

**Harrison County Juvenile Services**  
**General Administrative Policy Manual**

Chapter: General Administration	POLICY NO: 1.1 A
<b>Subject: PRISON RAPE ELIMINATION ACT (PREA) Zero Tolerance for Sexual Abuse, Sexual Activity, and Sexual Harassment</b>	EFFECTIVE DATE: 9/1/2017 UPDATED: 1/22/18
Statute(s): PREA: 111.311 – 115.501 TJJJ: 343.200, 343.204, 343.208	

**RULE**

**1. Purpose.**

The purpose of this rule is to establish the Harrison County Juvenile Services (HCJS's) zero-tolerance policy for any form of sexual abuse, sexual harassment, or sexual activity involving youth in the agency's care. This rule also addresses HCJS's obligations under federal Prison Rape Elimination Act (PREA) standards for preventing, detecting, and responding to sexual abuse and sexual harassment.

**2. Applicability.**

Unless stated otherwise, this rule applies to all residential facilities operated by HCJS or under contract with HCJS.

**3. Definitions.**

- a. **Asexual** – a person who is not romantically or sexually attracted to any gender.
- b. **Bisexual** – a person who is romantically or sexually attracted to more than one gender or sexual category.
- c. **Exigent Circumstances**--any set of temporary and unforeseen circumstances that require immediate action to combat a threat to the security or institutional order of a facility.
- d. **Gay** – commonly refers to men typically attracted to other men.
- e. **Gender** – a socially constructed concept, classifying behavior as either “masculine” or “feminine,” unrelated to one’s external genitalia.
- f. **Gender Identity** – distinct from sexual orientation of their gender identity, including appearance, dress, mannerisms, speech, and social interactions.
- g. **Gender Non-Conforming** – gender characteristics and/or behaviors that do not conform to those typically associated with a person’s biological sex.

- h. **Intersex**--a person who's 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.
- i. **Residential Facilities**--high restriction facilities and medium restriction facilities.
- j. **Sexual Abuse**--includes sexual abuse of a youth by another youth or sexual abuse of a youth by a staff member, contractor, or volunteer.
- k. **Sexual Abuse of a Youth by Another Youth**--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:

  - i. contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
  - ii. contact between the mouth and the penis, vulva, or anus;
  - iii. penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
  - iv. 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.
  - v. 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.
- l. **Sexual Abuse of a Youth by a Staff Member, Contractor, or Volunteer**--includes any of the following acts, with or without consent of the youth:

  - i. contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
  - ii. contact between the mouth and the penis, vulva, or anus;
  - iii. 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;
  - iv. 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;
  - v. 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;

- vi. any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in subparagraphs (i) - (v) of this paragraph;
  - vii. any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of a youth; and
  - viii. voyeurism by a staff member, contractor, or volunteer.
- m. **Sexual Activity**--includes any form of sexual misconduct that does not meet the definition of sexual abuse.
- n. **Sexual Harassment**--includes:
- i. repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one youth directed toward another; and
  - ii. repeated verbal comments or gestures of a sexual nature to a youth 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.
- o. **Sexual Identity** – the sex that a person sees themselves as. This can include refusing to label oneself with a sex.
- p. **Sexual Orientation** – romantic and/or physical attraction to members of the same or different sex.
- q. **Transgender** – a person whose gender identity differs from their birth sex.
- r. **Voyeurism**--an invasion of a youth's privacy by a staff member, contractor, or volunteer for reasons unrelated to official duties, such as:
- i. peering at a youth who is using a toilet in his or her cell to perform bodily functions;
  - ii. requiring a youth to expose his or her buttocks, genitals, or breasts; or
  - iii. taking images of all or part of a youth's naked body or of a youth performing bodily functions.

**4. General Provisions.**

- a. It is the policy of HCJS to ensure that any form of conduct that meets the definition of sexual abuse, sexual activity, or sexual harassment, regardless of consensual status, is strictly prohibited. Such conduct, if confirmed, will result in administrative disciplinary action and may result in criminal prosecution.
- b. It is the policy of HCJS to comply with all applicable PREA-related standards adopted by the U.S. Department of Justice.

