

**PRISON RAPE ELIMINATION ACT (PREA)  
POLICY MANUAL**

MISSISSIPPI DEPARTMENT OF HUMAN SERVICES  
DIVISION OF YOUTH SERVICES  
200 SOUTH LAMAR STREET  
JACKSON, MISSISSIPPI 39201

**Title X: Human Services**

**Part X: Division of Youth Services - Oakley Youth Development Center PREA Policy**

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**I. GENERAL**

Mississippi Department of Human Services (MDHS), Division of Youth Services (DYS) establishes the responsibilities, policies, and procedures to implement a zero-tolerance policy for prohibiting, preventing, detecting, responding to and investigating the sexual abuse and harassment of youth under Oakley Youth Development Center's (OYDC) supervision and care.

**II. POLICY**

It is the policy of the Mississippi Department of Human Services (MDHS), Division of Youth Services (DYS), that Oakley Youth Development Center (OYDC) maintains a zero-tolerance policy against the sexual abuse and harassment of youth and custodial misconduct in accordance with the standards set forth in the Prison Rape Elimination Act of 2003 (PREA). Any sexual contact, be it youth-on-youth or staff-on-youth, is strictly prohibited regardless whether any of the parties involved consider it to be consensual or forced.

**III. APPLICABILITY**

This policy applies to all OYDC youth, employees, contractors, visitors, and volunteers.

**IV. DEFINITIONS**

As used in this policy and procedure, the following definitions apply:

- A. **Agency:** The unit of a state, local, corporate, or nonprofit authority, or the Department of Justice, with direct responsibility for the operation of any facility that confine youth, detainees, or youth, including the implementation of policy as set by the governing, corporate, or nonprofit authority.
- B. **Authorized Visitor:** Any person approved to be present on campus by the OYDC Facility Administrator/Director of Institutions, DYS, MDHS, and/or listed by the youth's Community Services Counselor.
- C. **Contractor:** An individual that provides services on a recurring basis pursuant to a contractual agreement with the agency.
- D. **DOJ Certified Auditor:** A person that is certified as completing the United States Department of Justice (DOJ) requirements to conduct institutional audits for compliance with Federal PREA Standards.

- E. **Due Process Hearing Officer:** An impartial supervisory staff member or designee assigned to conduct disciplinary hearings with the authority to impose sanctions.
- F. **Employee/Staff:** Any person who works directly for the agency and/or facility.
- G. **Exigent Circumstances:** Allowing a change in procedure for temporary and unforeseen circumstances that requires immediate action in order to combat a threat to the security, safety, and/or order of the facility. Once a threat has been terminated, and security, safety, and/or order has been established, staff are to return to and follow standard procedures and protocols.
- H. **Facility:** A place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building) that is used by an agency for the confinement of individuals.
- I. **Facility Administrator/Director of Institutions:** The official ultimately responsible for the facility and/or program operations and management.
- J. **Juvenile:** Any person under the age of 18, unless under adult court supervision.
- K. **Juvenile Facility:** A facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system.
- L. **LGBTQI2-S:** An acronym that refers to lesbian, gay, bisexual, transgender, questioning, intersex, and Two-Spirit individuals.
- M. **Office of the Inspector General Investigator:** The departmental staff member assigned to examine all incidents that potentially involve abuse or unsafe practices involving youth and/or the safety of youth in the facility.
- N. **Nonconsensual Sexual Contact:** Touching of a confined youth directly or through clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks for sexual gratification perpetrated by another youth, if the victimized youth does not consent or is mentally incapable of consent, or perpetrated by an employee, contractor, or volunteer, unless the act is part of a lawful search.
- O. **Pat-Down Search:** A running of the hands over the clothed body of a confined youth by an employee to determine whether the individual possesses contraband.

- P. **Prison Rape Elimination Act of 2003 (PREA):** A federal statute enacted in September of 2003 to provide for the analysis of the incidences and effects of sexual abuse in federal, state, and local institutions, and to provide information, resources, recommendations, and funding to enable reviews of facility practice in order to protect individuals from sexual abuse in confinement.
- Q. **PREA Coordinator:** The person responsible for coordinating and developing procedures to identify, monitor, and train staff on youth sexual misconduct, harassment, and youth on youth sexual abuse or contact.
- R. **Retaliation Monitor:** A staff member, designated by the agency, who is responsible for the prevention, detection, and reporting of any retaliatory actions taken against individuals that report PREA allegations.
- S. **Sexual Abuse** (in accordance with PREA Standard §115.6) includes:
- a. Sexual abuse of a youth by another youth includes any of the following acts, if the victim is coerced into such act by overt or implied threats of violence or is unable to 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 over the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.
  - b. Sexual abuse of 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 over 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 i-v listed in this section; and
- 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.

T. **Sexual Act:** Any contact between the penis and the vulva or the penis and the anus involving penetration, however slight; contact between the mouth and the penis, vulva, or anus; or penetration of the vulva or anus of another person by hand, finger, or object; any other intentional touching, either directly or over the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

U. **Sexual Aggressor:** A person who threatens, attempts, or commits a sexual assault.

V. **Sexual Assault Kit:** A sexual assault evidence collection kit or sexual assault forensic evidence (SAFE) kit is a set of items used by medical personnel for gathering and preserving physical evidence following an allegation of sexual assault which can be used in a rape investigation.

- W. **Sexual Harassment:** 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; or 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.
- X. **Sexual Victimization:** All types of unwanted sexual activity, e.g., oral, anal, or vaginal penetration; manual stimulation of sexual organs, touching of youth's buttocks, inner thighs, penis, breast, or vagina in a sexual way; abusive sexual contacts; and both willing and unwilling sexual activity with employee/staff.
- Y. **Strip Search:** A search that requires a person to remove or arrange some or all clothing to permit a visual inspection of the person's breasts, buttocks, or genitalia.
- Z. **Substantiated Allegation:** An allegation that was investigated and determined to have occurred.
- AA. **Unfounded Allegation:** An allegation that was investigated and determined not to have occurred.
- BB. **Unsubstantiated Allegation:** An allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether the event occurred.
- CC. **Volunteer:** An individual who donated time and effort on a single occasion or recurring basis to enhance the activities and programs of the agency.
- DD. **Voyeurism:** An invasion of privacy of a youth by a staff member, contractor, or volunteer for reasons unrelated to official duties, such as peering at a youth taking a shower and/or performing bodily functions; requiring a youth to expose his or her buttocks, genitals, or breasts; or taking images/pictures of all or part of a youth's naked body or of a youth performing bodily functions.

## V. **RESPONSIBILITIES**

- A. The Director of the Division of Youth Services and/or Facility Administrator/Director of Institutions shall be responsible for OYDC's compliance with federal and state laws relating to PREA.

