

SECTION A: Administration IMPLEMENTED: 04/16/07
CHAPTER: A-300 Personnel
NUMBER: A-307 Prison Rape Elimination Act (PREA) Policy 09/29/16 Update

RELATED STANDARDS: A-306, Judicial Employees Code of Conduct, JMSR 10.2, ASCA PP 802, PCJCC PP2-119, PCJCC Administrative Procedure 7.3.2.1, 2004 PREA

POLICY: ZERO Tolerance of Sexual Assault, Sexual Abuse, Sexual Harassment

The Detention Division will not tolerate sexual misconduct or undue familiarity committed by any person acting under the authority of the Division against any youth, youth's family or other involved person. All allegations will be thoroughly investigated, and those found in violation of this policy and/or statutes shall be subject to corrective action. Criminal allegations against personnel will be forwarded to the law enforcement agency having jurisdiction.

PROCEDURE:

Relevant standards of conduct and established guidelines for behavior, and for the investigation of allegations of sexual misconduct and undue familiarity with youths, youth families and collateral contacts will be available to personnel, contractors, volunteers, interns and all persons providing services to Detention. Personnel are informed of the Pima County Juvenile Detention Center's (PCJDC) ZERO Tolerance Policy on their first day of work, sign the acknowledgment form and are provided the related policies. Annual PREA training is required for all persons providing services to Detention.

I. DEFINITIONS:

- A. **Undue Familiarity:** Any conversation, contact, personal or business dealing between a youth under the supervision of the court, and a staff member, volunteer, intern, or person providing services to Detention, the youth, or youth's family which is not a part of the duties, and related to a personal relationship or purpose rather than a court purpose.

Undue familiarity includes, but is not limited to:

- 1. Horseplay between youth and adults bound by this procedure;
 - a. Horseplay includes but is not limited to: wrestling, playfully pushing or shoving.
- 2. Betting, trading, dealing, or socializing that is unrelated to the staff member's duties;
- 3. Family contact that is unrelated to the staff member's duties;
- 4. Sharing or giving food or personal items; or
- 5. Inappropriate personal conversation or exchanging correspondence.

- B. **Sexual Misconduct:** Any conduct of a sexual nature directed toward a youth or a member of a youth's immediate family by a staff member, volunteer, visitor, contractor, or agency representative. This includes acts or attempts to commit such acts including but not limited to:

- 1. Sexual Assault
- 2. Sexual Harassment
- 3. Sexual Contact
- 4. Conduct of a sexual nature or implication
- 5. Obscenity and unreasonable invasion of privacy

6. Conversations or correspondences, which suggest a romantic or sexual relationship between a youth and persons identified above.

Such prohibited conduct includes:

- a. Sexual advances, propositions, or flirtations;
- b. Requests or pressure of any kind for sexual favors, activities, or contact;
- c. Sexually explicit, graphic, abusive, degrading, intimidating, or offensive language or jokes;
- d. Physical contact or touching of a sexual nature, including physical or sexual assault; and
- e. Display, circulation, or communication of any sexually suggestive, explicit, graphic, or offensive objects, pictures, or materials of any kind.

No youth under the authority, supervision or custody of the PCJDC has the ability to give consent to sexual relationships.

- C. **Sexual Abuse:** An abuse of a youth by a staff member, contractor or volunteer includes any of the following acts, with or without consent of the youth.

Sexual abuse includes but is not limited to:

1. Contact between the penis and the vulva or the penis and the anus, including penetration;
2. Contact between the mouth and the penis, vulva or anus;
3. 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;
4. Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
5. Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh or the buttocks, that is unrelated to official duties or where the staff member, contractor or volunteer has intent to abuse, arouse or gratify sexual desire;
6. Any attempt, threat or request a by staff member, contractor or volunteer to engage in activities described in paragraphs one (1) through five (5) of this section;
7. Any display by a staff member, contractor or volunteer of his/her uncovered genitalia, buttocks or breast in the presence of a youth;

- D. **Sexual Contact:** The intentional contact of an inappropriate sexual nature either directly or through the clothing, such as touching of genitals, anus, groin, breasts, inner thighs, or buttocks of another person.

