none"> <li>• Formal training with a lesson plan</li> <li>• If applicable, specialized training related to responsibilities</li> </ul>

6. DJJ shall maintain documentation of all training, including the employee, volunteer or contractor's signature or electronic verification that they understand the training. This shall be done electronically or via the PREA Training Acknowledgement for Staff Form (Attachment #1) or the PREA Volunteer and Contractor Acknowledgement Form (Attachment #2). [28 CFR § 115.331(d); § 115.332(c)]

### 1.03-5.2 Resident Education

1. During the intake process, residents shall receive information explaining, in an age-appropriate fashion, DJJ's zero tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment. The receipt of this information shall be documented using the Intake PREA Brochure Acknowledgement Form (Attachment #3) in addition to the Intake/Orientation Form (DIS-008) to be placed in the resident's master and transfer files. [28 CFR § 115.333(a)]
2. Within the first ten (10) days of arrival at the facility, residents shall attend the DJJ PREA Peer Education class where they will be instructed by a trained peer educator(s). DJJ PREA Peer Education classes shall be supervised by JCC staff. New residents shall receive comprehensive age-appropriate information (either in person or through video) regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and all aspects of DJJ's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. [28 CFR § 115.333(b)] Information shall include the following topics:
  - a. Definition of sexual abuse and sexual harassment and behavior prohibited by staff, contractors, volunteers and other residents;
  - b. Strategies to prevent sexual abuse and sexual harassment;
  - c. Reporting sexual abuse and sexual harassment (see the *Reporting of Sexual Abuse or Sexual Harassment* Section below);
  - d. Department policies and procedures for responding to such incidents;
  - e. Their rights to be free from retaliation for reporting such incidents;
  - f. Availability of treatment and counseling; and
  - g. Availability and use of Resident PREA Hotline (#55).

3. Peer educators shall be provided with a comprehensive training regarding the information listed above in Section 1.03-5.2 (2) prior to leading their first class. Peer educators shall be selected based on the following criteria:
  - a. Earned at least 90% of their weekly Facility-Wide Positive Behavior Interventions and Supports (FW-PBIS) points in the last 120 days;
  - b. No Disciplinary Reports (DRs) in the last 120 days;
  - c. No gang participation within the facility in the last year;
  - d. No sexual misconduct within the facility in the last year;
  - e. Must be approved through the case management process; and
  - f. Demonstration of leadership and positive role modeling.
4. In the event a peer educator team is not available within the first ten (10) days of a resident's arrival to the JCC, the Agency PREA Coordinator or designee shall provide the aforementioned DJJ PREA Peer Education Class.
5. Residents shall receive education upon transfer to a different facility to the extent that the policies and procedures of the resident's new facility differ from those of the previous facility. [28 CFR § 115.333(c)]
6. Such information (to include written materials) shall be provided in formats accessible to all residents, including residents who are deaf or hard of hearing; blind or visually impaired; have intellectual, psychiatric or speech disabilities or are otherwise disabled; or who have limited reading skills or are limited English proficient. DJJ shall take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to such residents. Ensuring access shall include, when necessary to ensure effective communication, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, for residents who are limited English proficient, deaf, or hard of hearing. [28 CFR § 115.316(a) and (b); § 115.333(d)]
7. DJJ shall not rely on resident interpreters, resident readers, or other types of resident assistants except in limited circumstances where an extended delay in obtaining another effective interpreter could compromise the safety of the resident, the performance of first-responder duties, or the investigation of a resident's allegations. [28 CFR § 115.316(c)]
8. Documentation that residents have received such information and training shall be maintained using the Intake/Orientation Form (DIS-008) and placed in the resident's master and transfer files. The Agency PREA Coordinator or designee shall also document this training using the Peer Education Acknowledgement Form (Attachment #4). [28 CFR § 115.333(e)]
9. DJJ shall ensure that key information (described in Section 1.03-5.2(2) above) is continuously and readily available or visible to residents through posters, resident handbooks, or other written formats. [28 CFR § 115.333(f)]

### **1.03-5.3 Medical Practitioner and Mental Health Professional Training**

1. Full and part-time employees and contractual medical practitioners and mental health professionals who work regularly within the facility shall have training in the following:

- a. How to detect and assess signs of sexual abuse and sexual harassment;
  - b. How to preserve physical evidence of sexual abuse;
  - c. How to respond effectively and professionally to juvenile victims of sexual abuse and sexual harassment; and
  - d. How to report allegations or suspicions of sexual abuse and sexual harassment and to whom. [28 CFR § 115.335(a)]
2. No medical staff employed by DJJ shall conduct forensic examinations. When a forensic examination is required, the resident shall be transported to a Sexual Assault Forensic Examiner/Sexual Assault Nurse Examiner. [28 CFR § 115.335(b)]
  3. DJJ shall maintain documentation of such training. [28 CFR § 115.335(c)]
  4. Medical practitioners and mental health professionals shall also receive the training mandated under the *Employee, Volunteer, and Contractor Training* Section for employees or for contractors and volunteers, depending upon the practitioner's status. [28 CFR § 115.335(d)]

#### **1.03-5.4 Investigator Training**

1. In addition to the general training provided to all employees under the *Employee, Volunteer, and Contractor Training* Section, DJJ investigators, including designated facility PREA investigators, who conduct investigations into sexual abuse and sexual harassment, shall receive specialized training in conducting investigations in the correctional center setting. [28 CFR § 115.334(a)] Training shall include:
  - a. Techniques for interviewing juvenile sexual abuse victims;
  - b. Proper use of *Miranda* and *Garrity* warnings;
  - c. Sexual abuse evidence collection in confinement settings; and
  - d. The criteria and evidence required to substantiate a case for administrative action or prosecution referral. [28 CFR § 115.334(b)]
2. DJJ shall maintain documentation of such training. [28 CFR § 115.334(c)]
3. Any State entity or Department of Justice component that investigates sexual abuse in juvenile confinement settings shall provide such training to its agents and investigators who conduct such investigations. [28 CFR § 115.334(d)]

#### **1.03-6.0 RESIDENT SUPERVISION**

##### **1.03-6.1 Resident Screening and Housing, Bed, Program, Education, and Work Placements**

1. Within 72 hours of a resident's arrival to a facility (both initial and transfers), the counselor shall obtain and use information about each resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident. The counselor shall complete the Vulnerability Assessment in BADGE as part of the orientation process and at least every 90 calendar days thereafter. In the absence of the counselor, the Casework Supervisor or designee shall complete the assessment. Upon each completion, the assessment shall be printed from BADGE and a copy shall be placed in the resident's

master and transfer files. The completion of the assessment shall also be documented on the Intake/Orientation Form (DIS-008). If new information is obtained during the intake process or throughout the resident's commitment, the counselor shall complete a new Vulnerability Assessment. [28 CFR § 115.341 (a) and (b)]