- B. The MDHS Office of the Inspector General (OIG) shall be responsible for:
- a. Ensuring that all allegations of sexual abuse and harassment are thoroughly investigated (See attachment: XV.7.G, Investigative Outcome of Allegations of Sexual Abuse and Sexual Harassment).
  - b. Referring violations of law to the district attorney (or other appropriate prosecuting attorney) for prosecution.
  - c. Reporting statistical data for PREA related incidents.
  - d. Informing youth as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
  - e. Informing youth of the following information when a youth alleges that an employee/staff member committed sexual abuse against the youth: (1) The employee/staff is no longer with MDHS/OYDC; (2) the employee/staff has been indicted on a charge related to the sexual abuse; or (3) the employee/staff has been convicted on a charge related to the sexual abuse. This notification shall be documented (See attachment: XV.7.L, Youth Notification of Investigative Outcome).

C. The PREA Coordinator shall be responsible for:

- a. Implementing, managing, and monitoring OYDC's compliance with the PREA standards.
- b. Reviewing, monitoring, and maintaining records of all PREA related incidents, forms, and documents in order to ensure compliance with this regulation and the federal PREA standards. Records to include, but not be limited to: Incident Reports (See OYDC policy: VII.2, Incident Reporting, and attachments: VII.2.A, Incident Report Form; VII.2.B, Serious Incident Report Form; and VII.2.C, Incident Reporting Log Form), Program Integrity reports of allegations of Sexual Abuse and Sexual Harassment, grievances (See OYDC policy: XV.2, Youth Grievance, and attachments: XV.2.A, Youth Grievance Form and XV.2.E, Grievance Log Form), staffing information, Vulnerability/Sexual Risk Assessments (Attachment: XV.7.C) and other screening forms/assessments (i.e. ERASOR), Protection Against Retaliation (Attachment: XV.7.F), and staff logs (Unit Log Book and attachment: XV.6.B, Unannounced Supervisory Visits).



- c. Ensuring youth and employees in PREA related incidents receive all services required and all appropriate reports are submitted.
- d. Consulting with the Director of the Division of Youth Services and the Facility Administrator/Director of Institutions to provide input on the facility staffing plans and surveillance monitoring equipment additions or changes as it relates to PREA.
- e. Assisting the Facility Administrator/Director of Institutions in developing and updating OYDC policies and procedures, as necessary, to ensure the facility's compliance with federal PREA standards.
- f. Briefing the Facility Administrator/Director of Institutions of allegations, investigations, findings, and the identity of potential victims and potential aggressors without violating confidentiality requirements of federal PREA standards.
- g. Conducting unannounced, after-hours institutional visits.
- h. Ensuring all volunteers and contractors at the facility have been trained.
- i. Collaborating with the MDHS to develop contracts with DOJ Certified Auditors.
- j. Coordinating with and assisting the DOJ Certified Auditor who conducts the PREA audit.
- k. Conducting annual internal audits of OYDC to ensure compliance with federal PREA standards.
  - i. The PREA Coordinator shall review the following prior to any actual audit:
    - 1. Prevention Planning,
    - 2. Responsive Planning,
    - 3. Training and Education,

4. Screening for Risk of Sexual Victimization and Abusiveness,
5. Reporting Procedures,
6. Response following a report of Sexual Abuse and/or Sexual Harassment,
7. Staff first responder duties,
8. Protection of youth from contact with abusers,
9. Investigations,
10. Corrective action for staff,
11. Corrective action for contractors and volunteers, and
12. Disciplinary sanctions for youth.

ii. The PREA Coordinator shall interview a representative sample of youth and employees/staff in a private setting.

l. Ensuring policy is in place such that youth and employees/staff who report sexual abuse, sexual harassment, or cooperate with an investigation of a sexual nature are protected from retaliation by other youth or employees/staff and are monitored for ninety (90) days after an incident (See attachment: XV.7.F, Protection Against Retaliation).

m. Reporting statistical data for PREA related incidents.

n. Ensuring all aggregated sexual abuse data is posted on the MDHS website by way of annual reporting and ensuring all data is stored securely for at least 10 years after the date of the initial collection.

D. The Training Department shall be responsible for (See OYDC policy: IV.1, Staff Training):

a. Training curricula for OYDC New Hire Employees, Refresher and In-Service Trainings, and other specialized training as necessary for PREA compliance.

- b. Reporting education and training statistical data to relevant parties.
  - c. Retaining records of employees/staff, contractors, and volunteers who have completed training.
- E. The Facility Administrator/Director of Institutions is responsible for:
- a. Developing OYDC policies and procedures to ensure facility compliance with federal PREA standards.
  - b. Ensuring that Juvenile Care Worker (JCW) Shift Supervisors conduct and document unannounced rounds on each shift to identify and deter employee/staff sexual abuse and sexual harassment (See OYDC policy: XV.6, Staffing Plan and attachment: XV.6.B, Unannounced Supervisory Visits).
  - c. Ensuring compliance with Incident Reporting, as it applies to PREA (See OYDC policies: VII.2, Incident Reporting and VII.5, Abuse and Neglect Reporting).
  - d. Designating a facility PREA Coordinator.
  - e. Ensuring that all LGBTQI2-S youth's health and safety are considered, on a case-by-case basis, in making housing and program assignments regarding management and security (See OYDC policy: XIII.24, LGBTQI2-S).
  - f. Ensuring that youth at high-risk for sexual victimization are not placed in involuntary segregation unless an assessment of all available alternative means have been made and there are no other available alternatives.
  - g. Ensuring that PREA educational information is continuously and readily available and visible to youth through posters, handbooks, or other written formats.
  - h. Ensuring that the facility telephone system is checked daily to confirm that abuse hotlines are accessible, and the telephone system status is to be recorded in the unit logbook as to whether the phones are inoperable; and, take prompt, appropriate action if maintenance is required.

- i. Ensuring that upon receipt of an allegation that a youth was sexually abused while confined to another facility, he/she notifies the head of that facility of the allegation (See attachment: XV.7.D Reporting to Other Confinement Facilities).
- j. Ensuring that an allegation received from a current youth of any sexual abuse or harassment at the facility is appropriately handled, that the Office of the Inspector General (OIG) is notified, and that the youth receives all necessary follow-up care according to the requirements in this policy.

F. The Director of Mental Health Services is responsible for:

- a. Designing, and/or implementing a diagnostic instrument (screening tool) to be utilized for assessing youth sexual vulnerability or aggression (See attachment: XV.7.C, Vulnerability/Sexual Risk Assessment).
- b. Assigning staff to conduct youth orientation.
- c. Ensuring youth counseling and mental health treatment is provided to victims and aggressors by mental health professionals.
- d. Ensuring the proper usage of the diagnostic instrument by OYDC Mental Health Staff.
- e. Recommending placement and/or transfer of youth involved in all PREA related incidents with the approval of the Facility Administrator/Director of Institutions and taking immediate action when a youth is subject to a substantial risk of imminent abuse.
- f. Monitoring youth identified as being sexual aggressors, potential sexual aggressors, victims of sexual abuse, and potential victims of sexual abuse and providing documentation of such monitoring to the PREA Coordinator and Facility Administrator/Director of Institutions (See OYDC policy: XIII.5., Service Plans).

G. The Personnel Officer shall ensure adherence to all OYDC policies and procedures relating to federal PREA compliance, specifically, as they relate to employment.

H. Employees, contractors, and volunteers are responsible for adherence to OYDC policies and procedures relating to youth sexual abuse, sexual harassment, and

custodial sexual misconduct. This includes a continuing affirmative duty to disclose any such misconduct.

