

## Prevention, Detection and Response to Sexual Abuse, Assault and Harassment (PPM 3247.01)

Approved By:	Date Issued:	Number of Pages: <b>12</b>	Appendix Pages: <b>N/A</b>
Related Laws: <b>Correction Law § 168-a(2)</b>  <b>Penal Law Article 130 Sex Offenses Sections 130.00(1) through 130.90(2)</b>  <b>Prison Rape Elimination Act (PREA)</b>	Division/Office: <b>Juvenile Justice and Opportunities for Youth</b>	Contact Office/Bureau/Unit: <b>Office of Program Services</b>	
Supporting Regulations: <b>None</b>	American Correctional Association Standards (ACA): <b>4-JCF-3D-06-1 through 3D-06-10</b>		
Regulatory Bulletins & Directives: <b>None</b>	Related Policies: <b>PPM 3456.00 Child Abuse and Neglect Reporting in OCFS Programs</b> <b>PPM 3247.03 Supervision of Youth</b> <b>PPM 3429.00 Reportable Incidents</b> <b>PPM 1810.00 Reporting Crimes</b> <b>PPM 1610. Special Investigations</b> <b>PPM 3243.42 Communicable Disease and Disease Control</b>	Supersedes: <b>PPM 3247.01 (08/20/08)</b>	

### **SUMMARY:**

This policy outlines the Office of Children and Family Services' (OCFS) zero tolerance policy concerning sexual abuse, sexual assault and sexual harassment of OCFS youth as well as procedures for prevention, detection and response within OCFS operated facilities.

## **I. POLICY**

OCFS has a zero tolerance policy concerning sexual abuse, sexual assault and sexual harassment of OCFS youth and is committed to the prevention and elimination of sexual

abuse/assault within Division of Juvenile Justice and Opportunities for Youth (DJJOY) facilities through compliance with the Prison Rape Elimination Act (PREA) of 2003. OCFS is committed to the equal opportunity to participate in and benefit from all aspects of the agency's efforts to prevent, detect and respond to sexual abuse, assault and harassment. Violations of this policy may result in disciplinary sanctions for staff and youth perpetrators and/or criminal prosecution as authorities deem appropriate. Violations of this policy which may be a criminal matter will be referred to the appropriate authorities.

## **II. DEFINITIONS**

### **A. Contractors**

Any person, not an employee, providing any service for an agreed upon form of compensation.

### **B. Employees**

Any person compensated by OCFS via state payroll regardless of civil service status.

### **C. Sexual Abuse**

Subjecting another to sexual contact by forcible compulsion.

### **D. Sexual Assault**

Sexual intercourse, anal sexual conduct or oral sexual acts by means of forcible compulsion.

### **E. Sexual Contact**

"Sexual contact" is defined by current Penal Law section 130.00(3) as any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying the sexual desire of either party, including touch of the victim by the actor or touching of the actor by the victim, whether directly or through clothing. The aforementioned definition may change should Penal Law section 130.00(3) be amended. "Sexual contact" as used in this policy also includes sexual touching including but not limited to caressing and kissing regardless of whether youth voluntarily engage in such activity. A youth placed with OCFS and in a residential facility cannot legally consent to sexual contact with an employee, regardless of the youth's age (Penal Law, section 130.05[2] [h]).

### **F. Sexual Conduct**

"Sexual Conduct" encompasses definitions in C, D, E, G and H of this policy.

### **G. Sexual Harassment**

Unwelcome or unsolicited sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

**H. Sex Offenses**

Any act identified as a sex offense by Article 130 of the New York State Penal Law or as defined by New York State Correction Law § 168-a(2).

**I. Substantiated\***

An allegation that was investigated and determined to have occurred.

**J. Unfounded\***

An allegation that was investigated and determined NOT to have occurred.

**K. Unsubstantiated\***

An allegation that was investigated and there was insufficient evidence to make a determination as to whether or not the event occurred.

**L. Visitors**

Any person having access to any OCFS facility, office or program that is not a contractor, employee or volunteer as defined in this policy.

**M. Volunteers**

Any person who, by mutual agreement with OCFS, provides a service without compensation.

**N. Youth**

Persons who are or have been in OCFS custody.

\* **NOTE:** The above definitions are taken from the Prison Rape Elimination Act Nation Standards for Juvenile Facilities and only apply to this policy. They are not interchangeable with the definitions of the same words as used in Social Services Law or the legislation creating the Justice Center for People with Special Needs (Justice Center).