- a. If a resident identifies as transgender or intersex during the completion of the initial Vulnerability Assessment or during a reassessment, the counselor shall also discuss the search process with the resident.
- b. Transgender and intersex residents are required to complete the Search Designation Request Form (Attachment #5) to express their preference regarding the gender identity of staff conducting their full body x-ray scan, frisk, and strip searches.
- c. If the resident prefers to be searched by an individual who is not the same gender identity as the resident, the form shall be referred to the Classification and Treatment Services Team (herein referred to as treatment team) for consideration. The treatment team meeting must include the Facility PREA Compliance Manager or Agency PREA Coordinator when the Search Deviation Request Form is reviewed. Prior to convening the meeting, the counselor shall ask the resident if they are comfortable discussing the form while their parent(s)/legal guardian(s) are present. This portion of the treatment team meeting does not require parent/legal guardian participation.
- d. The treatment team shall meet within seven (7) calendar days to consider the Search Designation Request Form and make a recommendation for approval or denial. The counselor shall forward the Search Designation Request Form to the Institutional Classification and Review Committee (ICRC) at the conclusion of the treatment team meeting.
- e. ICRC shall review the Search Designation Request Form at the next ICRC meeting, no later than seven (7) calendar days of receipt. ICRC shall forward the Search Designation Request Form and ICRC minutes for that resident to only the superintendent at the conclusion of the ICRC meeting.
- f. The superintendent shall either approve or deny the request within five (5) calendar days of receipt, in accordance with VOL IV-4.1-3.33 (Institutional Classification and Review Committee).
- g. The superintendent or designee shall provide a copy the form to the Facility PREA Compliance Manager and the Casework Supervisor. The original signed form shall be provided to the counselor and the counselor shall place the original signed form in the resident's master file. A copy of the form shall be placed in the resident's transfer file. Staff who may be responsible for searching the resident shall be notified of the determination.
- h. The Facility PREA Compliance Manager shall maintain a list of all transgender and intersex residents and the approved gender identity of staff who may search the resident. The Facility PREA Compliance Manager shall update the list upon receipt of an approved Search Designation Request Form and submit the list to the Superintendent, Assistant Superintendent, Chief of Security, BSU Treatment Director, and Head Nurse each time it is updated. The list shall also be maintained in

- a binder in the resident's assigned housing unit.
- i. The resident must be searched in accordance with the approved Search Designation Request Form.
  - j. The shift commander shall notify staff who may search transgender or intersex residents of the search designation of those residents at the start of their shift (e.g., during muster).
  - k. If, at any time during a resident's commitment, new information is obtained that suggests that a resident identifies as transgender or intersex, a new Vulnerability Assessment shall be completed and the same process shall be followed.
2. In the event BADGE is not available due to power outage, internet malfunction, etc., staff shall complete a paper copy of the Vulnerability Assessment (DIS-017). The staff who completed the form shall provide copies to appropriate staff, to include BSU, counselor, Housing Unit Coordinator, Casework Supervisor, Casework Manager (or, in the absence of the Casework Manager, their designee), and Facility PREA Compliance Manager, within 24 hours of completing the assessment. A copy shall also be placed in the resident's master and transfer files. The information shall be transferred into BADGE as soon as practicable but not to exceed five (5) working days after access is regained.
  3. Information shall be gathered through conversations with residents during the intake process, medical and mental health screenings, during classification assessments, and by reviewing court records, case files, facility behavioral records and other relevant documentation from residents' files. [28 CFR § 115.341(d)] Information to be gathered shall include:
    - a. Prior sexual victimization or abusiveness;
    - b. Any gender nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender, or intersex, and whether the resident may therefore be vulnerable to sexual abuse;
    - c. Current charges and offense history;
    - d. Age;
    - e. Level of emotional and cognitive development;
    - f. Physical size and stature;
    - g. Mental illness or mental disabilities;
    - h. Intellectual or developmental disabilities;
    - i. Physical disabilities;
    - j. The resident's own perception of vulnerability; and
    - k. Any other specific information about individual residents that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other residents. [28 CFR § 115.341(b)]
  4. For any resident who scores moderate or high risk of victimization and/or of perpetration based on the findings in their initial Vulnerability Assessment or whose score increases to moderate or high risk of victimization and/or of perpetration, the Institutional Classification and Review Committee (ICRC) shall review the resident's current placement within seven (7) days of the assessment. For any resident who scores little to no elevated risk but the assessor has concerns about the resident's vulnerability or deems

- further consideration is necessary, the resident may also be referred to ICRC. If the Vulnerability Assessment indicates no change in the risk of victimization and perpetration, no further action is required.
5. The information gathered relating to (3) and (4) above shall remain confidential. Information shall be disseminated in a manner that ensures sensitive information is not exploited to any resident's detriment by staff or other residents. [28 CFR § 115.341(e)]
  6. DJJ facilities shall use the information gathered during intake screenings or any time during commitment to make housing, bed, program, education, and work assignments for residents, with the goal of keeping all residents safe from sexual abuse. [28 CFR § 115.342(a)]
  7. Residents may be placed in protective custody away from other residents only as a last resort when less restrictive measures are inadequate for the safety of the resident and others and only until an alternative can be safely arranged in accordance with VOL IV-4.1-2.28 (Special Housing). Residents placed in protective custody shall have access to the same basic rights as residents in the general population and shall not be denied daily large-muscle exercise or any legally required educational programming or special education services. These residents shall receive daily visits from medical or mental health care clinicians in accordance with VOL IV-4.3-5.08 (Medical Management of Residents in Special Housing). They shall also have access to other programs and work opportunities to the extent possible. [28 CFR § 115.342(b)] Any protective custody placements shall document:
    - a. The basis for the facility's concerns for the resident's safety;
    - b. The reasons no alternative way of separation can be arranged; and
    - c. The need for protective custody shall be reviewed a minimum of every two (2) weeks to determine if there is a continuing need for separation from the general population in accordance with case management procedures. [28 CFR § 115.342(h)]
  8. A resident shall not be placed in any housing or programming based solely on the resident's identification as lesbian, gay, bisexual, transgender, or intersex. A resident's identification as lesbian, gay, bisexual, transgender, or intersex shall not be considered as an indicator of likelihood of being sexually abusive. [28 CFR § 115.342(c)]
  9. Decisions to place transgender or intersex residents in a male or female facility or unit, along with other housing and programming decisions and assignments, shall be made on a case-by-case basis ensuring each resident's health and safety and considering the impact of the placement on population management and security. [28 CFR § 115.342(d)]
  10. Placement and programming decisions for transgender or intersex residents shall be reassessed at least twice a year by the Classification and Treatment Services Team (treatment team) to review any threats to the resident's safety. The resident's perception of their own safety shall be given serious consideration. [28 CFR § 115.342(e) and (f)]
  11. A transgender or intersex resident shall not be searched or physically examined for the sole purpose of determining the resident's genital status. If the resident's genital status is unknown, it may be determined during conversations with the resident, by reviewing medical records, or, if necessary, by learning that information as part of the broader

medical examination conducted in private by a medical practitioner. [28 CFR § 115.315(e)]