- E. **Abuse of Position:** An abuse of position is prohibited by department policy and applicable to state statutes.

1. Subjecting a youth to sexual contact by persuasion, inducement, enticement or forcible compulsion;
2. Subjecting a youth to sexual contact who is incapable of giving consent by reason of his/her custodial status;

3. Subjecting a youth to sexual contact who is incapable of consenting by reason of being physically helpless, physically restrained, or mentally incapacitated and;
 4. Raping, molesting, prostituting, or otherwise sexually exploiting a youth.
- F. **Intimacy:** Inappropriate social or physical contact of a personal, romantic, sexual, or unduly familiar nature, and may include kissing, touching parts of the body not defined under sexual contact, sending personal letters or cards, making or receiving personal phone calls from the youth, accepting or giving gifts from or to the youth or family member, or similar contact. Meals may be considered gifts.
1. Youth initiated personal phone calls or mail to Detention personnel need to be immediately reviewed with the staff member's supervisor in order to develop a positive professional relationship.
 2. Detention personnel should continue to work to be a positive support for youth who are in Detention or released from Detention, but contacts need to be authorized, planned, and implemented with a supervisor in order to assure compliance to this policy and the Fair Labor Standards Act (FLSA) requirements.
- G. **Voyeurism:** The intentional observing, attempting to observe, or interfering in a youth's activities, which are of a personal nature, and are not pursuant to assigned duties. Any act by a staff member, contractor, volunteer, or intern conducting official court duties and responsibilities shall not be regarded as a violation of privacy.

II. PREVENTION PLANNING

- A. During the intake process, officers will explain the right to be protected from harm including sexual abuse and harassment.
- B. A Staffing Plan that provides for adequate levels of staffing and supervision and where applicable, video monitoring, to protect youth against sexual abuse, is implemented and documented.
- C. Detention leadership randomly conducts two (2) unannounced rounds per shift.
- D. Whenever necessary, but not less than once a year, the PREA Coordinator and Detention Administration will assess, determine, and document whether adjustments are needed to the Staffing Plan.
- E. All searches of transgender and intersex youth are conducted in a professional, respectful manner. Transgendered and intersex youth are not searched or physically examined for the sole purpose of determining their genital status.
- F. Cross gender pat searches are not allowed.

III. PREVENTION, EDUCATION, AND REPORTING MECHANISMS FOR YOUTH

- A. Officers explain the ZERO Tolerance Policy to the youth during the intake process and provide them with the Pima County Juvenile Detention Safety Guide, also known as (aka) the PREA Handbook.
- B. Each newly detained youth is provided comprehensive PREA facilitated group education within the first ten (10) days of detainment, requiring the youth's signature of participation and understanding. Education includes their right to be free from sexual abuse/harassment and to be free from retaliation for reporting such incidents, and

policy and procedure for responding to such incidents. PREA education will be in a sensitive manner, at an age appropriate level, so as not to create undue fear and anxiety.

- C. Each week, living unit officers will provide PREA Continuing Education. The education component consists of a curriculum that is based on the PREA Youth Orientation that all new detained youth receive within the first 10 days of being detained.
- D. Key information regarding PREA is posted in each living unit, classrooms and the Health Unit. These posters will include Hotline/Crisis phone numbers, how to report and to whom you can report to, along with internal multiple private mechanisms for confidentially reporting.
 - 1. Youth education includes provisions for youth who are limited English proficient, limited reading skills, hearing and/or visually impaired, or otherwise disabled. When necessary, Detention personnel will arrange for interpreters to effectively and accurately interpret information. On-site interpreters are available Monday through Friday from 0800 to 1700, excluding holidays. Language Access is available telephonically after regular business hours. Youth are not allowed to interpret for another youth. In exigent circumstances, personnel may assist with interpreting only if an extended delay in waiting for a court interpreter could risk the youth's safety.
- E. Youth reporting sexual abuse/harassment, retaliation by other youth or personnel for reporting, and neglect or violations of responsibilities that may have contributed to such incidents can: tell a Detention staff member, report it to a third party, complete a Healthcare Request form (aka sick call slip), or write a grievance. Youth are provided tools necessary to make a written report. There is no time limit on when a youth may submit a grievance regarding an allegation of sexual abuse.

