

# GUILFORD COUNTY JUVENILE DETENTION CENTER

## POLICY MANUAL

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<b>SUBJECT: Prison Rape Elimination Act (P.R.E.A.)</b>	<b>Policy NO.: JDS 12.6</b>
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<b>EFFECTIVE DATE: April 1, 2014</b>	<b>REVISED DATE: May 1, 2017</b>

- I. POLICY:** The Guilford County Juvenile Detention Center is committed to an expectation of zero-tolerance towards all forms of abuse, neglect and sexual offense by staff, volunteers, contractors, or by the population we serve. We are also committed to creating a place of safety and security free from the threat of abuse for all youth in our custody. Our mission is to maintain a professional level to prevent, detect, respond, investigate and monitor all reports of suspected abuse and harassment with our youth. The detention center is obligated to provide a humane environment for all youth in our custody uninhibited from sexual abuse and harassment; due to sexual orientation, ethnicity, and gender or religious beliefs.

**II. PROCEDURES:**

This policy shall apply to all residents, employees, volunteers, one-time service providers and contractors assigned to provide services to residents. The policy will follow the “*Juvenile Facility Standards*” as governed by the United States Department of Justice.

**A. Definitions:**

1. Sexual Abuse – Any contact with or without penetration of sexual organs, mouth, and anus with the fingers, hands, sexual organs or objects by the use of coercion, force or the threat of force.
2. Indecent Exposure - The display of his or her uncovered genitalia, buttocks, or breast in the presence of another person.
3. Voyeurism – Invasion of one’s privacy for reasons to peer at a person using a toilet, exposure of buttocks, genitals or breast; or taking images of all or part of a person’s naked body or performing bodily functions and then distributing or publishing those pictures.
4. Sexual Harassment– Repeated and unwelcome sexual advances, requests for sexual favors, verbal comments, or gestures or actions of a derogatory or offensive sexual nature.
5. Categories of Sexual Abuse or Harassment: For the purposes of this policy, normally construed but not limited to be juvenile-on- juvenile or staff-on-juvenile sexual abuse or harassment.

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6. Aggressor or Predator – The person who commits sexual abuse and or sexual harassment.
7. Victim – The individual, who is coerced, threatened or assaulted or is otherwise the recipient of sexual abuse or sexual harassment.
8. LGBTI - This is generally accepted to mean lesbian, gay, bisexual, transgender, and intersexual persons.
9. Intersex - A condition usually present at birth that involves reproductive, genetic, or sexual anatomy that does not seem to fit the typical definitions of female or male.
10. Gender nonconforming – A person’s internal, deeply felt sense of being male or female, regardless of the person’s gender at birth.
11. Substantiated allegation – An allegation that was investigated and determined to have occurred.
12. Unfounded allegation – An allegation that was investigated and determined not to have occurred.
13. Unsubstantiated allegation – An allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

#### **B. Prevention Planning (115.311)**

The Guilford County Juvenile Detention Center (GCJDC) shall have a written policy mandating zero-tolerance toward all forms of sexual abuse and sexual harassment. The policy shall outline the agency’s approach to preventing, detecting, and responding to such conduct.

The agency shall employ or designate an upper-level, agency-wide PREA Coordinator to develop, implement, and oversee the agency’s efforts to comply with the PREA standards.

The GCJDC shall designate a PREA Compliance Manager with the authority to coordinate the facility’s efforts to comply with the PREA standards and procedures as outlined in this policy. If feasible, the GCJDC shall assign an Assistant PREA Compliance Manager to ensure that full compliance is followed in absence of the designated Compliance Manager.