**5. Prevention Planning.**

**a. § 115.311 PREA Coordinator and PREA Compliance Managers.**

- i. HCJS designates an upper-level staff member as the agency-wide PREA coordinator. This staff member's duties must be structured to allow sufficient time and authority to develop, implement, and oversee agency efforts to comply with PREA standards in HCJS-operated residential facilities.
- ii. HCJS designates a PREA compliance manager at its HCJS-operated residential facility. This staff member's duties must be structured to allow sufficient time and authority to coordinate the facility's efforts to comply with PREA standards.

**b. § 115.312 Contracting with Other Entities for Confinement of Youth.**

In all new or renewed contracts for residential placement of HCJS youth, HCJS includes a clause requiring the contractor to adopt and comply with applicable PREA standards.

**c. § 115.313 Youth Supervision and Monitoring.**

**i. Staffing Plans.**

- 1. HCJS-operated residential facility develops and implements a written staffing plan to provide adequate levels of staffing and video monitoring to protect youth against sexual abuse.
- 2. Deviations from the staffing plan are permitted only during limited and discrete exigent circumstances. The facility documents each deviation and the reason for the deviation.
- 3. At least once each year, the Facility Administrator, in consultation with the HCJS PREA coordinator, reviews and documents whether any adjustments are needed to the HCJS-operated facility:
  - a. staffing plan;
  - b. prevailing staffing patterns;

- c. deployment of video monitoring systems and other monitoring technologies; and
- d. resources available to ensure adherence to the staffing plan.

**ii. Staff Ratios.**

HCJS shall maintain a staff ratio 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.

**iii. Unannounced Rounds.**

- 1. A staff member with management responsibilities will conduct and document unannounced rounds to identify and deter sexual abuse and sexual harassment. The unannounced rounds must be conducted at least once per month on each shift.
- 2. Staff members are prohibited from notifying other staff members that unannounced rounds are occurring, unless such notification is related to the legitimate operational functions of the facility.

**d. § 115.315 Limits to Cross-Gender Viewing and Searches.**

- i. HCJS will not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances.
- ii. HCJS does not search or physically examine a transgender or intersex youth for the sole purpose of determining the youth's genital status. The status may be determined during conversations with the youth, by reviewing medical records, or as part of a broader medical examination conducted in private by a medical practitioner.
- iii. At HCJS, staffing patterns and physical barriers are implemented to enable youth to shower, perform bodily functions, and change clothing without non-medical 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.
- iv. At HCJS, staff who are not the same gender as the youth must announce their presence when entering a dormitory pod but only if there are no other staff of the opposite gender already in the pod.

**e. § 115.316 Youth with Disabilities and Youth who are Limited English Proficient.**

- i. HCJS takes appropriate steps to ensure that youth with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps include providing access to:
    - 1. interpreters as needed by calling Language Line Services at 1-800-752-6096 at no cost to the youth; and
    - 2. written materials provided in formats or through methods that ensure effective communication.
  - ii. HCJS takes 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 for youth who are limited English proficient, including the use of interpreters as needed.
  - iii. When using interpreters to meet requirements of this paragraph:
  - iv. HCJS attempts to select interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary; and
  - v. HCJS does not use other youth to interpret, read, or otherwise assist except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise safety, the performance of first-response duties, or an investigation.
- f. § 115.317 Hiring and Promotion Decisions.**
- i. HCJS does not hire or promote anyone who may have contact with youth and does not use the services of any contractor who may have contact with youth if the person:
    - 1. 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; or
    - 2. has been convicted or civilly or administratively adjudicated 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.
  - ii. For any person who may have contact with juveniles, HCJS considers any incidents of sexual harassment in determining whether to hire, promote, or contract for services.
  - iii. Before hiring new employees who may have contact with youth, HCJS:

1. performs a criminal background records check;
  2. consults the child abuse registry maintained by Texas Department of Family and Protective Services (DFPS); and
  3. makes 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.
- iv. Before enlisting the services of a contractor who may have contact with youth, HCJS:
1. performs a criminal background records check; and
  2. consults the DFPS child abuse registry.
- v. HCJS conducts periodic criminal background records checks on current employees and contractors.
- vi. HCJS asks applicants and employees who may have contact with youth directly about previous misconduct described in subparagraph (i) of this paragraph in written applications or interviews for hiring or promotion and in any interviews or written self-evaluations conducted as part of reviews of current employees. HCJS employees have a continuing affirmative duty to disclose any such misconduct. Material omissions regarding such misconduct or the provision of materially false information is grounds for termination of employment.
- vii. Unless prohibited by law, HCJS provides information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom the former employee has applied to work.

