

Division of Youth Rehabilitative Services

<b>Chapter 2:</b> Professional Practices	<b>Policy #</b> 2.13	<b>Page:</b> 1 of 10
<b>Subject:</b> Prison Rape Elimination Act (PREA)	<b>Standards:</b> ACA: 4-JCF-3A-02, 6C-05, 4C-50, 3D-01,through 3D-09, JDF-C-04-01, 3A-28, 1C-21, 3C-09, Del Code Title 11 and Title 16, Public Law: 108-79, 108 <sup>th</sup> Congress, DYRS Policy 11.20, 11.8, Operating Guidelines, DSCYF Policy 212	
<b>Effective Date:</b> 6/16/09	<b>Revised:</b> 9/9/09, 9/6/13, 6/27/14, 7/15/15, 11/1/15, 6/29/17	

- I. **PURPOSE:** To ensure there is clear and unequivocal understanding regarding any type of sexual activity or statements with or among the youth we serve. This policy addresses the actions between youth and incidents with staff and youth.
  
- II. **POLICY:** DYRS has a zero tolerance for any incidence of sexual activity with youth in our care. DYRS commits to full compliance with the Prison Rape Elimination Act (PREA). Any type of forced or unwanted sexual activity, touching or sexual harassment between youth or any type of sexual activity or sexual harassment between staff and youth (including consensual) is criminal and prohibited.
  
- III. **DEFINITIONS:** As used in this document, the following definitions shall apply:
  - A. **Staff:** For the purpose of this policy, staff is defined as any Department employee, volunteer, contractor, official visitor, or other agency representative (exclude family, friends and other visitors).
  
  - B. **Non-consensual Sexual Act:** Contact of any person without his or her consent, or of a person who is unable to consent or refuse and/or:
    1. Contact between the penis and the vagina or the penis and the anus including penetration, however slight.
    2. Contact between the mouth and the penis, vagina, or anus.
    3. Penetration of the anal or genital opening of another person by a hand, finger, or other object.
  
  - C. **Abusive Sexual Contact:** Contact of any person without his or her consent, or of a person who is unable to consent or refuse and/or:
    1. Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.
    2. Exclude incidents in which the intent of sexual contact is to harm or debilitate rather than sexually exploit.

- D. Sexual Harassment: Repeated verbal statements or comments of a sexual nature to a youth by another youth or to a youth by a staff. Comments include demeaning reference to gender or derogatory comments about the youth's body or clothing, or repeated profane or obscene language or gestures.
- E. Compliance Manager: Each administrative unit shall have a designated person that ensures PREA compliance operationally and it's readiness for all related PREA standards.
- F. PREA Coordinator: This DYRS position acts as an agency representative on PREA related issues, attends national or regional PREA meetings or training opportunities and provides assistance to the PREA Compliance Managers. The coordinator is to develop, implement and oversee agency efforts to comply with the PREA standards in all of its facilities. Each state (and the District of Columbia) will have a PREA Coordinator for juvenile justice and another for adult corrections.
- G. Bisexual – A person who is attracted to and may form sexual and romantic relationships with, males and females.
- H. Gay – Generally refers to a person who is emotionally, romantically, and sexually attracted to people of the same gender. Sometimes, it may be used to refer to gay men and boys only. It is preferred over the term "homosexual."
- I. Gender Expression – The way a person shows their masculinity or femininity; this is usually an extension of their gender identity.
- J. Gender Identity – A person's internal sense of themselves as male, female, no gender or another gender, regardless of anatomy.
- K. Gender Nonconforming – A person whose appearance or manner does not conform to traditional societal gender expectations.
- L. 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 sexual development.
- M. Lesbian – Generally refers to a female who is emotionally, romantically, and sexually attracted to other females.

- N. LGBTI Youth – Youth who have self-identified as or are perceived by others to be lesbian, gay, bisexual, transgender, or intersex.
- O. Sexual Orientation – A person’s emotional, romantic, and sexual attraction to persons of the same or different gender.
- P. 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.