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### **C. Supervision and Monitoring (115.313)**

The department shall develop, implement and document a staffing plan that provides for adequate levels of staffing and where applicable, video monitoring to protect residents against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, the following shall be taken into consideration:

- (1) Generally accepted juvenile detention residential practices;
- (2) Any judicial findings of inadequacy;
- (3) Any findings of inadequacy from Federal investigative agencies;
- (4) Any findings of inadequacy from internal or external oversight bodies;
- (5) All components of the facility's physical structure (including "blind spots" or areas where staff or residents may be isolated);
- (6) The composition of the resident population;
- (7) The number and placement of supervisory staff;
- (8) Institution programs occurring on a particular shift;
- (9) Any applicable State or local laws, regulations or standards;
- (10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
- (11) Any other relevant factors.

The GCJDC shall comply with the staffing plan except during limited and discrete exigent circumstances and shall fully document deviations from the plan during such circumstances.

The GCJDC shall ensure that appropriate staffing plans are maintained which will provide adequate levels of staffing, and video monitoring (where applicable) to protect residents against sexual abuse. The facility shall maintain a staff ratio of a minimum of 1:8 during the residents waking hours and 1:16 during the residents sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented.

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Once a year, the facility Director, and Compliance Manager shall consult with the PREA Coordinator to assess, determine, and document whether adjustments are needed as outlined in the United States Department of Justice “*Juvenile Facility Standards §115.311*” to:

- (1) Established staffing plans;
- (2) Prevailing staffing patterns;
- (3) The facility’s deployment of video monitoring systems and other monitoring technologies; and
- (4) The resources the facility has available to commit to ensure adherence to the staffing plan.

The department shall implement a policy and practice of having intermediate-level or higher level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. The GCJDC shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

#### **D. Limits to cross-gender viewing and searches (115.315)**

The GCJDC shall not conduct cross-gender strip searches or cross-gender visual body cavity searches. All residents shall be allowed 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 cell checks.

The facility shall not search or physically examine a transgender or intersex resident for the sole purpose of determining the resident’s genital status. If the resident’s gender is not revealed; it may be determined during conversations with the resident or by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

All staff members of the opposite gender must announce their presence when entering an area where residents are likely to be showering, performing bodily functions or changing clothes.

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The GCJDC shall train staff members to conduct cross-gender pat-down searches, and searches of transgender and intersex residents, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

**E. Residents with disabilities and residents who are limited English proficient (115.316)**

The GCJDC shall take appropriate steps to ensure that residents with disabilities (including residents who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech 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 shall include, when necessary to ensure effective communication with residents who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

In addition, the department shall ensure that written materials are provided in formats or through methods that ensure effective communication with residents with disabilities, including residents who have intellectual disabilities, limited reading skills, or who are blind or have low vision.

The department shall not rely on resident interpreters, resident readers, or other types of resident assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the resident's safety, the performance of first-response duties under 115.364, or the investigation of the resident's allegations.

**F. Hiring and promotion decisions (115.317)**

The department shall not hire or promote anyone who may have contact with residents, and shall enlist the services of any contractor who may have contact with residents who:

- (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);
- (2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or

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- (3) coercion, or if the victim did not consent or was unable to consent or refuse; or
- (4) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (2) of this section.

The department shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with residents.

Before hiring new employees, who may have contact with residents, the department shall:

- (1) Perform a criminal background records check;
- (2) Consult any child abuse registry maintained by the State or locality in which the new employee would work; and
- (3) Consistent with Federal, State and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

The department shall also perform a criminal background records check, and Consult applicable child abuse registries, before enlisting the services of any Contractor who may have contact with residents.

The department shall require that employees and contractors complete the Quarterly Disclosure Requirements form to capture up to date information on the criminal background records.

The department shall also ask all applicants and employees who may have contact with residents, directly about previous misconduct described in this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The department shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

Material omissions regarding such misconduct, or the provision of materially false Information, shall be grounds for termination.

Unless prohibited by law, the department shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

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#### **G. Upgrades to facilities and technologies (115.318)**

When designing or planning any substantial expansion or modification to the existing facility, the department shall consider the effect of the design, acquisition, expansion, or modification upon the department's ability to protect residents from sexual abuse.

When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the department shall consider how such technology may enhance the department's ability to protect residents from sexual abuse.