**g. § 115.318 Upgrades to Facilities and Technologies.**

- i. When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, HCJS considers the effect of the design, acquisition, expansion, or modification on the agency's ability to protect youth from sexual abuse.
- ii. When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, HCJS considers how such technology may enhance the agency's ability to protect youth from sexual abuse.

**6. Responsive Planning.**

**a. § 115.321 Evidence Protocol and Forensic Medical Examinations.**

- i. To the extent HCJS is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative and criminal prosecutions.
- ii. The protocol must 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.
- iii. When evidentiary or medically appropriate, HCJS transports youth who experience sexual abuse to a hospital, clinic, or emergency room that can provide for medical examination by a Sexual Assault Nurse Examiner (SANE), Sexual Assault Forensic Examiner (SAFE), or other qualified medical practitioners. All such medical examinations are provided at no financial cost to the youth.
- iv. If requested by a youth who experiences sexual abuse, a victim advocate will accompany and support the youth through the forensic medical examination and investigatory interviews. The victim advocate provides emotional support, crisis intervention, information, and referrals.
- v. HCJS seeks to secure victim advocacy services from local rape crisis centers. If a rape crisis center is not available, HCJS makes these services available through a qualified staff member from a community-based organization or from a qualified HCJS staff member who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues.
- vi. To the extent HCJS itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (i) through (v) of this section.
- vii. The requirement of the paragraphs (i) through (vi) of this section also apply to:
  1. Any state entity outside of the agency that is responsible for investigating allegations of sexual abuse in juvenile facilities including Harrison County Sheriff's Department and Texas Juvenile Justice Department; and
  2. Any Department of Justice component that is responsible for investigating allegations of sexual abuse in juvenile facilities.

**b. § 115.322 Policies to Ensure Referrals of Allegations for Investigations.**



- i. HCJS shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse or sexual harassment and that all referrals are documented.
- ii. HCJS will ensure that allegations of sexual abuse or sexual harassment are referred for investigation to Harrison County Sheriff's office, who has the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. Allegations will also be reported to Texas Juvenile Justice Department (TJJD) Office of Inspector General (OIG) within 24 hours as required. Under Texas Human Resources Code §242.102, the OIG is authorized to conduct criminal investigations.

**7. Training and Education.**

**a. § 115.331 Employee Training.**

- i. HCJS provides PREA-related training to all employees who may have contact with youth. The training is tailored to the unique needs and attributes of youth in juvenile facilities and to the specific gender(s) represented at the facility. The training addresses:
  - 1. the zero-tolerance policy for sexual abuse, sexual harassment, and sexual activity;
  - 2. how to fulfill employees' responsibilities to prevent, detect, report, and respond to sexual abuse and sexual harassment;
  - 3. youths' right to be free from sexual abuse and sexual harassment;
  - 4. the right of youth and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
  - 5. the dynamics of sexual abuse and sexual harassment in juvenile facilities;
  - 6. the common reactions of juvenile victims of sexual abuse and sexual harassment;
  - 7. 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 youth;
  - 8. how to avoid inappropriate relationships with youth;

9. how to communicate effectively and professionally with youth, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming youth;
  10. how to comply with relevant laws related to mandatory reporting of sexual abuse; and
  11. relevant laws and rules regarding consent.
- ii. HCJS requires all employees to receive the PREA-related training annually. Any employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with a refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures.
  - iii. HCJS documents employees' written verification that they understand the training they have received.

**b. § 115.332 Volunteer and Contractor Training.**

- i. HCJS shall ensure that all volunteers and contractors who have contact with residents have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.
- ii. 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 all volunteers and contractors who have contact with residents shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed on how to report such incidents.
- iii. HCJS shall maintain documentation confirming that volunteers and contractors understand the training they have received.