- I. Youth are responsible for adherence to OYDC rules related to youth sexual abuse, sexual harassment, and sexual misconduct.

## **VI. PROCEDURES**

### **A. Prevention of Sexual Abuse and Sexual Harassment**

- a. Employee Education and Training: Employee instruction shall be accomplished during initial training, annual in-service trainings, specialized training, and additional training, as needed. Employee training shall be documented to denote employee understanding of material and verified by employee signature, and refresher training shall be accomplished at least annually (See attachment: XV.7.A PREA Staff Acknowledgement Form). Employees shall receive training to include, but not be limited to:
  - i. OYDC's zero tolerance policy for sexual abuse and sexual harassment;
  - ii. How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
  - iii. Youth's right to be free from sexual abuse and sexual harassment;
  - iv. The right of youth and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
  - v. The dynamics of sexual abuse and sexual harassment in juvenile facilities;
  - vi. The common reactions of juvenile victims of sexual abuse and sexual harassment;
  - vii. 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;
  - viii. How to avoid inappropriate relationships with youth;

- ix. How to communicate effectively and professionally with youth, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming youth;
  - x. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities; and
  - xi. Relevant laws regarding the applicable age of consent.
- b. Volunteer and Contractor Education and Training: 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 youth, but all volunteers and contractors who have contact with youth shall be notified of the agency's zero tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents. Contractors and volunteers shall receive training to include, but not be limited to: the prevention, detection, response, and reporting of allegations of youth sexual abuse, sexual harassment, and custodial sexual misconduct. Contractor and volunteer training shall be documented to denote the contractor or volunteer's understanding of material and verified through the contractor or volunteer's signature, and refresher training shall be accomplished at least annually (See attachment: XV.7.B PREA Contractor/Volunteer Acknowledgement Form). Contractor and volunteer instruction shall be accomplished during initial training, annual in-service trainings, specialized training, and additional training, as needed.
- c. Specialized Training: (Investigations). Investigators and other OYDC employees with PREA related responsibilities shall receive additional training related to their roles to include, but not be limited to: interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, conducting sexual abuse investigations and the collection of evidence in a confinement setting, and the criteria and evidence required to substantiate a case for administrative action or prosecutorial referral. Training shall be documented and verified through employee signature and forwarded to the Training Director for retention.
- d. Specialized Training: (Medical and Mental Health Care). Medical and mental health employees, shall receive additional training to include, but not be limited to: how to detect and assess signs of sexual abuse and harassment, how to preserve physical evidence of sexual abuse, how to

respond effectively and professionally to victims of sexual abuse and harassment, how and to whom to report allegations or suspicions of sexual abuse and harassment, recognizing the special medical and mental health needs of all youth, and factors to consider in a youth's risk of sexual victimization. Training shall be documented to denote employee understanding of material and verified through employee signature.

e. OYDC Hiring, Promotion, Evaluation

i. Departmental policy prohibits the hiring or promotion of an employee or contractor who may have contact with youth who:

1. Have engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution;
2. Have been convicted 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; or
3. Have been civilly or administratively adjudicated to have engaged in the activity described in paragraph VI.A.e.2 above.

(See MDHS Employee Handbook and OYDC attachment: III.2.A, PREA Employment/Appraisal Questionnaire)

ii. Before hiring a new employee or contractor, the Mississippi Department of Human Services (MDHS) Personnel Division or designee shall:

1. Conduct a criminal background records check;
2. Consult any child abuse registry maintained by the State or locality in which the employee would work;
3. Make its best efforts to contact all prior institutional employers in regard to substantiated allegations of sexual abuse or any resignation during a period of sexual abuse investigation;

4. The agency shall also ask all applicants and employees who may have contact with youth directly about previous misconduct described in VI.A.e.2 above (See OYDC policy: III.2, DYS Employment) 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 agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct; and
5. The agency will apprise potential employees and contractors that false information or material omissions regarding such misconduct shall be grounds for termination and that they have a continuing duty to disclose such conduct.

(See MDHS policy: AP-26, Background Checks)

- iii. For all promotions and rehires, the MDHS Personnel Department shall conduct a criminal background records check.
- iv. If the employee has engaged in any conduct described in paragraph VI.A.e.2 above, they shall be disqualified for promotion or rehire. Employees shall be subject to disciplinary sanctions up to and including termination for violating sexual abuse or sexual harassment policies. (See MDHS Employee Handbook and OYDC policy: III.8, Sexual Harassment).
- v. OYDC shall consider any incidents of sexual harassment in deciding whether to hire or promote any employee or contractor.
- vi. The MDHS Personnel Division shall conduct criminal background records checks at least every five (5) years for current employees and contractors who may have contact with youth.
- vii. Unless prohibited by law, the agency 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 said employee has applied to work.

## B. Youth Education

### a. All youth shall:

- i. Be given understandable information, verbal and written, explaining the OYDC's zero-tolerance PREA policy, including how to report sexual abuse and harassment during intake;
- ii. Receive a comprehensive educational orientation within 72 hours of their arrival at OYDC on the OYDC's zero tolerance PREA policy and how to report sexual abuse and harassment by an OYDC Counselor (See OYDC policy: XIII.1, Admission, Intake, and Orientation and attachment: XIII.1.G, Student Handbook); and
- iii. If a youth has special needs (e.g., language barriers, visually impaired, deaf, limited reading skills, or otherwise disabled), have an OYDC Counselor provide information in an accessible and understandable format addressing the following:
  1. OYDC shall take appropriate steps to ensure that youth with disabilities (including, for example, youth 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 and/or benefit from all aspects of the agency's efforts to prevent, detect, and properly respond to sexual abuse and sexual harassment.
  2. To ensure effective communication with youth 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, when necessary.
  3. In addition, the agency shall ensure that written materials are provided in formats or through methods that ensure

effective communication with youth with disabilities, including youth who have intellectual disabilities, limited reading skills, or who are blind or have low vision.

- a. The agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or cause undue financial and administrative burdens, as those terms are used in regulations promulgated under Title II of the Americans with Disabilities Act, 28 CFR 35.164.
- iv. The agency shall take 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 of youth who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. The agency shall not rely on youth interpreters, youth readers, or other types of youth assistants except in limited circumstances where an extended delay in obtaining an effective adult interpreter could compromise the youth's safety, the performance of first-response duties, or the investigation of the youth's allegations.
- b. Youth PREA educational information shall include the:
  - i. Right to be free from sexual abuse, sexual harassment, and retaliation;
  - ii. Prevention of sexual abuse and harassment;
  - iii. Self-protection;
  - iv. Methods of reporting;
  - v. Investigations; and
  - vi. Treatment and counseling availability.

- c. Upon completion of a youth's PREA orientation, the youth shall sign the Youth Orientation Acknowledgement Form (See attachment: XIII.1.E).
  - i. If the youth refuses to sign, the witness shall indicate by writing "Refused to Sign" and affix his/her signature.
  - ii. The completed Youth Orientation Acknowledgement Form shall be maintained in the youth's records.