#### **H. Responsive Planning – Evidence protocol and forensic medical examinations (115.321)**

To the degree, the agency is responsible for investigating allegations of sexual abuse and shall follow a uniform evidence protocol that increases the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. All residents shall:

- a. Have access to forensic medical examinations;
- b. Be provided a victim advocate whether from a rape crisis center or qualified agency staff member

All direct care staff personnel, and supervisors shall be trained as a qualified victim support person. The facility Compliance Manager with input from the Director shall make available a qualified agency staff member as required by the victim; may accompany the victim through the medical examination process, investigatory interviews and shall provide emotional support, and crisis intervention.

#### **I. Policies to ensure referrals of allegations for investigations (115.322)**

The department shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.

The department ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The department shall publish such policy on its website. The department shall document all such referrals.

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The Greensboro Police Department, as governed by N.C. General Statutes, is the designated law enforcement agency to conduct criminal investigations that arise from allegations of sexual abuse or harassment in the facility.

#### **J. Employee Training (115.331)**

The agency shall train all employees who may have contact with residents outlining the zero-tolerance policy for sexual abuse and sexual harassment; and their responsibility under the agency sexual abuse and sexual harassment policy for prevention, detection, reporting, and responding. Furthermore, employees shall receive instruction related to the rights for residents; and non-discriminatory guidelines for residents and employees to be free from retaliation for reporting sexual abuse and harassment.

All employees shall receive an annual refresher (*Understanding Sexual Abuse and Sexual Harassment in Confinement Training*) training emphasizing but not limited to zero-tolerance, duty to report, dynamics of sexual abuse and harassment, common reactions of juvenile victims, and current sexual abuse and sexual harassment policies and procedures. Verification of training shall be documented on the *PREA Sexual Abuse and Harassment Training Form (GCJDC 100-10)*. The completed form shall be forwarded to the Compliance Manager and maintained for audit purposes.

#### **K. Volunteer and Contractual Training (115.332)**

The agency shall ensure that all volunteers and contractors who regularly have contact with residents receive training on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures. The level of training should be administered so that it meets the degree of service provided; however, all persons shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

All volunteer and contractual workers shall receive an annual refresher (*Understanding Sexual Abuse and Sexual Harassment in Confinement Training*) training emphasizing but not limited to zero-tolerance, duty to report, dynamics of sexual abuse and harassment, common reactions of juvenile victims, and current sexual abuse and sexual harassment policies and procedures. Verification of training shall be documented on the *PREA Sexual Abuse and*

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*Harassment Training Form (GCJDC 100-10)*. The completed form shall be forwarded to the Compliance Manager and maintained for audit purposes.

A one-time visitor receiving clearance to interact with a resident must receive the *PREA Sexual Abuse and Harassment Training Form (GCJDC 100-10)* prior to

the visit. The visitor will acknowledge that they have an understanding of the information provided.

#### **L. Resident Education (115.333)**

All residents shall receive information explaining the ZERO TOLERANCE regarding sexual abuse and sexual harassment. The information shall be delivered in age appropriate fashion to include their rights to be free from sexual abuse, sexual harassment and retaliation; and how to report incidents or suspicion of sexual abuse and/or harassment.

Within 72-hours of arrival, the agency shall provide a comprehensive age-appropriate education to all residents. This includes residents who have transferred from a different facility. The format must be accessible to include those who are limited English proficient, deaf, visually impaired, limited reading skills, or otherwise disabled. The information provided must be readily available to residents at all times.

Staff members shall deliver the information using the *Juvenile PREA Orientation format; (Form GCJDC 100-1)*. Upon completion, every resident must sign and date the *PREA Juvenile Acknowledgement Form (GCJDC 100-2)*. The completed form will be forwarded to the resident's file and maintained for the duration of the resident's stay.