12. Residents shall be allowed to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine room checks. [28 CFR § 115.315(d)]
13. Transgender and intersex residents shall be allowed to shower separately from other residents. [28 CFR § 115.342(g)]

### **1.03-6.2 Supervision and Monitoring of Residents**

1. Facilities shall develop, implement, and document a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect residents against sexual abuse in accordance with VOL IV-4.1-2.01 (Security Staffing), VOL IV-4.1-2.00 (Development of Post Orders), and VOL IV-4.1-2.04 (Movement and Supervision of Residents). The staffing plan shall consider:
  - a. Generally accepted juvenile detention and correctional/secure residential practices;
  - b. Any judicial findings of inadequacy;
  - c. Any findings of inadequacy from Federal investigative agencies, if applicable;
  - d. Any findings of inadequacy from internal or external oversight agencies;
  - e. All components of the facility's physical plant (including "blind spots" or areas where staff or residents may be isolated);
  - f. The composition of the resident population;
  - g. The number and placement of security series staff;
  - h. Institutional programs occurring on a particular shift;
  - i. Any applicable State or local laws, regulations, or standards;
  - j. The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
  - k. Any other relevant factors. [28 CFR § 115.313(a)]
2. The staffing plan shall be followed except during limited and discrete exigent circumstances. Deviations from the plan shall be documented. The staffing plan shall specify a staff to resident ratio of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. Only security series staff as defined above shall be included in these ratios. Teachers and other school personnel who have had the appropriate training may be included in the ratio during the time in which they are leading class or during other on-campus educational programming. [28 CFR § 115.313(b) and (c)]
3. Each facility shall assess the established staffing plan a minimum of once per year in consultation with the DJJ PREA Coordinator and the Facility PREA Compliance Manager. The review shall consider the current staffing plan, prevailing staffing patterns, the facility's use of video monitoring systems or other monitoring technologies, and any resources the facility has available to commit to ensure adherence to the staffing plan. [28 CFR § 115.313(d)]
4. An administrator, as defined above, at each facility shall conduct unannounced rounds in all areas to which residents and/or staff have access (i.e., housing units, central infirmary, staff

- offices, school classrooms, etc.) in order to identify and deter staff sexual abuse and sexual harassment. The rounds shall be conducted at least twice per month, not to exceed fifteen (15) calendar days between rounds, and shall cover all shifts, day and night. Staff shall not alert other staff of when these supervisory rounds are occurring unless such announcement is related to the legitimate operational functions of the facility. The administrator shall document the rounds in the designated area's logbook in red ink as "PREA unannounced round" noting their first and last name in accordance with VOL IV-4.1-2.06 (Logbooks). Any deficiencies observed during such rounds and corrective actions shall be communicated in writing to the superintendent or designee and Facility PREA Compliance Manager. [28 CFR § 115.313(e)]
5. An announcement of the presence of staff of the opposite gender shall be made when they are entering a housing unit or area where residents are likely to be showering, performing bodily functions, or changing clothing in accordance with VOL IV-4.1-2.02 (Supervision of Opposite Gender Residents) and VOL IV-4.1-2.04 (Movement and Supervision of Residents). The announcement shall be made by staff currently supervising the unit. The announcement shall be made every time a staff of the opposite gender enters the unit, regardless of the current presence of another staff of that gender. The announcement shall be documented in the housing unit logbook in accordance with VOL IV-4.1-2.06 (Logbooks) by the staff who made the announcement. [28 CFR § 115.315(d)]
  6. The Facility PREA Compliance Manager shall conduct monthly rounds in all areas to which residents and/or staff have access (i.e., housing units, central infirmary, staff offices, school classrooms, etc.) to review the respective logbooks and ensure compliance with (4) and (5) above.
  7. Residents shall not be subject to cross-gender full body x-ray scans, strip searches or cross-gender body cavity searches (meaning a search of the anal or genital opening), except in exigent circumstances or when performed by medical practitioners. DJJ shall not conduct cross-gender pat-down (frisk) searches except in exigent circumstances. The facility shall document and justify all cross-gender full body x-ray scans, cross-gender strip searches, cross-gender visual body cavity searches, and cross-gender pat-down searches. All searches shall be conducted in accordance with VOL IV-4.1-2.14 (Resident, Staff, and Visitor Searches). [28 CFR § 115.315(a), (b) and (c)]

## **1.03-7.0 REPORTING OF SEXUAL ABUSE OR SEXUAL HARASSMENT**

### **1.03-7.1 Resident Reporting of Sexual Abuse or Sexual Harassment**

1. Residents shall be provided multiple internal ways to privately report sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents to include:
  - a. Grievance;
  - b. Emergency Grievance;
  - c. PREA Hotline;
  - d. Staff;
  - e. Written request; or
  - f. Medical Service Request. [28 CFR § 115.351(a)]



2. Residents shall also be provided at least one way to report abuse or harassment to a public or private entity or office that is not part of the agency and that is able to receive and immediately forward resident reports of sexual abuse and sexual harassment to agency officials, allowing the resident to remain anonymous upon request. This service is provided by EmpowerNet. [28 CFR § 115.351(b)]
3. Staff shall provide residents with the tools necessary to make a written report at their request and shall assist residents who cannot complete a written report themselves. [28 CFR § 115.351(d)]
4. Regardless of the means by which such reports are received, reports of sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents shall be responded to as provided in this procedure.
5. PREA related grievances shall be addressed with in accordance with VOL IV-4.1-1.15 (Resident Grievances and Complaints) in addition to the guidelines provided below:
  - a. The agency shall not impose a time limit on when a resident may submit a grievance regarding an allegation of sexual abuse. [28 CFR § 115.352(b)(1)]
  - b. No resident shall be required to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse. [28 CFR § 115.352(b)(3)]
  - c. A resident who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint and such grievance shall not be referred to a staff member who is the subject of the complaint. [28 CFR § 115.352(c)]
  - d. The agency shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance. Computation of the 90-day time period shall not include time consumed by residents in preparing any administrative appeal. The Facility PREA Compliance Manager shall communicate this to the resident using the Investigative Outcomes Form (Attachment #6). [28 CFR § 115.352(d)(1) and (d)(2)]
    - i. The agency may claim an extension of time to respond, of up to 15 days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the resident in writing of any such extension and provide a date by which a decision will be made. [28 CFR § 115.352(d)(3)]
  - e. At any level of the administrative process, including the final level, if the resident does not receive a response within the time allotted for reply, including any properly noticed extension, the resident may consider the absence of a response to be a denial at that level. [28 CFR § 115.352(d)(4)]
  - f. Third parties, including fellow residents, staff members, family members, attorneys, and outside advocates, shall be permitted to assist residents in filing requests for administrative remedies relating to allegations of sexual abuse. [28 CFR § 115.352(e)(1)]