### C. Staffing Plans

- a. The Facility Administrator/Director of Institutions will assist in the development and documentation of the facility staffing plan and will make his/her best effort to comply with the staffing plan. The plan will provide for adequate levels of staffing and, where applicable, video monitoring to protect youth against sexual abuse. (See OYDC policy: XV.6, Staffing Plan).
- b. In calculating adequate staffing levels and determining the need for video monitoring, OYDC shall take into consideration:
  - i. Generally accepted juvenile detention and correctional/secure residential practices;
  - ii. Any judicial findings of inadequacy;
  - iii. Any findings of inadequacy from state and/or federal investigative agencies;
  - iv. Any findings of inadequacy from internal or external oversight bodies;
  - v. All components of the facility's physical plant (including "blind spots" or areas where staff or youth may be isolated);
  - vi. The composition of the youth population;
  - vii. The number and placement of supervisory staff;
  - viii. Institutional programs occurring on a particular shift;

- ix. Any applicable state or local laws, regulations, or standards;
  - x. The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
  - xi. Any other relevant factors.
- c. OYDC shall comply with the staffing plan except during limited and discrete exigent circumstances and shall fully document deviations from the plan during such circumstances.
- d. OYDC shall maintain staff ratios of a minimum of 1:8 during youth waking hours and 1:16 during youth sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. Only direct care and security staff shall be included in these ratios.
- e. OYDC shall implement a practice of having intermediate and higher-level staff conduct and document unannounced rounds to identify and deter sexual abuse and harassment. These shall be implemented on day shift as well as night shift. Those conducting unannounced rounds are prohibited from alerting others of the rounds occurring and OYDC has practices in place that disallow staff from alerting other staff of the rounds unless there is a legitimate operational need to do so. (See OYDC policy: XV.6, Staffing Plan and attachment: XV.6.B, Unannounced Supervisory Visits).
- f. Whenever necessary, but no less frequently than monthly, the PREA Coordinator shall meet with the Facility Administrator/Director of Institutions to assess, determine, and document whether adjustments are needed to:
- i. The staffing plan established pursuant to paragraph (a) of this section;
  - ii. Prevailing staffing patterns;
  - iii. OYDC's deployment of video monitoring systems and other monitoring technologies; and

- iv. The resources OYDC has available to commit to ensure adherence to the staffing plan.
- g. OYDC will document the reviews utilizing the Annual Facility Staffing Assessment. (See attachment: XV.6.A)

#### D. Cross-gender Searches

- a. Employees/staff members shall not conduct cross-gender strip searches or cross-gender visual body cavity searches. The institution shall not conduct cross-gender pat-down searches of youth, except in exigent circumstances and must be approved by a Shift Supervisor. (See OYDC policy: VII.14, Youth Searches)
- b. Cross-Gender Pat-Down Searches must be justified and documented in the Unit Logbook and on a Youth Cross-Gender Search Form when they occur. (See attachment: XV.7.M)
- c. It is OYDC's policy that the facility shall implement procedures that enable youth to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitals, except in exigent circumstances or when such viewing is incidental to routine room and/or unit checks. Such procedures shall require staff of the opposite gender to announce their presence when entering a youth housing unit.
- d. The facility staff shall not search or physically examine a transgender or intersex youth for the sole purpose of determining the youth's genital status. If the youth's genital status is unknown, it may be determined during conversation with the youth, by reviewing medical records, or if necessary, by learning that information as part of the broader medical examination conducted in private by a medical practitioner. (See OYDC policy: XIII.24, LGBTQI2-S)
- e. The agency shall train security staff on how to conduct cross-gender pat-down searches, and searches of transgender and intersex youth, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

#### E. Intake Procedures

OYDC shall adhere to the following intake procedures when processing all youth into OYDC:

- a. All youth, at initial intake, shall be screened within seventy (72) hours utilizing the Vulnerability-Sexual Risk Assessment (See attachment: XV.7.C), for potential risk of sexual vulnerability and potential risk of sexual aggression. (See OYDC policy: XIII.3, Youth Screening and Assessment)
- b. A Counselor or Qualified Mental Health Professional (QMHP) shall complete the Vulnerability-Sexual Risk Assessment:
  - i. This will include an interview with the youth and review of prior known information and documentation from the youth's file in order to determine the youth's potential risk of sexual vulnerability and/or sexually aggressive behavior.
  - ii. If the assessment, interview, or prior known information reflects that the youth is at high risk to be victimized or screens as sexually aggressive, the Counselor and/or QMHP will recommend further review by a QMHP prior to assigning permanent housing.
- c. The Counselor and/or QMHP shall meet with the youth and review their screening information. If the screening indicates that the youth has prior sexual victimization or sexual aggression in their history, the Counselor and/or QMHP shall schedule a follow-up meeting with Mental Health Department within twenty-four (24) hours to seventy-two (72) hours of the intake screening.
- d. A youth's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that would impact the youth's risk of sexual victimization or abusiveness.
- e. A youth's risk level shall be reassessed every quarter (3 months) to ensure that the information on the youth's risk assessment is accurate and up to date.
- f. During the time of any of these assessments, OYDC shall take no formal or informal disciplinary action should a youth refuse to participate or answer any screening questions.

- g. There will be appropriate controls on the dissemination of screening information to ensure each youth's sensitive information is not exploited.
- h. If, during intake, a youth states that they have experienced sexual abuse, regardless of when the incident occurred, the abuse must be reported according to the procedures outlined in this policy. Medical and mental health practitioners shall obtain informed consent from the 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.
- i. PREA Mental Health Assessment
  - i. Youth that have been identified as being at risk for potential sexual vulnerability or sexually aggressive behavior shall be referred to a QMHP utilizing the Vulnerability-Sexual Risk Assessment.
  - ii. The QMHP shall perform the mental health assessment and document information in the Mental Health section of the medical record. The assessment shall include, but not limited to, a review of the Vulnerability-Sexual Risk Assessment and history of sexual victimization or sexually aggressive behavior. (See attachment: XV.7.C) Any updates of a youth's history or risk of sexual aggression or victimization shall be noted by the QMHP.
  - iii. Any employee may make a mental health referral and have an OYDC counselor fill out a Counseling Request Form (See attachment: XIII.11.D), based on his/her observation of the youth's behavior or at the youth's request. This referral may be based on the concerns that the youth has been a victim or is at risk of being a victim or sexual aggressor. (See OYDC policy: XIII.11, Counseling, Programs, and Progress Notes)
  - iv. All youth are to be reassessed at a minimum of every quarter (3 months) for potential risk of sexual vulnerability and/or sexually aggressive behavior. (See attachment: XV.7.N, Vulnerability-Sexual Risk of Victimization Review).
  - v. Identification of sexual aggressors or victims' information should be handled with the utmost confidentiality and only staff

specifically identified to address direct care needs will have access to the information.