#### **M. Specialized Training: Investigations (115.334)**

In addition to the general training provided to all employees pursuant to 115.231, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations; its investigators have received training in conducting such investigations in confinement settings. The investigators shall receive the *Specialized Sexual Abuse and Sexual Harassment Training: Investigations*; which shall include:

1. Techniques for interviewing juvenile sexual abuse victims,

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2. Proper use of Miranda and Garrity warnings,
3. Sexual abuse evidence collection in confinement settings,
4. Criteria and evidence required to substantiate a case (administrative action/prosecution referral)
5. Documentation (*PREA Investigation Form page 1 and 2 (GCJDC 100-8)*)

Upon completion of training, the investigator shall sign the *PREA Specialized Training form (GCJDC 100-12)*. The original copy shall be forwarded to the Compliance Manager to be maintained for audit purposes.

#### **N. Specialized Training: Medical and Mental Health Care (115.335)**

All medical care providers who work regularly in the facilities will be trained on:

- a. How to prevent, detect and assess signs of sexual abuse and sexual harassment;
- b. How to preserve physical evidence of sexual abuse;
- c. How to respond effectively and professionally to juvenile victims of sexual abuse and sexual harassment;
- d. How to report procedures for allegations or suspicions of sexual abuse and sexual harassment;
- e. Annually receive the *Understanding Sexual Abuse and Sexual Harassment Training* and document completion on the *PREA Sexual Abuse and Harassment Training Form (GCJDC 100-10)*;
- f. Annually receive the *Specialized Training for Medical/Mental Health Providers* and document on the *PREA Medical Acknowledgement Form (GCJDC 100-11)*.

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## **O. Screening for Risk of Sexual Victimization and Abusiveness (115.341, 115.342)**

### **Screening and Placement**

Within 72-hours of the resident's arrival at the facility, the agency shall obtain and use information about each resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident. The MAYSI screening tool, NC Join system, court documents, medical/mental health screenings, hospitalization records, case files and normal conversations with the resident shall all be used to assist in conducting an objective screening instrument. The information provided may intensify needs for supervision, additional safety precautions, or separation from certain other residents.

The department shall use all the information obtained to assist with housing assignments, programs, and education with the goal of keeping all residents safe and free from sexual abuse. Residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them or other residents safe. Isolation shall not be used as a form of punishment and all normal mandated services must be provided.

Lesbian, gay, bisexual, transgender, or intersex residents shall not be placed in a particular housing assignment solely on the basis of identification status or as an indicator for the likelihood of being sexually abusive.

If a resident is isolated pursuant this section, the facility shall document (*PREA Isolation Safe Keeping Form (GCJDC 100-13)*):

- a. The basis for the facility's concern for the resident's safety
- b. Reasons why no alternative means of separation can be arranged.

The completed form shall be maintained in the Compliance Manager's file for audit purposes.

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## **P. Reporting**

### **Resident reporting (115.351)**

The agency shall provide multiple internal ways for residents to privately report sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents. Means to report will include:

1. Inform staff or any adult (contractual worker, volunteer, etc.);
2. In writing utilizing the *Confidential Juvenile Documentation form (GCJDC 100-3)*; the form will be placed in the black boxes located in designated areas; or
3. Utilizing the *Childhelp National Child Abuse Hotline* as received during orientation; or
4. Filing a grievance

Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal report.

Staff members shall also have access to privately report sexual abuse and sexual harassment of residents by placing documentation in the black box designated for staff.

### **Exhaustion of administrative remedies (115.352)**

Any allegations regarding sexual abuse by a resident would not be treated as a grievance by the department. Rather, it would be reported to The Department of Health and Human Services and law enforcement.

### **Resident access to outside support services and legal representation (115.353)**

The department shall provide residents with access to outside victim advocates for Emotional support services related to sexual abuse, by providing, posting, or otherwise making accessible mailing addresses and telephone numbers, including toll free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The department shall enable

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reasonable communication between residents and these organizations and agencies, in as confidential a manner as possible.

The department shall inform residents, 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.

The department shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide residents with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

The department shall also provide residents with reasonable and confidential access to their attorneys or other legal representation and reasonable access to parents or legal guardians.