IV. PROCEDURES:

A. Training:

- 1. All Department staff working directly with or monitoring programs/services of youth in secure care and community services must receive PREA training.
  - a. The Center for Professional Development will provide training to all new DYRS employees during orientation.
  - b. DYRS staff are to re-new this training every two years.
  - c. Training will include, but not be limited to, complaint recipient responsibility, how to report an incident, coordinated responses duties (policy attachment G), investigations, and how to access victim services.
- 2. All youth in secure care shall receive PREA orientation and/or training.
  - a. During the intake process, residents shall receive information explaining the zero tolerance rule regarding sexual abuse and harassment and how to report incident or suspicions of sexual abuse or sexual harassment.
  - b. Within ten days of the intake the secure care program is responsible for implementing a more detailed tutoring (in person or a video) to include resident rights to be free from: 1) sexual abuse and sexual harassment; 2) free from retaliation for reporting such incidents; and 3) regarding agency policies and procedures for responding to such incidents i.e. definitions from this policy, how to access victim services, and the investigation process.
- 3. All DYRS staff will be given information regarding Miranda, Garrity, and Weingarten rules during Center for Professional Development training classes.

B. Prevention:

- 1. It is the responsibility of the program administration and shift supervisors to maintain facility staff to student ratio in accordance with individual facility policies.

2. Classification or assessment tools will be utilized to determine supervision needs of youth for the protection of victims and those known to be perpetrators.
  - a. A subjective judgment shall be made by the program's initial intake staff person to include a one sentence note to staff, stating if the youth's presentation conforms or does not conform to their gender.
3. This form of protective supervision includes housing decisions, movement throughout the facility, all routine and non-routine activities.
  - a. Placement and programming assignments for each transgender youth, intersex youth, youth assessed as high risk for being victimized or offending or in need of protective housing shall have a review by the facility's assessment team at least twice a month to review any threats to safety experienced by the resident.
4. Supervisors and Program Managers are to conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. This practice shall be implemented on all shifts and highlighted in the unit log books as it occurs.
  - a. Any and all subordinate or ancillary staff are prohibited from alerting other staff members that these supervisory rounds are occurring unless such announcement is related to the legitimate operational functions of the facility.
5. Staff entering a housing unit where there are youth of the opposite gender must first alert the youth via knocking on the door. Secondly, the staff member must announce their gender to ensure the youth, requiring privacy, has ample notice/time. This requirement is not needed during emergencies.
  - a. Mixed gender staff assigned to the housing unit for the shift, do not need to announce throughout the shift.
6. Each facility is to ensure that youth with disabilities of any kind, are given the same information to prevent, detect and respond to sexual abuse and sexual harassment in a format supportive of the disability.

C. Reporting:

1. Mandatory Reporting

- a. All staff are required to report any allegations and instances of Non-consensual Sexual Acts, Abusive Sexual Contact, and Sexual Harassment to the Child Abuse Hotline (**800-292-9582**).
- b. Failure to report any sexually related incident will result in disciplinary action up to and including termination and/or criminal prosecution.
- c. Contracted programs are responsible for reporting according to their contract and Operating Guidelines.

2. Reporting by DYRS youth in state managed programs can also report any sexual contact between two youth or, a staff member and a youth, to any staff, family member, probation officer, the Child Abuse Hotline or police agency.

- a. Youth on probation or aftercare can report sexual misconduct to their probation officer or other staff, family member, child abuse hotline or the police.
- b. Youth in state managed programs can report any sexual contact between two youth or, a staff member and a youth, to any staff or the Child Abuse Hotline. The Child Abuse Hotline will also serve as the designated 24 hour, 7 days a week resource for youth to report abuse while a resident of the program.
- c. Each facility will develop procedures that define the multiple ways for residents to privately report sexual abuse, sexual harassment and/or retaliation by other residents:
  - How to confidentiality access phones to report child abuse
  - How to initiate an emergency PREA grievance. These procedures may vary from facility to facility but must all ensure that access is unimpeded and all tools necessary to make a written report is provided.
- d. Each facility will also develop procedures for how staff can report sexual abuse, harassment and staff neglect or violation of responsibilities that may have contributed to any of these incidents.
  - In addition to the regular administrative reporting process, procedures must outline how staff can make these reports confidentially.
  - Staff may also use the Child Abuse Hotline