IV. CLASSIFICATION

- A. Newly detained youth are assigned a living unit based on their age, level of emotional and cognitive development, mental illness or disabilities, intellectual or developmental disabilities and physical disabilities. The youth's own perception of vulnerability and any specific information about the youth that may indicate heightened needs or supervision such as, additional safety precautions or separation from certain other youth is taken into consideration.
- B. Youth are neither segregated nor isolated.
- C. LGBTI youth are not placed in a particular unit solely on the basis of such identification or status. An LGBTI youth is not an indicator of being sexually abusive.
- D. Detention Administration shall consider on a case by case basis when determining unit assignment of a transgender or intersex youth. The youth's own views with respect to their own safety will be given serious consideration and the youth will be given the opportunity to shower separately from others. Detention Administration will reassess the unit assignment of transgender and intersex youth at least twice a year to review any threats to his/her safety.

V. PREA EDUCATION AND TRAINING FOR PERSONNEL, VOLUNTEERS AND CONTRACTORS

- A. Detention personnel are informed of PCJDC's ZERO Tolerance Policy on their first day of work and sign an acknowledgement form. All new Detention personnel receive PREA specific training within 1 year of hire and annually thereafter. The training is geared specifically towards the unique needs and attributes of the Detention facility and detained youth. All personnel sign a certification of understanding once their training is completed.
- B. PREA training includes the ZERO Tolerance Policy for sexual abuse and sexual harassment, the right of detained youth to be free from sexual abuse/harassment, and the right to be free from retaliation for reporting. The training also includes preventing, detecting, responding and reporting to threatening and actual sexual abuse/harassment. Also included, is the dynamics of sexual abuse/harassment in juvenile facilities, common reactions to sexual abuse/harassment, reporting laws, and departmental procedures. Communicating effectively and professionally with all youth to include lesbian, gay, bisexual, transgender, intersex or gender nonconforming youth, how to avoid inappropriate relationships and maintain healthy boundaries with peers and all youth, and avoiding a sexualized work environment is also part of the PREA training.
- C. Specialized PREA training for personnel who conduct administrative investigations include interviewing youth victims, proper use of Miranda and Garrity warnings, evidence collection in a Detention facility setting, and the criteria and evidence required to substantiate a case for administrative action against a PCJDC staff member.
- D. All volunteers and contractors who have contact with youth are trained on their responsibilities regarding sexual abuse and sexual harassment prevention, detection and response according to Detention's Policies and Procedures.

VI. FIRST RESPONDER

- A. Any staff member receiving a written, oral or an anonymous complaint, allegation, or any notice whatsoever of conduct prohibited by this Policy & Procedure, or of retaliation for reporting such conduct, or from third parties, is known as the First Responder.
- B. For all PREA complaints, the First Responder will:
 - 1. Separate the youth and alleged abuser, ensure the safety of the youth (victim) and provide notice of the complaint, allegation, incident, or notice immediately to the shift Juvenile Detention Supervisor (JDS)/Designee.
- C. In the case of an alleged sexual assault, the First Responder will also:
 - 1. Not allow the victim or alleged abuser to drink, eat, shower, change clothing, etc., or any motion that will disrupt the evidence and preserve the scene and evidence until appropriate steps can be taken for collection.
 - 2. Contact a Health Services Professional and/or Mental Health Professional.
 - 3. Youth will be transported to the hospital, if emergency medical care is needed.
 - 4. Law enforcement will transport the youth to the Southern Arizona Children's Advocacy Center (SACAC) for a forensic exam with SANE/SAFE.