### **Third-Party Reporting (115.354)**

In the event that information of sexual abuse and sexual harassment is received from a third-party, immediate notification should be given to the facility head or designee, Compliance Manager, and facility investigator. The department shall also post information on the website on how to report sexual abuse and sexual harassment on behalf of a resident.

## **Q. Official Response Following a Resident Report**

### **Staff and agency reporting duties (115.361)**

The department shall report immediately any knowledge, suspicion, or information they receive regarding an incident of sexual abuse or sexual harassment that occurred in the facility; whether or not it is part of the department; retaliation against residents or staff who reported such an incident; any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. The department shall also require all staff to comply with the mandatory child abuse reporting laws.

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Staff must respond appropriately as outlined within this policy. In addition, notification must be given to the supervisor on duty. The facility head or their designee shall promptly report the allegation to the appropriate agency and 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. The Director shall document and mail the *Guardian Notification Form (GCJDC 100-17)* to the victim's guardian. If the alleged victim is under the guardianship of the child welfare system, the report shall be made to the alleged victim's caseworker instead of the parents or legal guardians. If a juvenile court retains jurisdiction over the alleged victim, the facility head or designee shall report the allegation to the juvenile's attorney or other legal representative within 14 days of receiving the allegation.

Apart from reporting to designated supervisors or officials and designated State or local services agencies, staff shall be prohibited from revealing any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.

Notification must be given to the Compliance Manager and all the information shall be forwarded to the facility's designated investigators.

#### **Agency protection duties (115.362)**

When the departments learns that a resident is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the resident.

#### **Reporting to other confinement facilities (115.363)**

Upon receiving notification that a resident was sexually abused while confined at another facility, the Director shall notify the head of the facility from where the alleged abuse occurred and notify the appropriate investigative agency within 72-hours of notification. The Director shall complete the *PREA Reporting Communication form (GCJDC 100-7)* and forward the form to the facility's Compliance Manager.

Upon proper notification, the alleged facility Director shall notify the Compliance Manager and ensure that the allegation is investigated in accordance with the PREA

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standards. The Director shall complete the *PREA Reporting Communication form (GCJDC 100-7)* and forward the form to the facility's Compliance Manager.

#### **Staff first responder duties (115.364) and Coordinated response (115.365)**

Upon learning of an allegation that a resident was sexually abused, the reporting staff shall immediately:

1. Separate the alleged victim and abuser
2. Preserve and protect any crime scene
3. Request that the alleged victim and abuser not take any action that could destroy physical evidence such as washing, brushing teeth, changing clothes, urinating, defecating, drinking or eating.
4. Preserve any urine or fecal matter if the victim must give in to normal bodily functions.
5. Provide medical attention while minimizing contamination. Preserve all medical supplies as part of the incident scene.
6. Secure the scene until the supervisor on duty assumes control of the incident investigation.
7. Complete the *PREA Facility Checklist Form (GCJDC 100-4)* and forward to the supervisor on duty immediately.

Upon receipt of the *PREA Facility Checklist Form (GCJDC 100-4)*, the supervisor on duty shall issue all parties involved a **PREA Incident Form (GCJDC 100-5)**. **All documents must be immediately forward to the Compliance Manager by the Supervisor.** In cases where evidence has been identified at the crime scene, the crime scene shall be preserved. The investigator shall review and document the findings on the *PREA Evidence Incident Scene Tracking Log and Chain of Custody Form (GCJDC 100-6)*. In the event it becomes necessary to move items of evidentiary value prior to the arrival of law enforcement, latex gloves should be used to collect the evidence. Items should be placed in designated evidence bags and documented.