- g. The agency shall establish procedures for the filing of an emergency grievance alleging that a resident is subject to a substantial risk of imminent sexual abuse. [28 CFR § 115.352(f)(1)]
  - i. After receiving an emergency grievance alleging a resident is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken; shall provide an initial response within 48 hours; and shall issue a final agency decision within five (5) calendar days. The initial response and final agency decision shall document the agency's determination whether the resident is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance. [28 CFR § 115.352(f)(2)]
- h. DJJ may discipline a resident for filing a grievance related to alleged sexual abuse only where DJJ demonstrates that the resident filed the grievance in bad faith. [28 CFR § 115.352(g)]

### **1.03-7.2 Staff Reporting of Sexual Abuse or Sexual Harassment**

1. Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports in accordance with VOL IV-4.1-1.01 (Incident Reports). [28 CFR § 115.351(c)]
2. Staff, including medical practitioners and mental health professionals, shall immediately report to the shift commander any knowledge, suspicion or information of any type regarding any incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of DJJ, retaliation against residents or staff who reported such an incident, and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. If the shift commander is the subject of the complaint, the staff shall notify the Administrator on Call (AOC). [28 CFR § 115.361(a) and (d)]
3. Staff shall comply with any applicable mandatory child abuse reporting laws. [28 CFR § 115.361(b)]
4. Medical practitioners and mental health professionals shall inform residents at the initiation of services of their duty to report and the limitations of confidentiality. [28 CFR § 115.361(d)(2)]
5. Apart from reporting to designated supervisors or officials and designated State or local services agencies, staff is prohibited from revealing any information related to a sexual abuse or sexual harassment report to anyone other than to the extent necessary to make treatment, investigation, and other security and management decisions. [28 CFR § 115.361(c)]
6. Staff may use one of the Ombuds Program numbers (833-941-1370 [toll free] or 804-323-0888) to privately report sexual abuse and sexual harassment of residents. [28 CFR § 115.351(e)]

7. Incidents involving the sexual abuse or sexual harassment of a resident shall be entered into BADGE in accordance with VOL IV-4.1-1.01 (Incident Reports). The Facility PREA Compliance Manager shall input information regarding the immediate actions taken in the PREA Corrective Action Tab within five (5) business days. Once the investigation is completed by DJJ's Investigative Unit, the Facility PREA Compliance Manager shall update the disposition of the investigation and add information regarding the final PREA Corrective Action.

### **1.03-7.3 Medical Practitioner and Mental Health Professional Reporting**

1. Residents who report prior sexual victimization, whether it occurred in an institutional setting or in the community, shall be offered a follow-up meeting with a medical practitioner or mental health professional within 14 days of the intake screening. [28 CFR § 115.381(a)]
2. Residents who report having perpetrated sexual abuse shall be offered a follow-up meeting with a mental health professional within 14 days of the intake screening. [28 CFR § 115.381(b)]
3. All offerings of follow-up meetings and outcomes of meetings shall be documented in the resident's medical record or behavioral health file, as appropriate.
4. Information related to sexual victimization or sexual abusiveness that occurred in an institutional setting shall be limited to medical practitioners, mental health professionals and other staff, as necessary, to inform treatment plans and security and other management decisions (including housing, bed, work, education, and program assignments, or as otherwise required by federal, state, or local law). [28 CFR § 115.381(c)]
5. For a resident who is 18 years of age or older, medical practitioners and mental health professionals shall not report information to an external entity about prior sexual victimization that did not occur in an institutional setting unless they have first obtained informed consent from the resident. If the resident does not consent to reporting the allegation to an external entity, the medical practitioner or mental health professional shall offer follow-up services, as appropriate. [28 CFR § 115.381(d)]
6. Residents under the age of 18 who allege prior sexual victimization shall be reported in accordance with [6VAC35-71-70](#).

### **1.03-7.4 Third-Party Reporting of Sexual Abuse or Sexual Harassment**

1. Third parties, including fellow residents, staff members, family members, attorneys, and outside advocates, shall be permitted to file such requests on behalf of residents using the Ombuds Program or the Third Party Reporting Form (Attachment #7). [28 CFR § 115.352(e)(1)]
  - a. If a third party, other than a parent or legal guardian, files such a request on behalf of a resident, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on their behalf, and may also require the alleged

victim to personally pursue any subsequent steps in the administrative remedy process. [28 CFR § 115.352(e)(2)]

- b. If the resident declines to have the request processed on their behalf, the agency shall document the resident's decision. [28 CFR § 115.352(e)(3)]
  - c. A parent or legal guardian of a juvenile shall be allowed to file a grievance regarding allegations of sexual abuse, including appeals, on behalf of such juvenile. Such a grievance shall not be conditioned upon the juvenile agreeing to have the request filed on their behalf. [28 CFR § 115.352(e)(4)]
2. DJJ shall post information on how to make such reports on its website. [28 CFR § 115.354]

### **1.03-7.5 Reporting to Other Facilities**

1. Upon receiving an allegation that a resident was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred and shall also notify the appropriate investigating authority as detailed in [6VAC35-71-70](#). [28 CFR § 115.363(a)]
2. Such notification shall be provided as soon as possible but no later than 72 hours after receiving the allegation. [28 CFR § 115.363(b)]
3. The facility shall document that it has provided such notification. [28 CFR § 115.363(c)]
4. The facility head that receives such notification shall ensure that the allegation is investigated in accordance with established guidelines. [28 CFR § 115.363(d)]

### **1.03-7.6 Protection against Retaliation**

1. All residents and staff who report sexual abuse or sexual harassment or who cooperate with sexual abuse or sexual harassment investigations shall be protected from retaliation by other residents or staff. [28 CFR § 115.367(a)]
2. Protection measures may include housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations. [28 CFR § 115.367(b)]
3. For at least 90 days following a report of sexual abuse, the Facility PREA Compliance Manager shall monitor the conduct or treatment of residents who reported the sexual abuse or sexual harassment, and of residents who were reported to have suffered sexual abuse or sexual harassment to see if there are changes that may suggest possible retaliation by residents or staff. Such monitoring shall include review of disciplinary reports and housing or program changes and conducting periodic status checks, including interviews with the resident, at least every thirty (30) days. The monitoring shall be documented on the Retaliation Monitoring Form-Residents (Attachment #8). Monitoring for retaliation shall continue beyond 90 days if the initial monitoring indicates a continuing need. [28 CFR § 115.367(c) and (d)]
4. The Agency PREA Coordinator shall monitor staff who reported sexual abuse against a resident for at least 90 days following a report to see if there are changes that may suggest