5. SACAC will provide an advocate for emotional support services throughout the forensic exam and provide follow up support. SACAC will also provide crisis intervention counseling.
 6. All treatment shall be provided without financial cost, regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.
- D. Personnel are prohibited from discussing the incident with anyone other than those who need to know.
 - E. The shift JDS/Designee receiving the above information will contact:
 1. The Detention Division Director (DDD) and the PREA Coordinator as soon as possible, or no later than twenty-four (24) hours.
 2. Law enforcement
 - F. The DDD will make a brief report of the allegations to the Director of Juvenile Court Services as soon as possible, or no later than 24 hours after receiving the allegation(s).
 - G. All personnel will document their involvement thoroughly and accurately.

VII. MANDATORY REPORTING

- A. Personnel are required to report any and all suspected or alleged incidents of sexual misconduct within 24 hours to the DDD. The DDD will make a brief report of the allegations to the Director of Juvenile Court Services. Failure to report may result in disciplinary action, up to and including termination of employment. PCJCC Administrative Procedure 7.3.2.1 applies.
- B. Youths are encouraged to report or relate concerns regarding any incident or allegation of sexual misconduct immediately to any PCJCC staff member.
- C. All complaints and concerns reported under this policy shall be expeditiously investigated.
- D. Retaliation against any staff member or youth for filing a complaint, reporting an incident or allegation, or participating in an investigation is strictly prohibited. Violations will result in disciplinary action, up to and including termination of employment.

VIII. INVESTIGATIONS

- A. The DDD, in his/her discretion, may direct that an administrative investigation be conducted and may determine who shall conduct the investigation. The selected administrative investigator must have special training in sexual abuse investigations involving juvenile victims and follow a uniform evidence protocol. The administrative investigator shall conduct the investigation confidentially, promptly, thoroughly and objectively. The administrative investigator will gather and preserve direct and circumstantial evidence and electronic monitoring data. If at any time during the investigation, the quality of the evidence appears to support criminal prosecution, the Director of Juvenile Court Services or DDD will consult with the prosecutors as to whether interviews may be an obstacle for later criminal prosecution.
 1. The alleged accuser shall be informed that an allegation of misconduct has been made against him/her. A staff member will be reassigned to another area or may be

- placed on administrative leave pending the outcome of the investigation, if deemed necessary. The accuser/victim will be relocated to another unit or assigned one-on-one (1:1) supervision.
2. An interview with the youth (victim) will be conducted by the investigator. The alleged victim will never be subjected to a polygraph exam as a condition for proceeding with the investigation. If the youth recants or declines to participate in the investigation or leaves the facility, the alleged PREA incident will still be investigated.
 3. The youth will provide a written statement, with assistance from personnel, if needed.
 4. An interview with the accused offender (youth or staff member) will be conducted by the investigator. The staff member will provide a written statement. The investigator will also review prior complaints and reports regarding the accused and the alleged victim. The credibility of the alleged victim, suspect or witness shall be assessed on an individual basis and not based on a person's status as a detainee or staff member. If the alleged perpetrator leaves the facility, the investigation will still continue.
 5. Interviews will be conducted with any witnesses, if determined relevant to the investigation.
 6. Language interpreter services may be requested at any time by the victim, abuser or any witnesses involved with the investigation. At no time will youth be used as language interpreters.
 7. All personnel, regardless of position within the organization, shall fully cooperate with the administrative investigation and answer all inquiries truthfully. Failure to cooperate with an investigation or answer questions truthfully during the investigation shall result in disciplinary action, up to and including termination of employment.
- B. Upon completion of the investigation, the investigator will compile a final report of the facts, findings and recommendations, to include a summary of the allegations, statements from the youth, personnel, and all witnesses, physical and testimonial evidence, and whether personnel actions or failures to act facilitated the abuse, and submit the report to the DDD. This process needs to be completed within 5 days.
 - C. Substantiated allegations of conduct that appears to be criminal will be referred to law enforcement for investigations. Criminal investigations will include physical and DNA evidence.
 - D. The agency shall impose no standard higher than the preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.
 - E. All written reports will be retained for as long as the abuser is incarcerated or still employed, plus 5 years, unless the abuser was a detained youth and applicable law requires a shorter retention period.

- F. The investigative report and determination are confidential and are not subject to public disclosure. They shall not be distributed to any unauthorized court personnel and shall not be placed in any official personnel file.