- e. If the youth fears for his/her safety in their current setting, he/she can request a temporary transfer to another location (another housing unit or cluster). This request can be made through the facility procedures governing this type of request (or PREA implicated youth reports). For pre-trial facilities, the Superintendent or designee can also temporarily transfer the youth to another location if they feel the youth's safety is in jeopardy. In post adjudication programs, the option of placing the youth on a protective status (with additional staff) may be used when housing options cannot be utilized.
  - f. Retaliation from youth or staff will result in disciplinary action and subject to the full progression of sanctions and/or referral for criminal prosecution.
  - g. Contracted programs are responsible for assisting youth to report PREA incidents according to their contract and Operating Guidelines.
  - h. Consensual sexual activity between youth does not fall within the PREA definition or reporting procedures. However, sexual contact and harassment is prohibited in all Division programs and contracts. These contacts shall be addressed in the behavioral management programs, given appropriate medical follow-up and compliance to all reporting procedures.
  - i. If the program administrator has demonstrated that a youth has: 1) filed a PREA grievance in bad faith; or 2) made a verbal report about a PREA matter in bad faith, the program may discipline a youth via the Cognitive Behavior Treatment (CBT) program. A copy of this incident shall be kept on file by the program's Compliance Manager and the PREA Coordinator.
3. Upon receiving an allegation that a youth was sexually abused while confined to another facility, the administrator of the facility that received the allegation shall notify the administrator of the facility or appropriate office of the agency where the alleged abuse occurred and shall notify the appropriate investigative agency.
- a. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
  - b. The facility administrator shall document that notification to both the other agency administrator and the investigative agency has been made. Documentation must also show that YRS Director and the Division's PREA Coordinator have been notified.

**D. Investigations:**

**1. Secure Care**

- a. Crime Scene Protection (refer to DYRS policy on Reporting Crimes in State Facilities).

- b. All matters that involve the allegation of any sexual contact as defined in this policy will be reported to the Child Abuse Hotline.
- c. For matters which could result in a criminal action, Institutional Abuse will conduct a joint investigation with the Delaware State Police or Milford Police.
- d. The staff sexual misconduct will be reported to the Child Abuse Hotline to address all matters involving staff actions that may not be of a criminal nature, yet still violates PREA, such as conversations or correspondence of a romantic or sexual nature.
- e. For all incidents that occur in Delaware's state operated facilities, the State will pursue personnel actions that honor due process and decision making that is in the best interest of the child.
- f. Upon completion of an investigation, the facility administrator will make a recommendation for training and/or disciplinary action as necessary, after consulting with the Human Resource Unit.
- g. Acts deemed to be a criminal offense, as recognized by the Child Abuse Hotline, will be referred to the Delaware State Police or Milford Police (for Stevenson House).
- h. Incidents alleging sexual harassment that are not accepted by the Institutional Abuse Unit for investigation, shall receive an internal administrative review in an efficient time frame. All issues regarding protection and/or prevention of retaliation shall also apply to harassment allegations. Each administrative unit is to identify two supervisory level staff that have received training to assist this level of incident review.
- i. Upon notification from Institutional Abuse or Law Enforcement, the program administrator will ensure that the youth is notified of the outcome of the case via the Notification Form. See Youth Notification form that is an attachment to this policy.

## 2. Medical Procedure for Investigation

- a. Medical personnel gathering physical evidence or engaged in legitimate medical treatment while investigating prison rape will do so in a hospital setting. Any use of instruments to perform body cavity searches either for evidence or for security will also be performed in a hospital setting by its medical personnel.
- b. All medical interventions for PREA related incidents in New Castle County will be referred to A. I. DuPont or Christiana Care Hospital. For Kent and Sussex County, all medical interventions for PREA will be referred to Milford Hospital.