**c. § 115.333 Youth Education.**

- i. During the admission process, HCJS provides youth with age-appropriate information about the agency's zero-tolerance policy and how to report incidents or suspicions of sexual abuse, sexual harassment, or sexual activity.
- ii. Within 10 calendar days after admission, HCJS provides comprehensive, age-appropriate education to youth about:
  1. their rights to be free from sexual abuse, sexual harassment, and retaliation for reporting such incidents; and

2. agency policies and procedures for responding to such incidents.
  - iii. HCJS provides the information in formats accessible to all youth, including those who:
    1. are limited English proficient;
    2. are deaf, visually impaired, or otherwise disabled; and
    3. have limited reading skills.
  - iv. HCJS shall maintain documentation of resident participation in these education sessions.
- d. § 115.334 Specialized Training: Investigations.**
- i. In addition to the general training provided to all employees pursuant to § 115.331, HCJS shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its staff members who investigate allegations of sexual abuse receive specialized training that includes:
    1. techniques for interviewing juvenile sexual abuse victims;
    2. proper use of Miranda and Garrity warnings;
    3. sexual abuse evidence collection in confinement settings; and
    4. criteria and evidence required to substantiate a case for administrative action or prosecution referral.
  - ii. HCJS maintains documentation that such training has been completed.
  - iii. Any State entity or Department of Justice component including Harrison County Sheriff's Department and Texas Juvenile Justice Department that investigates sexual abuse in juvenile confinement settings shall provide such training to its agents and investigators who conduct such investigations.
- e. § 115.335 Specialized Training: Medical and Mental Health Care.**
- i. HCJS ensures and maintains documentation that all full and part-time medical and mental health practitioners who work in HCJS-operated facilities have been trained in how to:
    1. detect and assess signs of sexual abuse and sexual harassment;
    2. preserve physical evidence of sexual abuse;
    3. respond effectively and professionally to juvenile victims of sexual abuse and sexual harassment; and
    4. report allegations or suspicions of sexual abuse and sexual harassment and to whom such reports must be made.

**8. Screening for Risk of Sexual Victimization and Abusiveness.**

**a. § 115.341 Obtaining Information from Youth.**

- i. Within 72 hours after a youth's admission to HCJS, HCJS uses an objective screening instrument to obtain information about the youth's personal history and behavior to reduce the risk of sexual abuse by or upon another youth. Periodically throughout the youth's stay, information from the screening instrument is used to reassess housing and supervision assignments.
- ii. HCJS establishes appropriate controls to prevent sensitive information obtained from these screenings from being exploited to the youth's detriment by staff or other youth.

**b. § 115.342 Placement of Youth in Housing, Bed, Program, Education, and Work Assignments.**

- i. HCJS uses all information obtained under paragraph (a) of this subsection to make housing, bed, program, education, and work assignments for youth.
- ii. Except under limited situations involving self-injury, HCJS does not place youth in isolation as a means of protection.
- iii. Lesbian, gay, bisexual, transgender, or intersex youth are not placed in particular housing, bed, or other assignments solely on the basis of such identification or status. HCJS does not consider such identification or status as an indicator of likelihood of being sexually abusive.
- iv. For each transgender or intersex youth, HCJS:
  1. makes a case-by-case determination when assigning the youth to a male or female dormitory pod/room and when making other housing and programming assignments, considering the youth's health and safety and any management or security concerns;
  2. gives serious consideration to the youth's own views concerning his/her own safety when making placement and programming assignments;
  3. reassesses the placement and programming assignments at least twice each year to review any threats to safety experienced by the youth; and
  4. allows all HCJS youth to shower separately.

**9. Reporting.**

**a. § 115.351 Reports from Youth and Third Parties.**

- i. Youth may report sexual abuse, sexual harassment, retaliation by others for reporting sexual abuse or harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents by:
  1. filing a written grievance form and returning it to a Detention Officer assigned to their section or to the Grievance Officer (Detention Superintendent);
  2. calling the 24-hour, toll-free hotline at 1-877-786-7263 maintained by the Texas Juvenile Justice Department (TJJD) without being heard by staff or other youth;
  3. telling any staff member, volunteer, or contract employee, who must then call the TJJD hotline; or
  4. HCJS accepts verbal and written reports made anonymously or by third parties and promptly documents verbal reports. Anonymous and third-party reports may be submitted by calling the toll-free hotline maintained by the TJJD. HCJS publicly distributes information on how to report alleged abuse or sexual harassment on behalf of a youth by posting this information on the agency's website.
  5. HCJS provides youth with access to tools necessary to complete grievance forms. HCJS provides all staff with access to telephones to privately call the OIG hotline immediately if the staff member has reason to believe a youth has been a victim of sexual abuse or harassment.