j. Use of Screening Information

- i. All information obtained during the screening process and the Vulnerability-Sexual Risk Assessment results shall be strictly limited to medical and mental health practitioners and other staff, as deemed necessary, and used to assist in the initial classification and institutional assignment of the youth, as well as, determine work, education, and programs, in accordance with OYDC policy XIII.2, Classification System. This practice is with the goal of keeping separate those youth at high-risk of being sexually victimized from those at high-risk of being sexually abusive.
- ii. Any youth that may potentially be at risk for victimization based solely on age or mental capacity will not be placed in a housing unit in which the youth will have sight, sound, or physical contact with any other individual/youth which has reached the age of majority through the use of a shared dayroom or other common space, shower area, or sleeping quarters. In areas outside the housing unit, if sight and sound separation cannot be maintained, direct staff supervision shall be provided.
- iii. The agency has a zero-tolerance policy concerning sexual harassment and/or abuse of youth who identify as LGBTQI2-S (See OYDC policy XIII.24, LGBTQI2-S). The agency shall follow the steps of its LGBTQI2-S policy and make every effort to prevent, detect, and respond to sexual abuse and sexual harassment of LGBTQI2-S youth.
- iv. OYDC shall not place LGBTQI2-S youth in a dedicated facility, unit, or dorm solely on the basis of such identification or status. (See OYDC policy: XIII.24, LGBTQI2-S)
- v. Placement and programming assignments for each transgender, intersex, or Two-Spirit youth shall be reassessed at least quarterly to review any threats to safety experienced by the youth.



- vi. A transgender or intersex youth's own views with respect to his or her own safety shall be given serious consideration.
- vii. In deciding whether to assign a transgender, intersex, or Two-Spirit youth to a unit for male or female youth, and in making other housing and programming assignments, OYDC shall consider on a case-by-case basis whether the placement would ensure the youth's health and safety, and whether the placement would present management or security problems.
- viii. Transgender, intersex, and Two-Spirit youth shall be given the opportunity to shower separately from other youth.

#### F. Responding to Sexual Abuse and Harassment

- a. To the extent that MDHS is responsible for investigating allegations of sexual abuse, MDHS and OYDC shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. (See OYDC policy, VII.3, Institutional Investigations and MDHS Policy, Internal Investigations at OYDC)
- b. The protocol shall 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.
- c. First Responder Staff. Upon learning of an allegation of a PREA related incident, the first responder staff shall:
  - i. Ensure that the victim(s), aggressor(s), and witnesses are physically separated;
  - ii. Protect and preserve the crime scene until appropriate steps can be taken to collect evidence;
  - iii. Request that the victim not bathe, wash, brush his/her teeth, eat, drink, urinate or defecate;

- iv. Ensure that the alleged aggressor not bathe, wash, brush his/her teeth, eat, drink, smoke, urinate or defecate; and
- v. If the first responder staff is not security staff, the responder should request that the alleged victim not take any actions that would destroy evidence and notify security staff.
- vi. Do not show the alleged victim(s), aggressor(s), or witnesses any evidence, such as, but not limited to pictures or video footage of the incident, and do not interview any of these parties on the specifics of the incident.
- vii. As soon as possible, first responders shall notify the Shift Supervisor of the incident and fill out an Incident Report. (See attachment: VII.2A, Incident Report Form)

See attachments: XV.7.I First Responder Guidelines for Sexual Assault, XV.7.J First Responder Checklist, and XV.7.K, Sexual Abuse Coordinated Team Response

- d. Shift Supervisor(s) shall:
  - i. Ensure that first responder staff secure the crime scene;
  - ii. Ensure that the Administrative Duty Officer and PREA Coordinator have been notified;
  - iii. Ensure the Office of the Inspector General is contacted;
  - iv. Ensure that the collection of evidence is only accomplished by trained and qualified staff in accordance with MDHS Office of the Inspector General Policy and OYDC policy: VII.12, Weapons and Contraband;
  - v. Take the alleged victim to the clinic for a medical evaluation. The medical staff shall determine whether a Sexual Assault Kit is needed. The Sexual Assault Kit will be conducted at University of Mississippi Medical Center (UMMC) by SANE or SAFE certified medical personnel;

- vi. Do not show the alleged victim(s), aggressor(s), or witnesses any evidence, such as, but not limited to pictures or video footage of the incident, and do not interview any of these parties on the specifics of the incident;
  - vii. Ensure that the Incident Report form (Attachment VII.2A) is completed;
  - viii. Follow the instructions of the PREA Coordinator and Office of the Inspector General Investigator. Once the incident has been turned over to the Office of the Inspector General Investigator, do not conduct any further questioning of the alleged victim(s), aggressor(s), or witnesses regarding the incident. Office of the Inspector General will conduct a thorough investigation, complete an Investigation Report, and complete Investigative Outcome of Allegations of Sexual Abuse and Sexual Harassment documentation (Attachment: XV.7.G); and
  - ix. Ensure that any and all photographs of alleged victim(s), aggressor(s), and witnesses are only taken when advised by the PREA Coordinator and/or Office of the Inspector General Investigator or when required by OYDC policies. (See VII.1, Use of Force, VII.2, Incident Reporting, and VII.3 Institutional Investigations.) **NOTE: Do not take pictures of the genital or breast areas.**
- e. Medical and Mental Health Care
- i. Victims of sexual abuse at the facility shall be referred immediately to the OYDC Clinic. Victims shall receive timely, unimpeded access to emergency medical treatment and rape crisis intervention services. The PREA Coordinator shall also refer a youth victim immediately to the OYDC Mental Health Department for further treatment and counseling.
  - ii. OYDC shall offer all youth who experience sexual abuse access to forensic medical examinations at the University of Mississippi Medical Center (UMMC) or other appropriate medical facility, without financial cost, where evidentiary or medically appropriate. Such examinations should be performed by Sexual Assault

Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs), if on staff or on contract with the medical facility.

- iii. OYDC shall attempt to make available to the victim a Victim Advocate from the Mississippi Coalition Against Sexual Assault (MSCASA). In the event MSCASA is not available to provide victim advocate services, the agency shall provide these services through a qualified staff member. MDHS shall document efforts to secure services from rape crisis centers.
- iv. As requested by the victim, the Victim Advocate and/or qualified agency staff member, shall accompany and support the victim through the forensic medical examination process and investigatory interviews, and shall provide emotional support, crisis intervention, information, and referrals.
- v. If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim and shall immediately notify the appropriate medical and mental health practitioners.
- vi. Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with an investigation arising out of the incident.
- vii. Medical and mental health evaluations and treatment shall be offered to all youth who have been victimized by sexual abuse.
- viii. 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 upon their release from custody.
- ix. Youth victims of sexual abuse, while residing at OYDC, 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.

- x. Youth victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.
  - xi. If pregnancy results from conduct specified in paragraph x of this section, such victims shall receive timely and comprehensive information about, and timely access to, all lawful pregnancy-related medical services.
  - xii. Youth victims of sexual abuse, while incarcerated, shall be offered tests for sexually transmitted infections as medically appropriate.
  - xiii. Ongoing 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.
  - xiv. An attempt shall be made to conduct a mental health evaluation of known youth-on-youth abusers within fourteen (14) days but no later than thirty (30) days of learning of such abuse history and offer treatment.
- f. The requirements of paragraphs a, b, and e. ii, e. iii, e. iv of this section shall also apply to:
- i. Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in juvenile facilities; and
  - ii. Any Department of Justice component that is responsible for investigating allegations of sexual abuse in juvenile facilities.