- possible retaliation. Monitoring shall include contacting the DJJ Employee Relations Manager to determine if any negative performance reviews, corrective and/or disciplinary actions, and/or adverse employment actions have occurred. Monitoring shall also include reassignments and interviews with the staff member. Such monitoring shall be documented on the Retaliation Monitoring Form-Staff (Attachment #9). Monitoring for retaliation shall continue beyond 90 days if the initial monitoring indicates a continuing need. Staff who feel retaliated against may call the Ombuds Program at either (833) 941-1370 (toll free) or (804) 323-0888. [28 CFR § 115.367(c)]
5. If any individual who cooperates with an investigation expresses a fear of retaliation, DJJ shall take appropriate measures to protect that individual against retaliation using the same monitoring process provided in Sections 1.03-7.6 (2) and (3) above. [28 CFR § 115.367(e)]
  6. Any identified instances of retaliation shall be acted on promptly under VOL I-1.2-01 (Staff Code of Conduct) or VOL IV-4.1-1.16 (Resident Discipline), as appropriate.
  7. DJJ's obligation to monitor shall terminate if the allegation is determined to be unfounded. [28 CFR § 115.367(f)]

## **1.03-8.0 RESPONSE TO RESIDENT REPORTS OF SEXUAL ABUSE**

### **1.03-8.1 Facility Response to Report of Sexual Abuse**

1. Each facility shall coordinate actions taken in response to an incident of sexual abuse among staff first responders, medical practitioners, mental health professionals, investigators, and facility administrators in accordance with the facility's Sexual Abuse Coordinated Response Plan, as required by 28 CFR § 115.365, and VOL IV-4.1-2.00 (Development of Post Orders). [28 CFR § 115.365]
2. The Sexual Abuse Coordinated Response Plan shall be individualized for each facility, posted in each housing unit and other areas designated by the superintendent, and covered in training provided to all staff. Each superintendent shall be responsible for ensuring their facility-specific protocol has been posted.
3. Facilities shall take immediate action to protect residents who report sexual abuse or residents who are deemed to be at substantial risk of imminent sexual abuse. Any use of protective custody or segregated housing shall be in accordance with Section 1.03-6.1(5) above. [28 CFR § 115.362; § 115.368]
4. The facility shall provide residents with access to outside victim advocates for emotional support services related to sexual abuse by making available the mailing addresses and telephone numbers (including toll-free numbers, if available) of victim advocacy or rape crisis organizations. The facility shall enable reasonable communication between residents and these organizations and agencies, in as confidential a manner as possible [28 CFR § 115.353(a)]
  - a. Prior to giving them access, residents shall be informed of the extent to which such communication will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws. [28 CFR § 115.353(b)]

- b. DJJ shall maintain or attempt to enter into memoranda of understanding or other similar agreements with community service providers able to provide residents with confidential emotional support services related to sexual abuse and shall maintain copies of agreements or documentation showing attempts to enter into such agreements. [28 CFR § 115.353(c)]
- c. Residents shall have access to contact the following:
  - i. PREA Hotline: Residents may press #55 to reach the PREA Hotline. Residents may select one (1) for reporting or two (2) for the emotional support line.
  - ii. EmpowerNet, Director of Crisis Response: 6 North Fifth St., Richmond, VA 23219. Residents' correspondence with EmpowerNet shall be treated in the same manner as legal mail, as described in VOL IV-4.1-2.12 (Resident and Staff Mail).
- 5. Residents shall be provided with reasonable and confidential access to their attorneys or other legal representation and reasonable access to parents or legal guardians. [28 CFR § 115.353(d)]

### **1.03-8.2 Staff Response to Report of Sexual Abuse**

1. Any staff receiving a resident's report of sexual abuse shall *immediately* ensure the safety of the alleged victim and follow the facility's Sexual Abuse Coordinated Response Plan and the Sexual Assault Response Checklist (Attachment #10).
2. Staff shall immediately report to the shift commander any suspicion or knowledge of sexual abuse or sexual harassment, retaliation against residents or staff who report such an incident, and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
3. The superintendent or designee shall immediately report any allegation of sexual abuse and sexual harassment, including third-party and anonymous reports, to the Facility PREA Compliance Manager, the Agency PREA Coordinator, and DJJ's Investigative Unit in accordance with VOL IV-4.1-1.01 (Incident Reports). [28 CFR § 115.361(f)]
4. The superintendent or designee shall promptly report any allegation of sexual abuse and sexual harassment, including third-party and anonymous reports, to the alleged victim's parents or legal guardians, unless official documentation shows the parents or legal guardians should not be notified. [28 CFR § 115.361(e)(1)]
5. If the Department of Social Services is the guardian of the alleged victim, the report shall be made to the alleged victim's caseworker instead of the parents or legal guardians. [28 CFR § 115.361(e)(2)]
6. If a court retains jurisdiction over the alleged victim of sexual abuse (e.g., serious offenders committed pursuant to § 16.1-285.1), the superintendent or designee shall also report the allegation to the juvenile's attorney or other legal representative of record within 14 days of receiving the allegation. [28 CFR § 115.361(e)(3)]

**1.03-8.3 First Responders' Duties**

1. The first staff member (regardless of that staff member's position within the facility) to receive an allegation of sexual abuse shall:
  - a. Take immediate steps to protect the alleged victim by separating the alleged victim and abuser.
  - b. Immediately contact the shift commander unless the shift commander is the subject of the allegation in which case the first responder shall contact the AOC.
  - c. The shift commander, or AOC if the shift commander is the subject of the allegation, shall begin the Sexual Assault Response Checklist (Attachment #10).
  - d. If the first staff responder is not a security series staff member, the responder shall request that the alleged victim not take any actions that could destroy physical evidence, and then notify security series staff.
  - e. Ensure that constant one to one supervision of the alleged victim is maintained until another staff member assumes this responsibility. [28 CFR § 115.364]
  - f. Protect victim's privacy by limiting shared information.
  - g. Complete an Institutional Incident Report (IIR) and submit to Shift Commander.
  