3. Contracted Residential Programs

- a. In-state procedures for contracted programs require reporting to the Child Abuse Hotline, law enforcement and contractual compliance in regards to reportable events.
- b. Out-of-state procedures require compliance with that state's child abuse and neglect agency, law enforcement and contractual compliance in regards to reportable events.

4. Incident Review Teams (Secure Care)

- a. The program or facility will conduct a sexual abuse incident review within thirty (30) days of the report of the independent Institutional Abuse Investigation or when directed if the official investigation extends beyond forty-five (45) days. All extensions must be approved by the Division Director.
- b. The purpose of the review is to consider whether the allegation or investigation indicates a need for the following:
  - Change policy or practice to better prevent, detect or respond to sexual abuse.
  - Consider whether the incident or allegation was motivated by race, ethnicity, gender identity, lesbian, gay, bisexual, transgender, or intersex identification, status or perceived status, or gang affiliation, or was motivated or otherwise caused by other group dynamics at the facility.
  - Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse.
  - Assess the adequacy of staffing levels in that area during different shifts.
  - Assess whether monitoring technology should be made available or improved to supplement supervision by staff.
- c. A sexual abuse incident review will occur in all cases where allegations are accepted for investigation by the Institutional Abuse Unit and considered for all internal administrative reviews (not accepted for IA investigation). As a matter of training and in the absence of real allegations, each administrative unit shall complete at least one mock review annually by the incident review team. A copy of the review shall be kept by each unit's PREA Compliance Manager and Coordinator.
- d. The sexual abuse incident review team will consist of upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.

- e. The sexual abuse review team will prepare a report of its findings and any recommendations for improvement and submit such report to the facility head, PREA Compliance Manager, Deputy Director and Division Management Analyst.
- f. The facility shall implement the recommendations for improvement or shall document its reasons for not doing so, in the submitted report.

E. Victim Services:

1. Counseling Services will be made available to all youth involved in non-consensual sex, abusive sexual contact, or sexual harassment through:
  - a. Christiana Care Hospital, A.I DuPont Hospital or Bay Health if the youth was seen at the hospital for evaluation and treatment.
  - b. The Division of Prevention and Behavioral Health psychologists or the DYRS contracted medical provider while the youth remains in custody or as a follow-up for facility release/discharge.
2. In addition to or in place of the counseling services provided by the DPBH clinicians in our facilities, all youth shall be made aware of community agencies, addresses and contact numbers of mental health practitioners that provide emotional support services related to sexual abuse. The Division shall enter into a Memorandum of Agreement with one or more such agencies to ensure statewide service agreement.
  - a. For youth on community supervision that expresses the need for such services, staff are requested to provide the contact information of the agency under agreement with the Division and/or make available other agency contact information.

F. Data Collection:

1. Completion of attachments A, B, C and D are required and distributed to the Director, Deputy Director, Management Analyst, Quality Assurance Officer and Administrative Specialist within 24 hours of the incident.
2. Administrators are responsible for providing the internal investigation outcome for data collection.
3. The Deputy Director will be responsible for reporting Institutional Abuse and/or criminal investigation outcomes for data collection.
4. The Management Analyst III will provide a quarterly report to the Deputy Director to ensure outcome information is accurate and current.

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5. As required by the PREA Act, an annual report shall be made readily available to the public through its website. All information must receive prior approval by the Division Director before website posting. The annual report shall include the following:
  - a. Any findings and corrective actions for all allegations identified by facility.
  - b. A comparison of the current year's data and corrective actions with those from prior years.
  - c. An assessment of the Division's progress in addressing sexual abuse.
  - d. The Division may redact specific material from the reports when a publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.
  
6. In accordance with PREA Standard 115.389-a, all data collected throughout the division on PREA allegations and all associated reports, shall be securely stored by the Management Analyst using a double lock system.
7. Documentation referenced in Item 6. will be retained for no less than 10 years after the date of its initial collection unless Federal, State, or local law requires otherwise.

Review Date:	Reviewed By:
10/30/15	Nancy S. Dietz
5/16/16	Nancy S. Dietz
4/10/18	