**b. § 115.352 Administrative Remedies.**

- i. HCJS investigates all allegations of sexual abuse regardless of how much time has passed since the alleged incident.
- ii. Youth are not required to use the youth grievance system to report an allegation of sexual abuse. Youth are not required to attempt to resolve the allegation with staff.
- iii. If a youth uses the grievance system to report an allegation of sexual abuse, the allegation is immediately forwarded to the HCJS Director or his or her designee who shall promptly report the allegation to the appropriate agency for assignment and investigation.
- iv. HCJS does not refer allegations of sexual abuse to staff members who are the subject of the allegation.

**c. § 115.353 Youth Access to Outside Support Services and Legal Representation.**

- i. HCJS provides youth with access to outside victim advocates for emotional support services related to sexual abuse by making available mailing addresses and telephone numbers, including toll-free numbers of any local, state, or national victim advocacy or rape crisis organizations. HCJS also provides youth with on-site access to representatives of such advocacy organizations. HCJS enables reasonable communication between youth and these organizations and agencies in as confidential a manner as possible. HCJS informs youth, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.
- ii. HCJS maintains or seeks to enter into memoranda of understanding or other agreements with community service providers that are able to provide youth with confidential emotional support services related to sexual abuse. HCJS maintains documentation of such agreements or attempts to enter into such agreements.
- iii. HCJS provides youth with reasonable and confidential access to their:
  1. attorneys or other legal representatives; and
  2. parents or legal guardians.

**d. § 115.354 Third-party reporting.**

The agency shall establish a method to received third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of a resident.

**10. Official Response Following a Report of Alleged Sexual Abuse or Sexual Harassment.**

**a. § 115.361 Staff and Agency Reporting Duties.**

- i. All HCJS staff members must immediately report to the HCJS Director, in accordance with agency policy, any knowledge, suspicion, or information they receive regarding:
  1. an incident of sexual abuse;
  2. an incident of sexual harassment;
  3. retaliation against youth or staff who reported such an incident; and
  4. any staff neglect or violation of responsibilities that may have contributed to such an incident or retaliation.

- ii. The requirement to report applies to incidents occurring in any residential facility, whether or not it is operated by HCJS.
- iii. The requirement to report includes staff members whose personal communications may otherwise be privileged, such as an attorney, member of the clergy, medical practitioner, social worker, or mental health practitioner. Upon the initiation of services, these staff members must inform the youth of the staff member's duty to report abuse and the limits of confidentiality.
- iv. In addition to the reporting requirement in subparagraph (i) of this paragraph, HCJS staff must comply with mandatory child abuse reporting laws in Texas Family Code Chapter 261 and with applicable professional licensure requirements.
- v. Any HCJS staff who receives a report of alleged sexual abuse is prohibited from revealing any information to anyone other than to the extent necessary to make treatment, investigation, and other security and management decisions.
- vi. Upon receiving an allegation of sexual abuse, the facility director or his/her designee must promptly report the allegation to the alleged victim's parents or legal guardians, unless the facility has official documentation showing the parents or legal guardians should not be notified. If the alleged victim is under the conservatorship of DFPS, the report is made to DFPS.
- vii. HCJS shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.

**b. § 115.362 Agency Protection Duties.**

Upon receipt of a report that alleges a youth is subject to a substantial risk or imminent sexual abuse, HCJS takes immediate action to protect the youth.

**c. § 115.363 Reporting to Other Confinement Facilities.**

- i. Any staff member must immediately notify the Director if he/she receives an allegation that a youth was sexually abused while confined at a juvenile facility not operated by HCJS and not operated under contract with HCJS.
- ii. The Director must notify the head of the facility or the appropriate office of the agency where the abuse is alleged to have occurred and the appropriate investigative agency as soon as possible, but within 72 hours after receiving the allegation.