2. Upon receiving notification of an alleged incident, the shift commander shall:
  - a. Call for a medical practitioner's immediate response to the location or instruct staff to transport the alleged victim to the medical department.
  - b. Ensure that all involved individuals have been separated and constant one to one supervision of the alleged victim(s) and the alleged abuser(s) is maintained.
  - c. If the abuse occurred within a time period that still allows for the collection of physical evidence (e.g., within 120 hours from the time the abuse allegedly occurred):
    - i. Request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating; and
    - ii. Prevent the alleged abuser from taking any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating.
  - d. Ensure that any potential crime scene is preserved and protected until appropriate steps can be taken to collect any evidence. [28 CFR § 115.364]

**1.03-8.4 Access to Emergency Medical and Mental Health Services**

1. Resident victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services as determined by medical practitioners and mental health professionals in accordance with VOL IV-4.3-2.05 (Medical Sexual Assault Response Plan). [28 CFR § 115.382(a)]
  
2. If no qualified medical practitioners or mental health professionals are on duty at the time a report of recent abuse is made, staff first responders shall take preliminary steps to protect the victim and shall immediately notify the appropriate medical practitioners or mental health professionals. [28 CFR § 115.382(b)]
  
3. Resident victims of sexual abuse while committed shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections

- prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate. [28 CFR § 115.382(c)]
4. Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. [28 CFR § 115.382(d)]

### **1.03-8.5 Evidence Protocol and Forensic Medical Examinations**

1. To the extent DJJ is responsible for investigating allegations of sexual abuse, DJJ shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. [28 CFR § 115.321(a)]
2. The protocol shall be developmentally appropriate for youth and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011. [28 CFR § 115.321(b)]
3. Residents who experience sexual abuse shall be given access to forensic medical examinations without financial cost where evidentiarily or medically appropriate.
  - a. Such examinations shall be conducted at the designated community medical facility by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) where possible.
  - b. If SAFEs or SANEs are not available, the examination can be performed by other qualified medical practitioners. [28 CFR § 115.321(c)]
4. DJJ shall attempt to make a victim advocate available from a rape crisis center to the resident. For the purpose of this procedure, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 34 U.S.C. 12511(b)(2)(C), to victims of sexual assault of all ages. The facility may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services. If a rape crisis center is not available to provide victim advocate services, a qualified staff member from a community-based organization or a qualified agency staff member shall be made available. Agencies shall document efforts to secure services from rape crisis centers. [28 CFR § 115.321(d)]
  - a. For the purposes of this procedure, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual abuse and forensic examination issues in general. [28 CFR § 115.321(h)]
5. If requested by the resident, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals. [28 CFR § 115.321(e)]



6. To the extent DJJ itself is not responsible for investigating allegations of sexual abuse, DJJ shall request that the investigating agency follow the requirements of this section. [28 CFR § 115.321(f)]
7. The requirements of paragraphs (1) through (6) of this section shall also apply to:
  - a. Any State entity outside of DJJ that is responsible for investigating allegations of sexual abuse in juvenile facilities; and
  - b. Any Department of Justice component that is responsible for investigating allegations of sexual abuse in juvenile facilities. [28 CFR § 115.321(g)]

#### **1.03-8.6 Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers**

1. Any resident who is the victim of sexual abuse shall be offered a medical and mental health evaluation and, as appropriate, treatment services while in any DJJ facility in accordance with VOL IV-4.3-2.05 (Medical Sexual Assault Response Plan). [28 CFR § 115.383(a)]
2. The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody. [28 CFR § 115.383(b)]
3. The facility shall provide such victims with medical and mental health services consistent with the community level of care. [28 CFR § 115.383(c)]
4. Resident victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests. [28 CFR § 115.383(d)]
5. If pregnancy results from conduct specified in paragraph (4) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services in accordance with VOL IV-4.3-5.10 (Care of Pregnant Residents). [28 CFR § 115.383(e)]
6. Resident victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate. [28 CFR § 115.383(f)]
7. Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. [28 CFR § 115.383(g)]
8. The facility shall attempt to conduct a mental health evaluation of all known resident-on-resident abusers within thirty (30) days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners. [28 CFR § 115.383(h)]

#### **1.03-8.7 Investigations**

All allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, shall be investigated promptly, thoroughly and objectively. [28 CFR § 115.322(a); § 115.371(a)]

1. DJJ shall have a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. DJJ shall publish this policy on its website. The agency shall document all such referrals. [28 CFR § 115.322(b)]
  - a. If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both DJJ and the investigating entity. [28 CFR § 115.322(c)]
2. All allegations of sexual abuse shall be investigated by investigators who have received special training in sexual abuse investigations involving juvenile victims in accordance with the *Investigator Training* Section above. [28 CFR § 115.371(b)]
3. DJJ's Investigative Unit may refer 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 to the Virginia State Police (VSP) as provided by the Memorandum of Agreement (MOA). All such referrals shall be documented.
  - a. DJJ's Investigative Unit shall request that VSP follow the requirements of PREA, including specialized training for investigators mandated under PREA.
  - b. For allegations of sexual abuse that have been referred to VSP, DJJ's Investigative Unit shall only investigate when the incident has been referred back to the Investigative Unit by VSP.
  - c. DJJ's Investigative Unit shall not designate investigative authority on PREA-related allegations to the JCC.
4. Allegations of sexual harassment of a resident by another resident shall be referred to the head of DJJ's Investigative Unit and shall be investigated by a unit member who has received specialized training as mandated by PREA.
5. No standard higher than a preponderance of evidence shall be imposed in determining whether allegations of sexual abuse or sexual harassment are substantiated. [28 CFR § 115.372]
6. Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator. [28 CFR § 115.371(c)]
7. Investigations shall not be terminated based solely on the source of the allegation recanting the allegation. [28 CFR § 115.371(d)]
8. When the quality of evidence appears to support criminal prosecution, DJJ shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution. [28 CFR § 115.371(e)]

9. The credibility of an alleged victim, suspect, or witness shall not be assessed by the person's status as a resident or staff. Residents shall not be required to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of an allegation. [28 CFR § 115.371(f)]
10. Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence, and copies of all documentary evidence shall be attached where feasible. [28 CFR § 115.371(h)]
11. Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution. [28 CFR § 115.371(i)]
12. Administrative investigations:
  - a. Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and
  - b. Shall 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. [28 CFR § 115.371(g)]
13. All written administrative and criminal investigative reports shall be retained for as long as the alleged abuser is committed to or employed by DJJ, plus five years, unless the abuse was committed by a juvenile resident and applicable laws require a shorter period of retention. [28 CFR § 115.371(j)]
14. The departure of an alleged abuser or victim shall not be the basis for terminating an investigation. [28 CFR § 115.371(k)]
15. Any entity of the Commonwealth of Virginia conducting investigations involving sexual abuse or sexual harassment involving a resident shall do so pursuant to the requirements listed above. [28 CFR § 115.371(l)]
16. DJJ shall cooperate with any outside agencies investigating sexual abuse and shall endeavor to remain informed about the progress of the investigation. [28 CFR § 115.371(m)]