#### G. Youth Access to Outside Support Services and Legal Representation

- a. OYDC shall provide youth 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. OYDC shall enable reasonable communication between youth and these organizations and agencies, in as confidential a manner as possible.

- b. OYDC shall inform 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.
- c. MDHS shall maintain or attempt 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. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.
- d. OYDC shall also provide youth with reasonable and confidential access to their attorney(s) or other legal representation and reasonable access to parents or legal guardians (See OYDC policies: XV.3, Youth Visitation, XV.4, Youth Access to Mail, and XV.5, Youth Phone Usage).

#### H. Reporting Sexual Abuse and Sexual Harassment

- a. Employee/Staff Reporting
  - i. According to Mississippi Code of 1972, §43-21-353, all OYDC employees/staff who receive any information, including verbal, written, third-party reports, and anonymous complaints, concerning youth sexual abuse, sexual harassment, and custodial sexual misconduct; retaliation against youth or staff who report such an incident; or any staff neglect or violation of responsibilities that may have contributed to an incident or violation, shall immediately report the incident through their chain of command (See OYDC policies: VII.5, Abuse and Neglect Reporting and VII.6, Abusive Institutional Practices). In addition, in accordance with the Mississippi Code of 1972, §43-21-353, any contractor, volunteer, and/or visitor that receives any information concerning sexual abuse of a youth must report this information to the appropriate authorities and/or abuse hotlines.
  - ii. Any knowledge, suspicion, or information regarding sexual abuse, sexual harassment, and custodial sexual misconduct shall be reported to the Facility Administrator/Director of Institutions, Administrative Duty Officer, PREA Coordinator, and the Office of the Inspector General immediately (See OYDC policies VII.2, Incident Reporting and VII.5, Abuse and Neglect Reporting).

- iii. An employee/staff shall not reveal any information related to the incident to anyone other than to the extent necessary to make treatment, investigation, and management decisions. Initial interviews of potential sexual abuse victims should be limited to only that information necessary to protect the victim from immediate harm until an investigator arrives for a more detailed interview.
- iv. The Facility Administrator/Director of Institutions, or designee, shall promptly report the allegation to the appropriate agency office 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. 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 youth court retains jurisdiction over the alleged victim, the Facility Administrator/Director of Institutions or designee shall also report the allegation to the juvenile's attorney or other legal representative of record within fourteen (14) days of receiving the allegation.
- v. The Facility Administrator/Director of Institutions or designee shall ensure that the designated OYDC Medical and Mental Health Staff are notified of the allegation in a timely manner.
- vi. Medical and Mental Health Practitioners shall ensure all youth are informed prior to the initiation of services of the limits of their confidentiality and shall report information about sexual victimization to the PREA Coordinator.
- vii. Any allegations of sexual harassment or sexual abuse involving a youth shall also be reported to Mississippi Department of Child Protective Services (MDCPS).
- viii. Youth PREA-related complaints may be deposited in the grievance box, a secured receptacle located in each unit of the facility, and/or privately by phone or letter to MDHS, MDCPS and/or Mississippi Coalition Against Sexual Assault (MSCASA). Employees and staff may also make reports privately.

- ix. In order to remain informed of the progress of every sexual abuse investigation, the PREA Coordinator will contact the Office of the Inspector General (OIG) twice monthly and ask about progress and completion. The Office of the Inspector General will contact the Facility Administrator/Director of Institutions when an investigation is completed.
- x. Once the Office of the Inspector General Investigator completes the investigation, the outcome will be submitted to the Lead OIG Investigator. The Lead OIG Investigator will submit the case to the appropriate District Attorney's office, if applicable, for criminal prosecution.
- xi. Within thirty (30) days of the conclusion of the Office of the Inspector General's investigation, the Facility Administrator/Director of Institutions shall convene a sexual abuse incident review team to review all substantiated and unsubstantiated PREA allegations (See attachment: XV.7.H, Sexual Abuse Critical Incident Review).
  1. This team shall be composed of the Facility Administrator/Director of Institutions designee, a medical representative, a mental health representative, an Office of the Inspector General Investigator, the Shift Supervisor present at time of the allegation, and the PREA Coordinator.
  2. The PREA Coordinator will take detailed meeting minutes to include the agenda, participants' names, date, name and number of the investigation, type of investigation and findings, and all meeting content, utilizing OYDC form: XV.7.H, Sexual Abuse Critical Incident Review.
  3. The team shall:
    - a. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
    - b. Consider whether the incident or allegation was motivated by race, ethnicity, gender identity;



LGBTQI2-S identification, status, or perceived status or gang affiliation; or was motivated or otherwise caused by other group dynamics;

- c. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may have enabled the abuse to occur;
  - d. Assess the adequacy of the staffing levels in that area during different shifts;
  - e. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
  - f. Prepare a report of its findings including, but not necessarily limited to, determinations made pursuant to the preceding paragraphs and any recommendations for improvement. Such report shall be submitted to the Director of the Division of Youth Services, Facility Administrator/Director of Institutions, and PREA Coordinator in a timely manner.
4. The Facility Administrator/Director of Institutions or his/her designee shall implement the recommendations for improvement or shall document the reasons for not implementing recommendations for improvement.
  5. The PREA Coordinator, upon completion of the recommended improvement or upon providing the reason the improvement was not completed, shall submit utilizing OYDC form: XV.7.H, Sexual Abuse Critical Incident Review, to the Director of Division of Youth Services and Facility Administrator in a timely manner.
- xii. The Facility Administrator/Director of Institutions, upon receiving an allegation that a youth was sexually abused while confined in another facility, shall notify the head of the other facility of the alleged abuse as soon as possible, but no later than seventy-two

(72) hours from receiving the allegation (See attachment: XV.7.D, Reporting to Other Confinement Facilities) and shall ensure that the allegation investigation is done in accordance with PREA Standards.

- xiii. Nothing in this section should be interpreted to restrict the ability of the Office of Inspector General to designate or coordinate an investigation with another appropriate law enforcement agency. In such instances, the outside agency would either be incorporated into the process along with the Office of Inspector General Investigator or substituted for the OIG Investigator.

b. Youth Reporting

- i. Youth may report sexual abuse or harassment verbally, in writing, through a third party, or anonymously. Additionally, they may report incidents of abuse or harassment in the following manner:
  - File a grievance,
  - Call the MDCPS Child Abuse Hotline (1-800-222-8000) and/or the MSCASA hotline (1-888-987-9011),
  - Deposit a complaint in the grievance box (a secured receptacle located in each unit),
  - Tell the PREA Coordinator,
  - Contact the Office of the Inspector General via use of a pre-addressed Office of the Inspector General envelope, or
  - They may tell any staff, contractor, or volunteer, and expect the information to be reported immediately and thoroughly investigated as indicated in this policy (See attachment: XV.7.E, Third Party Reporting for Alleged Sexual Abuse Sexual Assault and Sexual Harassment).

Youth will be provided with the tools to write a written report.

- ii. Disciplinary action may be taken when an investigation by the Office of the Inspector General's Investigator determines that a youth made a bad faith/false report of sexual abuse or sexual harassment. However, a bad faith/false report is different than an unsubstantiated report.
- iii. A youth reporting sexual abuse or sexual harassment will not be issued a disciplinary report for lying based solely on the fact that

their allegations were unfounded or that the youth later decides to withdraw his/her allegation.