IX. INVESTIGATION OUTCOME

- A. For allegations that are founded or substantiated, the DDD will determine the outcome of the investigation in accordance with PREA Standards.
- B. For allegations that are unfounded or inconclusive, the staff member and youth will be notified of the outcome in writing.
- C. This procedure prohibits retaliation against personnel or other persons who bring allegations in good faith or otherwise assist in the investigation of those allegations. Any staff member who engages in retaliatory action will be subject to discipline, up to and including termination of employment.

X. REPORTING TO YOUTH

- A. Following an investigation, youth will be informed as to whether the allegation has been determined to be substantiated, unsubstantiated or unfounded. If law enforcement conducts the investigation, the PREA Coordinator will have ongoing communication, documenting all contact. The youth will be informed of the progress and these notifications will be documented.
- B. If the allegation involves staff member committed sexual abuse against a youth, the youth will be informed (unless unfounded) when the staff member is no longer working within the youth's unit, the staff member is no longer employed, the staff member has been indicted or convicted on a charge related to sexual abuse within the facility.
- C. If the alleged abuse was perpetrated by another youth, the victim will be informed when the alleged abuser has been indicted or convicted on a charge related to sexual abuse within the facility.
- D. Obligation to report ceases once the youth is released from custody. All notifications or attempted notifications will be documented.

XI. PROTECTION FOR ALLEGED VICTIMS AND REPORTERS OF SEXUAL ABUSE AND SEXUAL HARASSMENT

- A. Unit changes, 1:1 supervision or increased visual checks are implemented to ensure that youth that are at substantial risk of imminent sexual abuse/harassment and youth who are retaliated against for reporting are protected (youth are neither segregated nor isolated).
- B. Youth or personnel that have reported sexual abuse and alleged victims that suffered the sexual abuse will be monitored for ninety (90) days to ensure there are no changes in their conduct or treatment (by other youth or personnel) that may suggest retaliation. Monitoring of youth will consist of, but not be limited to: reviewing discipline reports, programming and living unit changes, and/or status checks. Monitoring personnel will consist of but not be limited to: disciplinary action reviews, negative performance reviews and/or status checks. Monitoring will continue after 90 days if the initial

monitoring indicates a continuing need. If the allegation is unfounded, there is no longer an obligation to monitor.

- C. If any other individual who cooperates with an investigation expresses fear of retaliation, the DDD will take appropriate measures to protect that individual from retaliation.

XII. MEDICAL, MENTAL HEALTH AND SUPPORT SERVICES FOR YOUTH

- A. Youth who are victims of sexual abuse that occurred in PCJDC will receive timely, unimpeded access to emergency medical treatment, crisis intervention and/or mental health services. Services offered include: emergency contraception and sexually transmitted infection prophylaxis and pregnancy testing, in accordance with professionally accepted standards of care, where medically appropriate. If pregnancy results from sexually abusive vaginal penetration, the victim shall receive timely and comprehensive information about access to all lawful pregnancy related medical services. Treatment services shall be provided to the victim without financial cost.
- B. Medical and mental health evaluations will be provided for all youth who have been victimized by sexual abuse in PCJDC by the SACAC. Follow up services, mental health services and treatment plans will be provided and will be consistent with the community level of care, and if necessary, referrals for continued care when the youth is released.
- C. All known youth-on-youth abusers shall have a mental health evaluation within sixty (60) days of learning of the abuse history. Treatment will be offered when deemed appropriate by Mental Health Professionals.
- D. PCJDC contracts for health services to administer medical and mental health services. The contractor conducts medical and mental health screenings.
- E. If the screening indicates that a youth has experienced prior sexual abuse, whether it occurred in an institutional setting or in the community, personnel shall ensure that the youth is offered a follow up meeting with a Medical or Mental Health Professional within fourteen (14) days of the Intake screening.
- F. Any information related to sexual victimization or abusiveness that occurred in PCJDC shall be strictly limited to SACAC's medical and mental health professionals and other personnel as necessary to inform for treatment plans, security and management decisions including housing, bed, education and program assignments, or as otherwise required by Federal, State or local law.
- G. Contract Mental Health Professionals shall report information about prior sexual victimization.
- H. Youth that have been sexually assaulted will be taken to SACAC for all forensic assessments/interviews and victim services.