**III. PROHIBITIONS**

- A.** Sexual conduct with OCFS youth by OCFS staff, volunteers, visitors or contractors is prohibited. These individuals must also comply with PPM 3247.00, "Interpersonal Boundaries."
- B.** Sexual conduct among OCFS youth in OCFS facilities.
- C.** Cross-gender strip searches and pat searches except for thoroughly documented exigent circumstances.
- D.** Opposite gender viewing of youth under circumstances when breasts, buttocks or genitalia would normally be exposed (shower/hygiene time, performing bodily functions, and changing clothes).

- E. Searching or physically examining a transgender or intersex youth for the sole purpose of determining the youth's genital status

## IV. PROCEDURE

### A. Prevention - Supervision and Monitoring

DJJOY shall develop and document a staffing plan and video monitoring plan for each of its facilities that takes into account:

1. Generally accepted professional standards for juvenile justice practices.
2. Composition of the different populations within its facilities.
3. Number and placement of supervisory staff.
4. Programs occurring on each shift.
5. Relevant laws, regulations and standards.
6. Prevalence of substantiated and unsubstantiated incidents of sexual abuse.
7. Any other relevant factors.

Minimum staff to youth ratios shall be 1 to 8 during waking hours and 1 to 16 during sleeping hours. Any deviations from the plan due to exigent circumstances shall be documented.

On an annual basis DJJOY will assess its staffing and monitoring plans to determine if adjustments are needed to:

1. The staffing plan.
2. Prevailing staffing patterns.
3. Video surveillance systems and/or emerging technology.
4. Resources committed to adherence to staffing and monitoring plans.
5. Implementation of the policy and practice of having administrative staff conduct and document unannounced rounds (all shifts) to identify and deter staff sexual abuse and sexual harassments. Policy in place that prohibits staff from alerting other staff members that these supervisory rounds are taking place.

Staff of opposite gender must announce their presence when entering a living unit or area where youth change, shower, or perform bodily functions.

### B. Admission

1. Youth will be screened for potential vulnerabilities to victimization and propensity to victimize others with sexually aggressive behavior upon arrival at

an OCFS facility. This screening will be documented using form OCFS-4928. Living unit and room assignments will be made accordingly.

2. Upon admission youth will be provided information, in age appropriate manner, concerning prevention, intervention, self-protection, reporting of sexual abuse or assault and the agency's zero tolerance policy. Youth will also receive information regarding treatment and counseling for victims of sexual abuse or assault.

The above information will be communicated orally and in writing, in a language clearly understood by the youth, during the admission process.

3. Youth will be clearly advised that sexual conduct encompassing all definitions in this policy by adults or other youth in OCFS facilities is prohibited and that youth are to feel comfortable to report any such activity to his/her counselor, ombudsman or any staff member in authority.
4. Youth shall be referred to a mental health clinician under the following circumstances:
  - a. He or she is identified as a high risk with a history of sexually assaultive behavior. Such youth shall be monitored, counseled, and provided appropriate treatment.
  - b. He/she is identified as a risk for sexual victimization. Such youth shall be monitored and counseled.

### **C. Employee Training and Youth Education**

1. All employees shall receive training that is specific to juveniles and the gender of the population they are working with. Employees must sign an acknowledgement verifying that they understand the training they receive. Staff must be retrained when they transfer to a different gender population. Current employees must receive this training and receive refresher training annually. The training shall include the following:
  - a. Agency's zero tolerance policy.
  - b. Fulfilling their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting and response policies and procedures.
  - c. Youth's right to be free from sexual abuse, assault and harassment.
  - d. Right of youth and employees to be free from retaliation.
  - e. Dynamics of sexual abuse and sexual harassment in juvenile facilities.
  - f. Common reactions of juvenile victims of sexual abuse and harassment.