- iv. Allegations of sexual abuse or sexual harassment will be referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The Office of the Inspector General shall refer all substantiated criminal cases to the local District Attorney's office and will be available, as requested, to work with those authorities to support criminal prosecution of those cases.

I. Sexual Abuse and Sexual Harassment Investigations: The standard of proof in all investigations of sexual abuse and harassment is a preponderance of the evidence.

a. Youth-on-Youth Sexual Abuse and Staff-on-Youth Sexual Abuse and Harassment

- i. The PREA Coordinator and the Office of the Inspector General shall be notified of all alleged incidents involving sexual abuse against a youth, by a youth or staff, and of any sexual harassment by a staff toward a youth. The Office of the Inspector General will be notified of such incidents in accordance with OYDC policies: VII.2, Incident Reporting and VII.5, Abuse and Neglect Reporting.
- ii. Each case shall be carefully evaluated on its merit, considering all evidence and circumstances and whether there is any possibility that the alleged incident could have occurred.
- iii. The Office of the Inspector General Investigators are responsible for conducting a prompt, thorough and objective investigation, whether administrative or criminal, in all such cases.
- iv. If applicable, the Director of the Division of Youth Services and/or the Facility Administrator/Director of Institutions shall determine the re-assignment of employees/staff allegedly involved in any such incidents.
- v. When applicable, investigators may gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence in collaboration with local law enforcement 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.

- vi. The Office of the Inspector General nor OYDC shall terminate an investigation solely because the source of the allegation recants the allegation.
- vii. When the quality of evidence appears to support criminal prosecution, the Office of the Inspector General shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- viii. 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 youth or staff. The Office of the Inspector General shall not require a youth 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.
- ix. Administrative investigations:
  - 1. Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and
  - 2. Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
- x. Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence, where feasible.
- xi. Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

- xii. The agency shall retain all written reports referenced in paragraphs (ix) and (x) of this section, for as long as, the alleged abuser is incarcerated or employed by the agency, plus five (5) years, unless the abuse was committed by a youth and applicable law requires a shorter period of retention.
- xiii. The departure of the alleged abuser or victim from the employment or control of the facility or agency will not provide a basis for terminating an investigation.

b. Youth-on-Youth Sexual Harassment

- i. The PREA Coordinator and the Office of the Inspector General shall be notified of all incidents involving sexual harassment of a youth by another youth, in accordance with OYDC policies: VII.2, Incident Reporting and VII.5, Abuse and Neglect Reporting.
- ii. The Office of the Inspector General is responsible for conducting a prompt, thorough, and objective investigation, whether administrative or criminal, in all such cases.

J. Reporting to Youth

- a. Following the Office of the Inspector General's investigation into a youth's allegation that he or she suffered sexual abuse, the Office of the Inspector General shall inform the youth as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. (See attachment: XV.7.L, Youth Notification of Investigative Outcome.)
- b. Following a youth's allegation that a staff member has committed sexual abuse against the youth, MDHS shall subsequently inform the youth (unless the agency has determined that the allegation is unfounded) whenever:
  - i. The staff member is no longer posted within the youth's unit;
  - ii. The staff member is no longer employed at the facility;
  - iii. MDHS learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or

- iv. MDHS learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
- c. Following a youth's allegation that he or she has been sexually abused by another youth, MDHS shall subsequently inform the alleged victim whenever:
  - i. MDHS learns that the alleged abuser has a petition being drawn (under 18) or has been indicted (tried as an adult) on a charge related to sexual abuse within the facility; or
  - ii. MDHS learns that the alleged abuser has been adjudicated delinquent (under 18) or has been convicted (tried as an adult) on a charge related to sexual abuse within the facility;
  - iii. All such notifications or attempted notifications shall be documented; or
  - iv. MDHS's obligation to report under this policy shall terminate if the youth is released from the agency's custody.

#### K. Disciplinary Actions for Staff

- 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 engaged in sexual abuse.
- c. Disciplinary sanctions for violations of MDHS and/or OYDC 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 MDHS and/or OYDC 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.

#### L. Corrective Action for Contractors and Volunteers

- a. Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with youth and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.
- b. OYDC shall take appropriate remedial measures and shall consider whether to prohibit further contact with youth, in the case of any other violation of MDHS and/or OYDC sexual abuse or sexual harassment policies by a contractor or volunteer.

#### M. Interventions and Disciplinary Sanctions for Youth Filing Bad Faith/False Reports

- a. After review by the Facility Administrator/Director of Institutions and/or the Director of the Division of Youth Services, an occurrence of sexual assault between youth and another youth will be referred to the Disciplinary Hearing Officer and processed according to OYDC policy: VII.9, Due Process Hearings. Additionally, youth may be subject to criminal disciplinary action.
- b. 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.
- c. OYDC shall offer therapy, counseling, and/or other interventions designed to address and correct underlying reasons or motivations for the abuse and/or bad faith/false report. OYDC may require participation in such interventions as a condition of access to OYDC behavior-based incentives/opportunities, but not as a condition to access to general programming or education. (See OYDC policy: XIII.4, Treatment Team and XIII.5 Service Plans.)
- d. OYDC may discipline a youth for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
- e. 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 sufficient evidence to substantiate the allegation.

- f. OYDC prohibits all sexual activity between youth and may discipline youth for such activity. MDHS and/or OYDC may not, however, deem such activity to constitute sexual abuse if it is determined that the activity was not coerced.

#### N. Exhaustion of Administrative Remedies

- a. OYDC shall not impose a time limit on when a youth may submit a grievance regarding an allegation of sexual abuse.
- b. OYDC may apply otherwise applicable time limits on any portion of a grievance that does not allege an incident of sexual abuse. (See OYDC policy, XV.2, Youth Grievance and OYDC attachment: XIII.1.G, Student Handbook.)
- c. OYDC shall not require a youth to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.
- d. Nothing in this section shall restrict MDHS's ability to defend against a lawsuit filed by a youth on the grounds that the applicable statute of limitations has expired.
- e. OYDC shall ensure that:
  - i. A youth who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and
  - ii. Such grievance is not referred to a staff member who is the subject of the complaint.
- f. MDHS shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within ninety (90) days of the initial filing of the grievance.
  - i. Computation of the ninety (90) daytime period shall not include time consumed by youth in preparing any administrative appeal.



- ii. MDHS may claim an extension of time to respond, of up to seventy (70) days, if the normal time period for response is insufficient to make an appropriate decision. MDHS shall notify the youth in writing of any such extension and provide a date by which a decision will be made.
  
- g. Third parties, including fellow youth, staff members, family members, attorneys, and outside advocates, shall be permitted to assist youth in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of youth. The Third-Party Reporting for Alleged Sexual Abuse Sexual Assault and Sexual Harassment form (XV.7.E) is to be posted to the MDHS, DYS website, along with corresponding contact information.
  - i. If a third party, other than a parent or legal guardian, files such a request on behalf of a youth, OYDC may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.
  - ii. If the youth declines to have the request processed on his or her behalf, OYDC shall document the youth's decision.
  - iii. A parent or legal guardian of a youth shall be allowed to file a grievance regarding allegations of sexual abuse, including appeals, on behalf of such youth. Such a grievance shall not be conditioned upon the juvenile agreeing to have the request filed on his or her behalf.
  