PCJDC has a Memorandum of Understanding with the Tucson Police Department and the SACAC to serve sexually assaulted detained youth.

XIII. DISCIPLINARY SANCTIONS FOR YOUTH

- A. Youth may be subject to disciplinary sanctions following an administrative finding or criminal finding that the youth committed sexual abuse or sexual harassment against another youth or a staff member. Sanctions will be commensurate with the nature and circumstances of the abuse committed, the youth discipline history, and sanctions imposed for comparable offenses by other youth with similar histories. The discipline process shall consider whether a youth's mental disabilities or mental health contributed to his/her behavior, when determining an imposed sanction.
- B. Youth are neither segregated nor isolated as a form of discipline.
- C. Consensual sexual activity between youth is prohibited and subject to discipline.
- D. If the sexual contact between youth is not coerced, then it does not constitute sexual abuse.
- E. Sexual contact with a staff member is subject to discipline, if the staff member did not consent to the contact.
- F. A youth who makes a report of sexual abuse/harassment in good faith based upon reasonable belief the conduct occurred, will not be disciplined for making the report even if evidence does not support the claim. A youth who makes a false report in order to cause harm to another may be referred to law enforcement for possible criminal charges.

XIV. DISCIPLINARY SANCTIONS FOR PERSONNEL

- A. Personnel are subject to disciplinary actions to include termination of employment for violating the PREA Policy. Personnel who have engaged in sexual abuse of a youth will be terminated. Sanctions will be commensurate with the nature and circumstances of the acts committed, discipline history, and sanctions imposed for comparable offenses by other personnel with similar histories.
- B. All terminations for violations of sexual abuse/harassment will be reported to law enforcement, unless the activity was clearly not criminal. An administrative investigation will be conducted if the offense is not criminal. The administrative investigation will proceed even if a resignation was submitted by the staff member prior to completion of the investigation.

XV. DISCIPLINARY SANCTIONS FOR CONTRACTORS AND VOLUNTEERS

- A. Any contractor or volunteer who engages in sexual abuse will be prohibited from contact with youth and will be reported to law enforcement and to any relevant licensing bodies, unless the activity was clearly not criminal.

XVI. SEXUAL ABUSE INCIDENT REVIEW

- A. An incident review will be conducted within seven (7) to 10 days at the conclusion of every sexual abuse investigation, including when the allegation has not been substantiated, unless the allegation has been determined to be unfounded. The Review Team will include upper level management officials with input from line supervisors, investigators and medical or mental health professionals.

- B. The Review Team considers whether to change policy or practice to better prevent, detect or respond to sexual abuse. They also consider whether the incident was motivated by race, ethnicity, gender identity, lesbian, gay, bisexual, transgender, or intersex identification, status or perceived status or gang affiliation, or motivated by or caused by other group dynamics at the facility.
- C. Determine if any physical barriers in the area of the incident enabled the abuse, assess the staffing levels at the time of the abuse, and whether technology or supervision should be added.
- D. The PREA Coordinator will prepare a report of findings, including but not necessarily limited to, determinations made in B and C above. The report is to include recommendations for improvement and submitted to the DDD. Documentation of reasons for not implementing recommendation(s) is required.

XVII. DATA COLLECTION

- A. PCJDC collects accurate, uniform data for every allegation of sexual abuse at the PCJDC using a standardized instrument and set of definitions.
- B. At least annually, PCJDC will aggregate the incident-based sexual abuse data.
- C. At a minimum, the incident-based data shall include the data necessary to answer all questions from the most recent version of the survey of Sexual Violence conducted by the Department of Justice.
- D. PCJDC will maintain, review and collect data as needed from all available incident-based documents, including reports, investigative files and sexual abuse incident reviews.
- E. PCJDC will provide all such data from the previous calendar year to the Department of Justice no later than June 30th.