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### **Preservation of ability to protect residents from contact with abusers (115.366)**

Neither the department nor any other governmental entity responsible for collective bargaining on the department's behalf shall enter into or renew any collective bargaining agreement that limits the department's ability to remove alleged sexual abusers from contact with residents pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

Nothing in this standard shall restrict the entering into or renewal of agreements that govern:

- (1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of 115.372 and 115.376; or
- (2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

### **Department protection against retaliation (115.367)**

For at least 90-days following a report of sexual abuse, the GCJDC shall monitor the conduct or treatment of residents or staff that reported or witnessed the sexual abuse or sexual harassment. The Compliance Manager shall complete the ***PREA 90-Day Retaliation Monitoring Form (GCJDC 100-9)*** and assign a supervisor as a liaison for the monitoring. A separate form must be completed per person for all parties being monitored for retaliation.

The department shall employ multiple protection measures, such as housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

If the juvenile is released; and the staff member is no longer with the department prior to the to the conclusion of the monitoring, the Compliance Manager will conclude the ***PREA 90-Day Retaliation Monitoring Form (GCJDC 100-9)***. The completed form must be filed. The department's obligation to monitor shall

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terminate if the department determines that the allegation is unfounded.

#### **Post-allegation protective custody (115.368)**

Any use of segregated housing to protect a resident who is alleged to have suffered sexual abuse shall be subject to the requirements of 115.342.

### **R. Investigations**

#### **Criminal and administrative department investigations (115.371)**

When conducting its own investigations into allegations of sexual abuse and sexual harassment, the department shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports. The Coordinator will notify the investigator assigned and send email verification to the Director. The assigned investigator shall work closely with the Compliance Manager to ensure that all protocols are in place as mandated.

Where sexual abuse is alleged, the department shall use investigators who have received special training in sexual abuse investigations involving juvenile victims pursuant to § 115.334.

Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

The department shall not terminate an investigation solely because the source of the allegation recants the allegation.

When the quality of evidence appears to support criminal prosecution, the department shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

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The credibility of an alleged victim, suspect, or witness shall be assessed on an Individual basis and shall not be determined by the person's status as resident or Staff. The department shall not require a resident who alleges sexual abuse to Submit to a polygraph examination or other truth-telling device as a condition for Proceeding with the investigation of such an allegation.

During an investigation, the investigator will receive all incident reports (*GCJDC Form 100-5*) from the victim, witness, alleged assailant, and staff person(s); collect evidence and interview all participants. When determining the outcome, the Investigator shall utilize §115.371 (*Federal Standard*) as a guide and will complete a thorough written report of the alleged incident on the *PREA Investigation Form Page 1, 2 (GCJDC 100-8)*. The investigator shall document whether the incident is substantiated, unsubstantiated, or unfounded. In addition, a recommendation must be issued to include any of the following corrective measures: building maintenance concerns; and any disciplinary action warranted. Upon completion of the report, the investigator will forward the form to the Compliance Manager.

Upon receipt of the written report from the investigator, the Compliance Manager will submit an email notification *PREA Compliance Manager Email Template to Director Form (GCJDC 100-16)* to the Director outlining the conclusion (substantiated, unsubstantiated, or unfounded) and any recommendation(s) noted. *The Detention Center Director will follow the county policies regarding the disciplinary process as guided by §115.376 (Federal Standard)*. The Compliance Manager will forward a copy of the Investigator's report to the PREA Coordinator for filing. The Director will forward the email notification *PREA Compliance Manager Email Template to Director Form (GCJDC 100-16)* with their final remarks noted to the PREA Coordinator for filing. The Compliance Manager will maintain the original documents in a secure file (exception/ Form GCJDC 100-16).

When notification is given of an alleged incident, the Director reserves the right to notify the local law enforcement agency and child protective services department to start a full review if warranted. All investigations may run concurrent with dissimilar outcomes. When outside agencies investigate sexual abuse, the facility shall cooperate with the investigation.

The department shall retain all written reports for as long as the alleged abuser is incarcerated or employed by the agency, plus five years, unless the abuse was committed by a juvenile resident and applicable law requires a shorter period of retention.