**d. § 115.364 Staff First Responder Duties.**

- i. Upon learning of an allegation that a youth was sexually abused, the first staff member to respond to the report must:
  1. separate the alleged victim and alleged abuser;
  2. preserve and protect any crime scene until appropriate steps can be taken to collect any evidence; and
  3. if the alleged abuse occurs within a time period that still allows for the collection of physical evidence:
    - a. request that the alleged victim not take any actions that could destroy physical evidence, including as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
    - b. ensure that the alleged abuser does not take any actions that could destroy physical evidence.

**e. § 115.365 Coordinated Response.**

HCJS maintains a written plan to coordinate the actions taken among staff first responders, medical and mental health practitioners, investigators, and facility leadership in response to an incident of sexual abuse.

**f. § 115.366 Preservation of Ability to Protect Youth from Contact with Abusers.**

HCJS will not enter into any agreement that limits its ability to remove alleged staff sexual abusers from contact with youth pending the outcome of an investigation or a determination of whether and to what extent discipline is warranted.

**g. § 115.367 Agency Protection against Retaliation.**

- i. Retaliation by a youth or staff member against a youth or staff member who reports sexual abuse or sexual harassment or who cooperates with an investigation is strictly prohibited. To help prevent retaliation, HCJS:
  1. designates certain staff members to monitor the person who reported the allegation and the alleged victim to determine whether retaliation is occurring;
  2. uses multiple measures to protect youth and staff from retaliation, such as housing transfers, removal of the alleged abuser from contact with the alleged victim, and emotional support services for youth or staff who fear retaliation;



3. for at least 90 days (except when the allegation is determined to be unfounded):
  - a. monitors the reporter and the alleged victim for signs of retaliation including items such as disciplinary reports, housing or program changes, staff reassignments, and negative performance reviews; and
  - b. conducts periodic status checks on the alleged victim;
- ii. acts promptly to remedy any retaliation; and
- iii. takes appropriate measures to protect any other individual who cooperates with the investigation who expresses a fear of retaliation.

**h. § 115.368 Post-Allegation Protective Custody.**

HCJS does not use segregated housing to protect a youth who is alleged to have suffered sexual abuse.

**11. Investigations.**

**a. § 115.371 Criminal and Administrative Agency Investigations.**

- i. When HCJS conducts its own investigations into allegations of sexual abuse or sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports.
- ii. For investigations of alleged sexual abuse, HCJS uses investigators from Harrison County Sheriff's Department and Texas Juvenile Justice Department who have received special training in sexual abuse investigations involving juvenile victims.
- iii. Investigators must:
  1. gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data;
  2. interview alleged victims, suspected perpetrators, and witnesses; and
  3. review prior complaints and reports of sexual abuse involving the suspected perpetrator.

- iv. HCJS will not terminate an investigation solely because the source of the allegation recants the allegation.
- v. When the quality of evidence appears to support criminal prosecution, HCJS will forward the information to Harrison County Sheriff's Department to conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- vi. Harrison County Sheriff's Department and Texas Juvenile Justice Department investigators must assess the credibility of an alleged victim, suspect, or witness on an individual basis and must not determine credibility by the person's status as a youth or staff.
- vii. Harrison County Sheriff's Department and Texas Juvenile Justice Department does not require youth who allege sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation.
- viii. Administrative investigations of sexual abuse must:
  - 1. include an effort to determine whether staff actions or failures to act contributed to the abuse; and
  - 2. be documented in a written report that includes a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
- ix. Criminal investigations must be documented in a written report that includes:
  - 1. a thorough description of physical, testimonial, and documentary evidence; and
  - 2. copies of all documentary evidence, when feasible.
- x. Substantiated allegations of conduct that appear to be criminal are referred for prosecution.
- xi. HCJS maintains all criminal and administrative investigation reports for as long as the alleged abuser is incarcerated by HCJS or employed by HCJS, plus at least five years.
- xii. HCJS does not terminate investigations solely on the basis that the alleged abuser or victim is no longer in the custody of HCJS or employed by HCJS.
- xiii. If an outside agency conducts an investigation into an allegation of sexual abuse, HCJS staff must cooperate with the outside investigators. HCJS management will attempt to remain informed about the progress of the investigation.