- g. How to detect and respond to signs of threatened and actual sexual abuse and how to distinguish between consensual and sexual abuse between youth.
    - h. How to avoid inappropriate relationships with youth.
    - i. Effective and professional communication with youth including LGBTQ or gender non-conforming.
    - j. Compliance with relevant laws related to mandatory reporting of sexual abuse.
    - k. Laws governing consent for OCFS youth.
2. All volunteers and contractors who have contact with youth shall be trained on their responsibilities under this policy. The level and type of training shall be based on the services they provide and the level of contact they have with youth. Regardless of level of contact all volunteers and contractors who have contact with youth shall be notified in writing of the agency's zero tolerance policy and how to report incidents or suspicions of sexual abuse, assault or harassment.
3. Investigators shall receive specialized training (in addition to the training provided to all employees) in conducting investigations in facility settings. The specialized training shall include:
  - a. Techniques for interviewing juvenile sexual abuse victims.
  - b. Proper use of Miranda and Garrity warnings.
  - c. Sexual abuse evidence collection in facility settings.
  - d. Criteria and evidence required to substantiate a case for administrative action and/or prosecution referral.
4. Medical staff and mental health clinicians shall receive specialized training (in addition to the training provided to all employees) in the following:
  - a. Detecting and assessing signs of sexual abuse, assault and harassment.
  - b. Preserving physical evidence of sexual abuse and assault.
  - c. Responding effectively and professionally to victims of sexual abuse, assault and harassment.
  - d. How and to whom to report allegations or suspicions of sexual abuse and assault.
5. Within 10 days of admission to an OCFS operated facility all youth shall receive comprehensive, age appropriate education, either in person or video, about their rights to be free from sexual abuse and harassment, and free from retaliation for reporting allegations of sexual abuse, assault or harassment. Additionally, they shall receive information regarding OCFS policies and procedures for responding to incidents of sexual abuse, assault or harassment

as well as the various methods of reporting. All education and information shall be made available in formats accessible to all youth (limited English, deaf, visually impaired or otherwise disabled as well as limited reading skills). Additionally, key information shall be continuously and readily available or visible via posters, brochures, or other formats.

Receipt of the above education and information shall be documented for each youth in the Juvenile Justice Information System.

#### **D. Allegations of Inappropriate Conduct**

Youth who believe they have been subjected to conduct prohibited by this policy have the option to report the incident to a designated staff member other than an immediate point-of-contact line staff member. That would include, but not be limited to, the unit/office supervisor, counselor, mental health clinician, medical personnel, any facility administrator, or the OCFS Ombudsman. Reports may be made verbally or in writing. The necessary materials to submit written reports will be provided to all youth. Youth also have the option of reporting allegations to the Office of the Ombudsman and/or the Special Investigations Unit via their respective toll-free numbers posted on all living units. Additionally, youth, their families and the public have the ability to report allegations outside OCFS via the toll-free number for the Justice Center for People with Special Needs (Justice Center).

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

1. For all allegations of sexual abuse or assault the victim will be immediately referred to the medical facility which the facility has established a prior Memorandum of Agreement (MOA) with for clinical assessment and gathering of forensic evidence by professionals who are trained and experienced in the management of victims of sexual abuse and assault.

If the alleged incident occurred more than 96 hours before it was discovered/reported the likelihood of viable physical evidence being collected diminishes, but still remains possible. In all cases the victim must be brought to the medical facility. The medical facility's trained examiner will make the final determination regarding evidence collection.

2. OCFS health staff will follow the procedures in PPM 3243.42 "Communicable Diseases and Disease Control" as needed for management of high risk exposures, paying particular attention to the following areas:
  - a. The Bureau of Health Services will be notified of the occurrence of a high risk exposure.

- b. Provision will be made for testing for sexually transmitted diseases (for example, HIV, gonorrhea, hepatitis, and other diseases) and release of information for purposes of medical management of both the victim and alleged perpetrator.
  - c. Prophylactic treatment and follow-up for sexually transmitted diseases will be offered to all victims, as appropriate, if not already done in the emergency room.
  - d. Follow-up will be done by a mental health professional to assess the need for crisis intervention counseling and long-term follow-up.
  - e. A report will be made to the facility or program administrator or designee to assure separation of the victim from his or her alleged abuser.
3. The parent/legal guardian will be notified of any allegations of inappropriate conduct involving their child.
  4. Pregnancy testing, as well as comprehensive information and access to all lawful pregnancy related medical services shall be provided in a timely manner.
  5. All medical, mental health and counseling services shall be provided at no cost to the youth.