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### **Evidentiary standard for administrative investigations (115.372)**

The GCJDC shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

### **Reporting to residents (115.373)**

Following an investigation, the Compliance Manager shall inform the resident as to whether the allegation was substantiated, unsubstantiated, or unfounded. The notification shall be documented on the **Resident Notification Form (GCJDC 100-14)**. A copy of the form shall be filed with the Compliance Manager.

If the department did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the resident.

Following a resident's allegation that a staff member has committed sexual abuse against the resident, the department shall subsequently inform the resident (unless the department has determined that the allegation is unfounded) whenever:

- (1) The staff member is no longer posted within the resident's unit;
- (2) The staff member is no longer employed at the facility;
- (3) The department learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
- (4) The department learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

Following a resident's allegation that he or she has been sexually abused by another resident, the department shall subsequently inform the alleged victim whenever:

- (1) The department learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
- (2) The department learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

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All such notifications or attempted notifications shall be documented.

In the event that the resident has been released from custody, the obligation to report the outcome shall be terminated.

## **S. Discipline**

### **Disciplinary sanctions for staff (115.376)**

Staff shall be subject to disciplinary sanctions up to and including termination for violating departmental sexual abuse or sexual harassment policies.

Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.

Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

All terminations for violations of departmental sexual abuse or sexual harassment policies, or resignations by staff who have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

### **Corrective action for contractors and volunteers (115.377)**

Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with residents and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with residents, in the case of any other violation of departmental sexual abuse or sexual harassment policies by a contractor or volunteer.

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### **Interventions and disciplinary sanctions for residents (115.378)**

A resident may be subject to disciplinary sanctions only pursuant to a formal Disciplinary process following an administrative finding that the resident engaged in resident-on-resident sexual abuse or following a criminal finding of guilt for resident-on-resident sexual abuse.

Any disciplinary sanctions shall be commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories. In the event a disciplinary sanction results in the isolation of a resident, the department 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.

The disciplinary process shall consider whether a resident's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

If the facility offers therapy, counseling or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to offer the offending resident participation in such interventions. The department may require participation in such interventions as a condition of access to any rewards-based behavior management system or other behavior-based incentives, but not as a condition to access to general programming or education.

The department may discipline a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

The department may, in its discretion, prohibit all sexual activity between residents and may discipline residents for such activity. The department may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not

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## **T. Medical and Mental Care**

### **Medical and mental health screenings; history of sexual abuse (115.381)**

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, staff shall ensure that the resident is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

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, staff shall ensure that the resident is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.

Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall 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 Federal, State, or local law.

Medical and mental health practitioners shall obtain informed consent from residents before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the resident is under the age of 18.

### **Access to emergency medical and mental health services.**

Resident victims of sexual abuse shall 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.

If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, staff first responders shall take preliminary steps to protect the victim pursuant to 115.362 and shall immediately notify the appropriate medical and mental health practitioners.

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Resident victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.

Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

**Ongoing medical and mental health care for sexual abuse victims and abusers (115.383)**

The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all residents who have been victimized by sexual abuse in juvenile detention.

The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

The facility shall provide such victims with medical and mental health services consistent with the community level of care.

Resident victims of sexually abusive vaginal penetration while confined shall be offered pregnancy tests

If pregnancy results from conduct specified in paragraph four (4) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

Resident victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.

Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

The facility shall attempt to conduct a mental health evaluation of all known

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resident-on-resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

## **U. Data Collection and Review**

### **Sexual abuse incident reviews (115.386)**

The department shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. Such review shall be completed within 30 days of the conclusion of the investigation. The review shall be administered by the PREA Compliance Manager with input from the Facility Director, PREA Coordinator, officials, investigators, and medical or mental health practitioners. The information noted shall be documented on the *PREA Post Incident Review Team Form (GCJDC 100-15)*. Upon completion, a copy of the PIRT will be forwarded to the PREA Coordinator for data collection and filing.

#### **The review team shall:**

- (1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
- (2) 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;
- (3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
- (4) Assess the adequacy of staffing levels in that area during different shifts;

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(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

(6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to numbers 1 – 5 of this section, and any recommendations for improvement and submit such report to the Facility Director, PREA Compliance Manager and PREA Coordinator.