### **1.03-8.8 Reporting Investigative Outcomes to Residents**

1. Following an investigation into a resident's allegation of sexual abuse suffered in a DJJ facility, the Facility PREA Compliance Manager shall complete and review the Investigative Outcomes Form (Attachment #6) with the resident within five (5) business days, informing the resident as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. If the investigations are conducted by an outside entity, DJJ shall request relevant information from the investigating agency and inform the resident. The Facility PREA Compliance Manager shall provide a copy of the notification to the resident. [28 CFR § 115.373(a) and (b)]
2. 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 has been determined to be 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. The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; and
  - d. The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility. [28 CFR § 115.373(c)]
3. Following a resident's allegation that they have been sexually abused by another resident, the alleged victim shall be informed whenever:
    - a. The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; and
    - b. The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility. [28 CFR § 115.373(d)]
  4. All such notifications or attempted notifications shall be documented on the Investigative Outcomes Form (Attachment #6). [28 CFR § 115.373(e)] The Facility PREA Compliance Manager shall retain a copy of the form and provide additional copies to the Agency PREA Coordinator and DJJ's Investigative Unit.
  5. The obligation to report under this procedure shall terminate if the resident is released from DJJ's custody. [28 CFR § 115.373(f)]

### **1.03-8.9 Sexual Abuse Incident Reviews**

1. The facility shall conduct a sexual abuse incident review using the PREA Incident Review Form (Attachment #11) at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. Such review shall occur within 30 days of the investigation's conclusion. [28 CFR § 115.386(a) and (b)]
2. An incident review shall be conducted using the PREA Incident Review Form (Attachment #11) at the end of every substantiated sexual harassment investigation. Such review shall occur within 30 days of the investigation's conclusion.
3. The review team shall include the following staff:
  - a. The Superintendent and/or Assistant Superintendents, with input from line supervisors,
  - b. Facility PREA Compliance Manager and/or Agency PREA Coordinator;
  - c. Investigators;
  - d. Medical practitioners; and
  - e. Mental health professionals. [28 CFR § 115.386(c)]
4. The review team shall:
  - a. Consider whether the allegation or investigation indicates a need to change procedures or practices to better prevent, detect, or respond to sexual abuse;
  - b. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived

status; gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;

- c. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
  - d. Assess the adequacy of staffing levels in that area during different shifts;
  - e. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff;
  - f. Document its findings, including but not necessarily limited to determinations made pursuant to (a) through (e) above, and any recommendations for improvement and submit to the Superintendent and Facility PREA Compliance Manager. The findings shall be maintained in accordance with the Library of Virginia retention schedule. [28 CFR § 115.386(d)]
5. The facility shall implement the recommendations for improvement or shall document its reasons for not doing so. [28 CFR § 115.386(e)]

## **1.03-9.0 DISCIPLINARY SANCTIONS**

### **1.03-9.1 Disciplinary Sanctions for Employees**

1. Employees shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment procedures. [28 CFR § 115.376(a)]
  - a. Termination shall be the presumptive disciplinary sanction for employees who have engaged in sexual abuse. [28 CFR § 115.376(b)]
2. Disciplinary sanctions for violations of agency procedures relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the employee's disciplinary history, and the sanctions imposed for comparable offenses by other employees with similar histories. [28 CFR § 115.376(c)]
3. All terminations for violations of agency sexual abuse or sexual harassment procedures, or resignations by employees who would have been terminated if not for their resignation, shall be reported to DJJ's Investigative Unit and to any relevant licensing bodies by the Agency PREA Coordinator. [28 CFR § 115.376(d)]

### **1.03-9.2 Corrective Action for Contractors and Volunteers**

1. Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with residents and shall be reported to DJJ's Investigative Unit and to relevant licensing bodies by the Agency PREA Coordinator. [28 CFR § 115.377(a)]
2. The facility shall take appropriate remedial measures and shall consider whether to prohibit further contact with residents, in the case of any other violation of agency sexual abuse or sexual harassment procedures by a contractor or volunteer. [28 CFR § 115.377(b)]

### **1.03-9.3 Interventions and Disciplinary Sanctions for Residents**

1. Residents may be subject to disciplinary sanctions following an administrative finding that the resident engaged in resident-on-resident sexual abuse or following a criminal finding of

guilt for resident-on-resident sexual abuse. The residents' due process rights shall be followed as described in VOL IV-4.1-1.16 (Resident Discipline). [28 CFR § 115.378(a)]

2. Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed on other residents with similar histories and who have received sanctions for comparable offenses. [28 CFR § 115.378(b)]
3. In the event a disciplinary sanction results in the room confinement of a resident, such confinement shall not deny the resident daily large-muscle exercise or access to any legally required educational programming or special education services in accordance with VOL IV-4.1-2.28 (Special Housing). Residents in room confinement shall receive daily visits from a medical or mental health care clinician. Residents shall also have access to other programs and work opportunities to the extent possible to maintain safety and security. [28 CFR § 115.378(b)]
4. The disciplinary process shall consider whether a resident's mental disabilities or mental illness contributed to their behavior when determining what type of sanction, if any, should be imposed. [28 CFR § 115.378(c)]
5. Residents may be offered participation in programs, services, or interventions designed to address and correct underlying reasons or motivations for the abuse. Such interventions may be required for participation in any rewards-based behavior management program, but not as a condition to access general programming or education. [28 CFR § 115.378(d)]
6. Residents may be disciplined for sexual contact with staff only upon a finding that the staff member did not consent to such contact. [28 CFR § 115.378(e)]
7. For the purpose of disciplinary action, a report of sexual abuse made in good faith, based upon a reasonable belief that the alleged conduct occurred, shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation. [28 CFR § 115.378(f)]

## **1.03-10.0 DATA COLLECTION AND REVIEW**

### **1.03-10.1 Data Collection**

1. DJJ shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using BADGE and a standardized set of definitions. [28 CFR § 115.387(a)]
2. DJJ shall aggregate the incident-based sexual abuse data at least annually. [28 CFR § 115.387(b)]
3. The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice. [28 CFR § 115.387(c)]
4. DJJ shall maintain, review, and collect data as needed from all available incident-based documents, including BADGE Incident Reports (BADGE – IRs), other reports, investigation files, and sexual abuse incident reviews. [28 CFR § 115.387(d)]

5. DJJ shall also obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its residents. [28 CFR § 115.387(e)]
6. Upon request, DJJ shall provide all such data from the previous calendar year to the Department of Justice no later than June 30. [28 CFR § 115.387(f)]

### **1.03-10.2 Data Review for Corrective Action**

1. Data collected pursuant to the *Data Collection* Section above shall be used to assess and improve the effectiveness of DJJ's sexual abuse prevention, detection, and response procedures, practices, and training, including:
  - a. Identifying problem areas;
  - b. Taking corrective action on an ongoing basis; and
  - c. Preparing an annual report of its findings and corrective actions for each facility, as well as DJJ as a whole. [28 CFR § 115.388(a)]
2. Such annual report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of DJJ's progress in addressing sexual abuse. [28 CFR § 115.388(b)]
  - a. The report shall be approved by the Director and made available to the public through DJJ's website. [28 CFR § 115.388(c)]
  - b. Specific material from the report may be redacted when publication would present a clear and specific threat to the safety and security of a facility. The nature of the material redacted must be indicated. [28 CFR § 115.388(d)]