#### **D. Staff First Responder Duties**

Upon learning of and an allegation that a youth was sexually abused, the first staff member to respond to the report shall be required to:

1. Separate the victim and alleged abuser.
2. Preserve and protect the scene until appropriate steps can be taken to collect any evidence.
3. Request 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.
4. Take steps to prevent the alleged abuser from destroying physical evidence, such as washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

#### **E. Reporting and Investigations**



All OCFS employees, contractors and volunteers are required to report knowledge of any alleged, threatened or actual violations of this policy to their supervisor, any on-duty employee above them in the chain of command, the On Call Administrator (OCA) or the facility/program director. They also have the ability to privately report abuse and sexual harassment of residents to the Justice Center. Failure to report may result administrative, criminal or disciplinary sanctions appropriate to individual status.

Every allegation of threatened or actual sexual abuse or sexual assault constitutes a reportable incident and shall be called into the Central Communications Unit (CCU) in accordance with PPM 3429.00, "Reportable Incidents". CCU staff then enters all available information regarding the incident into the Juvenile Justice Information System (JJIS).

OCFS requires that an investigation be conducted and documented whenever a violation of this policy is alleged. The Justice Center has responsibility investigations of all PREA related allegations and incidents. Notifications and reports are to be made in accordance with the emergency notification procedures detailed in OCFS PPM 3429.00, "Reportable Incidents", OCFS PPM 3456.00, "Child Abuse and Neglect Reporting in OCFS Programs." Local law enforcement authorities will also be contacted as necessary.

## **F. Sexual abuse incident reviews**

Within 30 days of the conclusion of the investigation the facility shall conduct a sexual abuse incident review for all allegations (substantiated and unsubstantiated), unless the allegation has been determined to be unfounded. Reviews shall be conducted by a team of staff, grade 18 and above, and shall include input from direct care staff, investigators, medical and mental health practitioners. 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;
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 this section, and any recommendations for

improvement and submit such report to the facility head and PREA compliance manager.

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

## **G. Documentation**

All case records associated with claims of sexual abuse/assault, including incident reports, investigative reports, juvenile information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling are marked “Confidential” and retained in accordance with an established schedule and PPM 3450.00 “Case Record Management”.

Form OCFS-4928, as a part of the youth’s case record, is a confidential document and shall be maintained in accordance with PPM 3450.00 “Case Record Management”.

All trainings mandated by this policy shall be documented as required by the Bureau of Training.

## **H. Disciplinary**

### **1. Staff Disciplinary Sanctions**

- A. Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.
- B. Termination shall be the presumptive disciplinary sanction for staff who have been substantiated for sexual abuse.
- C. 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.
- D. All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would 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.

### **2. Corrective action for contractors and volunteers**

- A. 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.

- B. The facility shall take appropriate remedial measures and shall prohibit further contact with residents.

### **3. Interventions and disciplinary sanctions for residents**

- A. A youth may be subject to disciplinary sanctions pursuant to the agency's formal disciplinary procedures or following a criminal finding.
- B. Disciplinary sanctions imposed by the facility shall 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 residents with similar histories.
- C. The disciplinary process shall consider whether a youth's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.
- D. Facilities with sex offender units offering therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, shall consider whether to offer the offending youth participation in such interventions.
- E. The facility may not require participation in such interventions as a condition of access to general programming or education.
- F. The facility may only discipline a youth for sexual contact with staff upon a finding that the staff member did not consent to such contact.
- G. 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.
- H. Sexual activity between residents is prohibited, however for such activity to constitute sexual abuse it must be coerced.

#### **I. Notifications to Youth**

- 1. Following an investigation into a youth's allegation of sexual abuse suffered in an agency facility, the agency shall inform the youth as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
- 2. Following a youth's allegation that a staff member has committed sexual abuse against the youth, the agency shall subsequently inform the youth (unless the agency has determined that the allegation is unfounded) whenever:

- a. The staff member is no longer posted within the youth's unit;
  - b. The staff member is no longer employed at the facility;
  - c. The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; and/or
  - d. The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
3. Following a youth's allegation that he or she has been sexually abused by another youth, the agency shall subsequently inform the alleged victim whenever:
    - a. The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
    - b. The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
  4. All such notifications or attempted notifications shall be documented. DJJOY's obligation to report under this standard shall terminate if the resident is released from the agency's custody.

#### **J. Data Collection and Review**

The DJJOY PREA Database is the central repository for all information regarding allegations of sexual abuse and sexual assault. Data will be entered into DJJOY PREA Database using standardized data fields and standardized definitions.

This database of all reported allegations, threats or actual violations of this policy will be maintained by DJJOY for reporting compliance with the provisions of the Prison Rape Elimination Act of 2003.