(7) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

#### **Data collection (115.387)**

The department shall collect accurate, uniform data for every allegation of sexual abuse using a standardized instrument and set of definitions.

The department shall aggregate the incident-based sexual abuse data at least annually.

The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.

The department shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

The department also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its residents.

Upon request, the department shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

#### **Data review for corrective action (115.388)**

The Department shall review data collected and aggregated pursuant to § 115.387 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:

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- (1) Identifying problem areas;
- (2) Taking corrective action on an ongoing basis; and
- (3) Prepare an annual report of its findings and corrective actions for the Department as a whole
- (4) Shall report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the department's progress in addressing sexual abuse.
- (5) The department's report shall be approved by the department head and made readily available to the public through its website.
- (6) The department may redact specific material from the reports when 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.

#### **Data storage, publication, and destruction (115.389)**

The GCJDC shall ensure that data collected pursuant to § 115.387 are securely retained. The Department shall make all aggregated sexual abuse data, from the agency under its direct control readily available to the public at least annually through its website or, if it does not have one; through other means. Before making aggregated sexual abuse data publicly available, the Department shall remove all personal identifiers. The Department shall maintain sexual abuse data collected pursuant to § 115.387 for at least 10 years after the date of its initial collection unless Federal, State, or local law requires otherwise.

## **V. Audits**

#### **Audits of standards (115.393)**

The department shall conduct audits pursuant to 115.401-405.

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## **Auditing and Corrective Action**

### **Frequency and scope of audits (115.401)**

During the three-year period starting on August 20, 2013, the GCJDC shall ensure that the facility is audited, and during each three-year period thereafter.

The Department of Justice may send a recommendation to an agency for an expedited audit if the Department has reasons to believe that a particular facility may be experiencing problems relating to sexual abuse. The recommendation may also include referrals to resources that may assist the department with PREA-related issues. Furthermore:

1. The Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit.
2. The agency shall bear the burden of demonstrating compliance with the standards.
3. The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits.
4. The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.
5. The auditor shall have access to, and shall observe, all areas of the audited facilities.
6. The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).
7. The auditor shall retain and preserve all documentation (including, e.g., video tapes and interview notes).
8. The auditor shall interview a representative sample of residents, staff, supervisors, and administrators.
9. The auditor shall review any available videotapes and other electronically available data (e.g., Tour Watchman).
10. The auditor shall be permitted to conduct private interviews with residents.
11. Residents shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communication with legal counsel.
12. Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.

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#### **Auditor qualifications (115.402)**

An audit shall be conducted by:

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

#### **Audit contents and findings (115.403)**

Each audit shall include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the agency under review.

Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.

For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds

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requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.

Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision and shall include recommendations for any required corrective action.

Auditors shall redact any personally identifiable resident or staff information from their reports, but shall provide such information to the department upon request, and may provide such information to the Department of Justice.

The department shall ensure that the auditor's final report is published on the department's website if it has one, or is otherwise made readily available to the public.

#### **Audit corrective action plan (115.404)**

A finding of "Does Not Meet Standard" with one or more standards shall trigger a 180-day corrective action period.

The auditor and the department shall jointly develop a corrective action plan to achieve compliance.

The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility.

After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.

If the department does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

#### **Audit appeals (115.405)**

An agency may lodge an appeal with the Department of Justice regarding any

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specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor's final determination.

If the Department determines that the agency has stated good cause for a re-evaluation, the agency may commission a re-audit by an auditor mutually agreed upon by the Department and the agency. The agency shall bear the costs of this re-audit.

The findings of the re-audit shall be considered final.

## **V. State Compliance**

### **State determination and certification of full compliance (115.501)**

In determining pursuant to 42 U.S.C. 15607(c)(2) whether the State is in full Compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits.

The Governor's certification shall apply to all facilities in the state under the operational control of the State's executive branch including facilities operated by private entities on behalf of the State's executive branch.