### **1.03-10.3 Data Storage, Publication and Destruction**

1. DJJ shall ensure that data collected pursuant to the *Data Collection* Section above are securely retained. [28 CFR § 115.389(a)]
2. DJJ shall make all aggregated sexual abuse data, from facilities under its direct control and any private facilities with which it contracts, readily available to the public at least annually through its website. [28 CFR § 115.389(b)]
3. Before making aggregated sexual abuse data publicly available, DJJ shall remove all personal identifiers. [28 CFR § 115.389(c)]
4. DJJ shall maintain sexual abuse data collected pursuant to the *Data Collection* Section above for at least 10 years after the date of its initial collection unless Federal, State, or local law requires otherwise. [28 CFR § 115.389(d)]

### **1.03-11.0 PREA AUDITS**

#### **1.03-11.1 Frequency and Scope of Audits**

1. During the three-year period starting on August 20, 2013, and during each three-year period thereafter, DJJ shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once. [28 CFR § 115.401(a)]

2. During each one-year period starting on August 20, 2013, DJJ shall ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, is audited. [28 CFR § 115.401(b)]
3. The Department of Justice may send a recommendation to an agency for an expedited audit if the Department has reason to believe that a particular facility may be experiencing problems relating to sexual abuse. The recommendation may also include referrals to resources that may assist DJJ with PREA-related issues. [28 CFR § 115.401(c)]
4. The Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit. [28 CFR § 115.401(d)]
5. DJJ shall bear the burden of demonstrating compliance with the standards. [28 CFR § 115.401(e)]
6. The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type. [28 CFR § 115.401(f)]
7. The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period. [28 CFR § 115.401(g)]
8. The auditor shall have access to, and shall observe, all areas of the audited facilities. [28 CFR § 115.401(h)]
9. The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information). [28 CFR § 115.401(i)]
10. The auditor shall retain and preserve all documentation (e.g., video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request. [28 CFR § 115.401(j)]
11. The auditor shall interview a representative sample of residents and of staff, supervisors, and administrators. [28 CFR § 115.401(k)]
12. The auditor shall review a sampling of any available videotapes and other electronically available data that may be relevant to the provisions being audited. [28 CFR § 115.401(l)]
13. The auditor shall be permitted to conduct private interviews with residents. [28 CFR § 115.401(m)]
14. Residents shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel. [28 CFR § 115.401(n)]
15. Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility. [28 CFR § 115.401(o)]



**1.03-11.2 Auditor Qualifications**

1. An audit shall be conducted by:
  - a. A member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government);
  - b. A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or
  - c. Other outside individuals with relevant experience. [28 CFR § 115.402(a)]
2. All auditors shall be certified by the Department of Justice. The Department of Justice shall develop and issue procedures regarding the certification process, which shall include training requirements. [28 CFR § 115.402(b)]
3. No audit may be conducted by an auditor who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years prior to the agency's retention of the auditor. [28 CFR § 115.402(c)]
4. DJJ shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits. [28 CFR § 115.402(d)]

**1.03-11.3 Audit Contents and Findings**

1. Each audit shall include a certification by the auditor that no conflict of interest exists with respect to their ability to conduct an audit of the agency under review. [28 CFR § 115.403(a)]
2. Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards. [28 CFR § 115.403(b)]
3. For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); or Does Not Meet Standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level. [28 CFR § 115.403(c)]
4. Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility and shall include recommendations for any required corrective action. [28 CFR § 115.403(d)]
5. Auditors shall redact any personally identifiable resident or staff information from their reports but shall provide such information to the agency upon request and may provide such information to the Department of Justice. [28 CFR § 115.403(e)]
6. DJJ shall ensure that the auditor's final report is published on the agency's website or is otherwise made readily available to the public. [28 CFR § 115.403(f)]

**1.03-11.4 Audit Corrective Action Plan**

1. A finding of “Does Not Meet Standard” with one or more standards shall trigger a 180-day corrective action period. [28 CFR § 115.404(a)]
2. The auditor and DJJ shall jointly develop a corrective action plan to achieve compliance. [28 CFR § 115.404(b)]
3. The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility. [28 CFR § 115.404(c)]
4. After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action. [28 CFR § 115.404(d)]
5. If DJJ does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance. [28 CFR § 115.404(e)]

**1.03-11.5 Audit Appeals**

1. DJJ may lodge an appeal with the Department of Justice regarding any specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor’s final determination. [28 CFR § 115.405(a)]
2. If the Department of Justice determines that DJJ has stated good cause for a re-evaluation, DJJ may commission a re-audit by an auditor mutually agreed upon by the Department of Justice and DJJ. DJJ shall bear the costs of this re-audit. [28 CFR § 115.405(b)]
3. The findings of the re-audit shall be considered final. [28 CFR § 115.405(c)]

**1.03-11.6 State Compliance**

1. Pursuant to 34 U.S.C. 30307, in determining whether the State is in full compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits. [28 CFR § 115.406(a)]
2. The Governor’s certification shall apply to all facilities in the State under the operational control of the State’s executive branch, including facilities operated by private entities on behalf of the State’s executive branch. [28 CFR § 115.406(b)]

**1.03-12.0 ANNUAL REVIEW**

This procedure shall be reviewed at least annually by the Agency PREA Coordinator.

**1.03-13.0 RESPONSIBILITY**

The Superintendent shall have primary responsibility for ensuring compliance with this procedure.

**1.03-14.0 INTERPRETATION**

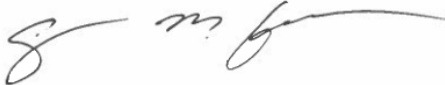
The Deputy Director of Policy shall be responsible for interpreting and granting any exceptions to this procedure.

**1.03-15.0 CONFIDENTIALITY**

All procedures and bulletins are DJJ property and shall only be used for legitimate business purposes. Any redistribution of 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.

**1.03-16.0 REVIEW DATE**

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

<p><b>Approved by:</b></p>  <p>_____</p> <p>Amy M. Floriano, Director</p>	<p><b>Date:</b> January 21, 2025</p>
<p><b>Effective Date:</b> January 22, 2025</p>	<p><b>Office of Primary Responsibility:</b> Deputy Director of Policy; Deputy Director of Education and Rehabilitative Care; Superintendent</p>
<p><b>Supersedes:</b> July 1, 2024</p>	<p><b>Forms:</b> PREA Training Acknowledgement Form for Staff; Volunteer and Contractor Acknowledgement Form; Intake PREA Brochure Acknowledgement Form; Peer Education Acknowledgment Form; Search Designation Form; Investigative Outcomes Form; Third Party Reporting Form; Retaliation Monitoring Form-Residents; Retaliation Monitoring Form-Staff; Sexual Assault Response Checklist; PREA Incident Review Form; DIS-008 Intake/Orientation Form; DIS-017 Vulnerability Assessment</p>
<p><b>IOP Required:</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	<p><b>Resident Access:</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>