**b. § 115.372 Evidentiary Standard for Administrative Investigations.**

In administrative investigations into allegations of sexual abuse or sexual harassment, the investigator's findings must be based on a preponderance of the evidence.

**c. § 115.373 Reporting to Youth.**

- i. The notification requirements in this paragraph apply until the youth is discharged from HCJS. HCJS documents all notifications and attempted notifications.
  1. Following an investigation into a youth's allegation of sexual abuse suffered in a HCJS facility, HCJS informs the youth whether the allegation is substantiated, unsubstantiated, or unfounded. If HCJS did not conduct the investigation, HCJS management will request the information from the investigating agency so that the youth may be informed.
  2. Following a youth's allegation that a staff member has committed sexual abuse against the youth, HCJS informs the youth whenever the following events occur, except when the allegation is determined to be unfounded:
    - a. the staff member is no longer posted within the youth's housing unit;
    - b. the staff member is no longer employed at the facility;
    - c. HCJS learns that the staff member has been indicted on a charge related to the sexual abuse; or
    - d. HCJS learns that the staff member has been convicted on a charge related to the sexual abuse.
- ii. Following a youth's allegation that he/she has been sexually abused by another youth, HCJS informs the alleged victim whenever the following events occur:
  1. HCJS learns that the alleged abuser has been indicted on a charge related to the sexual abuse; or
  2. HCJS learns that the alleged abuser has been convicted on a charge related to the sexual abuse.

**12. Discipline.**

**a. § 115.376 Disciplinary Sanctions for Staff.**

- i. Staff members are subject to disciplinary sanctions up to and including termination of employment for violating HCJS sexual abuse or sexual harassment policies.
- ii. Termination of employment is the presumptive disciplinary sanction for staff members who have engaged in sexual abuse.
- iii. Disciplinary sanctions for violations of HCJS policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) are commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.
- iv. HCJS reports the following actions to any relevant licensing bodies:
  - 1. terminations of employment for violations of agency sexual abuse or sexual harassment policies; and
  - 2. resignations by staff members who would have been terminated if they had not resigned.

**b. § 115.377 Corrective Action for Contractors and Volunteers.**

- i. If a contractor or volunteer engages in sexual abuse, HCJS:
  - 1. prohibits the contractor or volunteer from having any contact with HCJS youth; and
  - 2. reports the finding of abuse to any relevant licensing bodies.
- ii. If a volunteer or contractor violates HCJS sexual abuse or sexual harassment policies but does not actually engage in sexual abuse, HCJS takes appropriate remedial measures and considers whether to prohibit further contact with HCJS youth.

**c. § 115.378 Interventions and Disciplinary Sanctions for Youth.**

- i. A youth may be subject to disciplinary sanctions for engaging in sexual abuse only when there is a criminal finding of guilt or an administrative finding that the youth engaged in youth-on-youth sexual abuse.
- ii. Any disciplinary sanctions must be commensurate with the nature and circumstances of the abuse committed, the youth's disciplinary history, and the sanctions imposed for comparable offenses by other youth with similar histories.

- iii. The disciplinary process must consider whether a youth's mental disabilities or mental illness contributed to his/her behavior when determining what type of sanction, if any, should be imposed.
- iv. In the event a disciplinary sanction results in isolation of a resident, HCJS shall not deny the resident daily large-muscle exercise or access to any legally required educational programming or special education services. Residents in isolation 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.
- v. HCJS offers youth abusers counseling and other interventions designed to address and correct underlying reasons or motivations for the abuse. HCJS may require participation in such counseling and interventions as a condition of access to behavior-based incentives, but not as a condition to access general programming or education.
- vi. A youth may be disciplined for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
- vii. HCJS may not discipline a youth if the youth made a report of sexual abuse in good faith based upon a reasonable belief that the alleged conduct occurred, even if an investigation does not establish evidence sufficient to substantiate the allegation.
- viii. HCJS may, in its discretion, prohibit all sexual activity between residents and may discipline residents for such activity. HCJS may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

**13. Medical and Mental Care.**

**a. § 115.381 Medical and Mental Health Screenings; History of Sexual Abuse.**

- i. If the screening pursuant to § 115.341 indicates that a resident has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, HCJS shall ensure that the resident is offered a follow-up meeting with a medical or mental health practitioner within 14 days after the intake screening.
- ii. If the screening pursuant to § 115.341 indicates that a resident has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, HCJS shall ensure that the resident is offered a follow-up meeting with a medical or mental health practitioner within 14 days after the intake screening.