- h. OYDC shall establish procedures for the filing of an emergency grievance alleging that a youth is subject to a substantial risk of imminent sexual abuse.
  - i. After receiving an emergency grievance alleging a youth is subject to a substantial risk of imminent sexual abuse, OYDC shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken. Additionally, OYDC shall provide an initial response within forty-eight (48) hours and shall issue a final agency decision within five

(5) calendar days. The initial response and final agency decision shall document the agency's determination whether the youth is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

- i. The OYDC may discipline a youth for filing a grievance related to alleged sexual abuse only where the agency can demonstrate and prove that the youth filed the grievance in bad faith.

#### O. Protective Custody

- a. Youth at high risk for sexual victimization or those who report sexual victimization shall not be placed in involuntary administrative or punitive segregation unless there has been an assessment of all other available alternatives and a determination made that there are no other alternatives available. (See OYDC policy: XII.7, Special Management Unit-Assessment Unit.)
- b. In cases where segregated housing is the only means to protect such youth, the youth shall have access to all programs, privileges, education and work opportunities, to the extent possible, and it shall only be until an alternative means of separation from likely abusers can be arranged, a time not ordinarily to exceed thirty (30) days. Youth in isolation are to receive at least one (1) hour of large body exercise each day. In these cases, the facility shall clearly document:
  - i. The basis for the facility's concern for the youth's safety;
  - ii. The reason why no alternative means of separation can be arranged; and
  - iii. Every thirty (30) days, the facility shall afford each such youth a review to determine whether there is a continuing need for separation from the general population.

#### P. Preservation of Ability to Protect Youth from Contact with Abusers

- a. Neither MDHS, nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with

youth pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

- b. Nothing in this policy shall restrict OYDC from entering into or renewal of agreements that govern:
  - i. The conduct of the disciplinary process, as long as such agreements are not inconsistent with the PREA provisions of §§115.372 and 115.376; or
  - ii. 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.

#### Q. Retaliation

- a. Retaliation in any form for the reporting of, or cooperation with, sexual abuse or harassment allegations is strictly prohibited.
- b. The Facility Administrator/Director of Institutions and PREA Coordinator shall ensure youth and staff who report sexual abuse, sexual harassment, or cooperate with a sexual abuse investigation are protected from retaliation by other youth or staff.
- c. The Office of the Inspector General will be chiefly responsible for Retaliation Monitoring by monitoring the conduct and treatment of the youth(s) and/or staff for at least ninety (90) days after an incident is reported. Monitoring time will be extended in thirty (30) day increments if there is a continuing need to do so. (See attachment: XV.7.F, Protection Against Retaliation.)
- d. The monitoring of youth shall consider any disciplinary reports, housing or program changes, and shall include periodic status checks.
- e. The monitoring of staff shall include negative performance reviews or reassignments.
- f. MDHS and OYDC shall employ multiple protection measures, such as housing changes or transfers for youth victims or abusers, removal of alleged staff or youth abusers from contact with victims, and emotional

support services for youth and/or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

- g. If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.
- h. The facility's obligation to monitor may terminate if the facility determines the allegation is unfounded.

#### R. Upgrades to Facilities and Technologies

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

#### S. Data Collection

- a. For the purpose of data collection tracking, the Incident Report Form alleging sexual abuse or sexual harassment, shall be forwarded to the Office of the Inspector General within seventy-two (72) hours of notification of a PREA related incident. (See VII.2A, Incident Report Form.)
- b. The PREA Coordinator shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions. The PREA Coordinator shall aggregate the incident-based sexual abuse data at least annually.
- c. The PREA Coordinator shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

- d. The PREA Coordinator shall compile the records and data from the previous calendar year necessary to fill out the requested data in the DOJ's Survey of Sexual Violence (SSV) should it be requested. This is to be provided to the Department of Justice no later than June 30<sup>th</sup> of each year.
- e. The PREA Coordinator shall review data collected to assess and improve the effectiveness of appropriate OYDC policies and procedures. The PREA Coordinator shall prepare a report for the facility for the Director of the Division of Youth Services and Facility Administrator/Director of Institutions identifying problem areas, suggesting corrective action, and providing comparison from the previous year's data and reports. This report shall be approved by the Director of the Division of Youth Services and made readily available to the public through the MDHS-DYS website.
- f. MDHS and/or OYDC may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of the facility but must indicate the nature of the material redacted.
- g. Before making aggregated sexual abuse data publicly available, MDHS and/or OYDC shall remove all personal identifiers.
- h. The above referenced data shall be retained securely for ten (10) years.

#### T. Facility Audits

- a. OYDC shall be audited at least once during each three-year PREA audit cycle as MDHS is a single entity agency.
- b. The audit shall be conducted by a DOJ Certified Auditor(s).
- c. The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type. OYDC shall bear the burden of demonstrating compliance with PREA standards.
- d. The auditor shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.
- e. The auditor shall have access to, and shall observe, all areas of the audited facility.

- f. The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).
- g. The auditor shall retain and preserve all documentation (including, e.g., video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request.
- h. The auditor shall be permitted to and interview a representative sample of youth and employees/staff in a private setting.
- i. The auditor shall review a sampling of any available videotapes and other electronically available data that may be relevant to the provisions being audited.
- j. Youth shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.
- k. Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.
- l. Audit reports shall state whether OYDC policies and procedures comply with relevant federal PREA standards and be provided to the Director of the Division of Youth Services, Facility Administrator/Director of Institutions, and PREA Coordinator.
- m. 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.
- n. For each PREA standard, the auditor shall determine whether OYDC reaches one of the following findings: Exceeds Standard (substantially exceeds 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.

- o. Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions regarding each standard provision for each audited facility and shall include recommendations for any required corrective action.
- p. Auditors shall redact any personally identifiable student or staff information from their reports but shall provide such information to the agency upon request and may provide such information to the Department of Justice.
- q. A finding of "Does Not Meet Standards" triggers a 180-day corrective action period. The auditor, along with the Director of the Division of Youth Services, Facility Administrator/Director of Institutions, PREA Coordinator, and any other designees shall jointly develop a corrective action plan to achieve compliance.
- r. 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 the facility.
- s. After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether OYDC has achieved compliance with those standards requiring corrective action.
- t. If OYDC 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.
- u. Within 90 days of the auditor's final determination, OYDC may lodge an appeal with the DOJ regarding any specific audit finding that it believes to be incorrect.
- v. If DOJ determines that OYDC has stated good cause for a re-evaluation, the OYDC may commission a re-audit by an auditor mutually agreed upon by DOJ and OYDC. The agency shall bear the costs of this re-audit.
- w. The findings of the re-audit shall be considered final.
- x. OYDC shall publish the auditor's final report on the agency website to ensure it is available to the public.

## U. State Compliance

- a. 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 audit(s).
- b. 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.