- iii. Any information obtained related to sexual victimization or abusiveness that occurred in an institutional setting must be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by law.
- iv. Medical and mental health practitioners must obtain informed consent from youth before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the youth is under the age of 18.

**b. § 115.382 Access to Emergency Medical and Mental Health Services.**

- i. HCJS ensures that youth victims of sexual abuse receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.
- ii. If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, staff first responders must take preliminary steps to protect the victim and must immediately notify the appropriate medical and mental health practitioners.
- iii. HCJS ensures that youth victims of sexual abuse while incarcerated are 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.
- iv. HCJS provides treatment services to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising from the incident.

**c. § 115.383 Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers.**

- i. HCJS offers medical and mental health evaluation and, as appropriate, treatment to all youth who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.
- ii. The evaluation and treatment of such victims includes, as appropriate:
  - 1. follow-up services;
  - 2. treatment plans; and
  - 3. referrals for continued care following their transfer to other facilities or their release from custody.

- iii. HCJS provides such victims with medical and mental health services consistent with the community level of care.
- iv. HCJS offers pregnancy tests to youth victims of sexually abusive vaginal penetration while incarcerated. If pregnancy results, HCJS ensures the youth is provided timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.
- v. HCJS ensures that tests for sexually transmitted infections are offered, as medically appropriate, to youth victims of sexual abuse while incarcerated.
- vi. HCJS provides treatment services to a victim of sexual abuse while incarcerated without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising from the incident.
- vii. HCJS attempts to conduct a mental health evaluation of all known youth-on-youth abusers within 60 days after learning of such abuse history and offers treatment when deemed appropriate by mental health practitioners.

**d. § 115.386 Sexual Abuse Incident Reviews.**

- i. HCJS conducts an incident review within 30 days of the conclusion of every sexual abuse investigation unless the allegation is determined to be unfounded.
- ii. The review team shall include upper-level management officials, with the input from supervisors, investigators, and medical or mental health practitioners.
- iii. The review team:
  - 1. considers whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
  - 2. considers whether the incident or allegation was motivated by race; ethnicity; gender identity; status or perceived status as lesbian, gay, bisexual, transgender, or intersex; gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
  - 3. examines the area where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
  - 4. assesses the adequacy of staffing levels in that area during different shifts;
  - 5. assesses whether monitoring technology should be used or enhanced to supplement supervision by staff; and

6. submits a report of its findings and recommendations to the facility administrator and other appropriate staff members.
  - iv. The facility where the incident allegedly occurred must implement the review team's recommendations or document its reasons for not doing so.
- e. § 115.387 Data Collection and Storage.**
- i. HCJS collects data for every allegation of sexual abuse at HCJS-operated facilities using a standardized instrument and set of definitions and aggregates the data at least once each year. HCJS also maintains, reviews, and collects data as needed from all available incident-based documents, such as reports, investigation files, and sexual abuse incident reviews.
  - ii. HCJS develops its data collection instrument to include the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the U.S. Department of Justice.
  - iii. HCJS obtains incident-based and aggregate data from each residential facility operating under a contract with HCJS.
  - iv. HCJS securely retains all sexual abuse data it collects for at least 10 years after the date of its initial collection.
- f. § 115.389 Publication of Sexual Abuse Data.**
- i. HCJS reviews aggregate sexual abuse data to assess and improve the effectiveness of its policies, practices, and training. Following this review, HCJS prepares an annual report of its findings and corrective actions for the facility. The report will be posted on the agency's website.
  - ii. Annually, HCJS posts on its website all aggregated sexual abuse data from HCJS-operated and contracted facilities.
- g. § 115.393 Audits of PREA Standards.**
- i. HCJS conducts audits pursuant to 28 CFR §§115.401 - 115.405.