

Chapter: Rules for State-Operated Programs and Facilities Subchapter: Youth Rights and Remedies <b>Rule: Zero Tolerance for Sexual Abuse, Sexual Activity, and Sexual Harassment</b>  ACA: 4-JCF-3A-02, 3D-02, 3D-03, 3D-04, 3D-05, 3D-06, 3D-07, 3D-08, 3D-09, 4C-50 Statute(s): Prison Rape Elimination Act of 2003 (42 USC 15601 et seq.) 28 CFR Part 115 Texas Hum. Res. Code §242.101	<b>Effective Date: 4/21/14</b>  Page: 1 of 16  Replaces: GAP.380.9337, 12/15/08
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**RULE**

(a) **Purpose.**

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

(b) **Applicability.**

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

(c) **Definitions.**

- (1) **Exigent Circumstances**--any set of temporary and unforeseen circumstances that require immediate action to combat a threat to the security or institutional order of a facility.
- (2) **Residential Facilities**--high restriction facilities and medium restriction facilities as defined in [§380.8527](#) of this title.
- (3) **Sexual Abuse**--includes sexual abuse of a youth by another youth or sexual abuse of a youth by a staff member, contractor, or volunteer.
- (4) **Sexual Abuse of a Youth by Another Youth**--includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:
  - (A) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
  - (B) contact between the mouth and the penis, vulva, or anus;
  - (C) penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
  - (D) any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.
- (5) **Sexual Abuse of a Youth by a Staff Member, Contractor, or Volunteer**--includes any of the following acts, with or without consent of the youth:
  - (A) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
  - (B) contact between the mouth and the penis, vulva, or anus;

- (C) 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;
  - (D) 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;
  - (E) any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
  - (F) any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in subparagraphs (A) - (E) of this paragraph;
  - (G) 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
  - (H) voyeurism by a staff member, contractor, or volunteer.
- (6) **Sexual Activity**--includes any form of sexual misconduct, as defined in [§380.9503](#) of this title, that does not meet the definition of sexual abuse.
- (7) **Sexual Harassment**--includes:
- (A) repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one youth directed toward another; and
  - (B) 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.
- (8) **Voyeurism**--an invasion of a youth's privacy by a staff member, contractor, or volunteer for reasons unrelated to official duties, such as:
- (A) peering at a youth who is using a toilet in his or her cell to perform bodily functions;
  - (B) requiring a youth to expose his or her buttocks, genitals, or breasts; or
  - (C) taking images of all or part of a youth's naked body or of a youth performing bodily functions.
- (d) **General Provisions.**
- (1) It is the policy of TJJJ to ensure that any form of conduct that meets the definition of sexual abuse, sexual activity, or sexual harassment, regardless of consensual status, is strictly prohibited. Such conduct, if confirmed, will result in administrative disciplinary action and may result in criminal prosecution.
  - (2) It is the policy of TJJJ to comply with all applicable PREA-related standards adopted by the U.S. Department of Justice.
- (e) **Prevention Planning.**
- (1) **PREA Coordinator and PREA Compliance Managers.**
    - (A) TJJJ designates an upper-level staff member as the agency-wide PREA coordinator. This staff member's duties must be structured to allow sufficient time and authority to develop, implement, and oversee agency efforts to comply with PREA standards in all TJJJ-operated residential facilities.

- (B) TJJJ designates a PREA compliance manager at each TJJJ-operated residential facility. This staff member's duties must be structured to allow sufficient time and authority to coordinate the facility's efforts to comply with PREA standards.

(2) **Contracting with Other Entities for Confinement of Youth.**

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

(3) **Youth Supervision and Monitoring.**

(A) **Staffing Plans.**

- (i) Each TJJJ-operated residential facility develops and implements a written staffing plan to provide adequate levels of staffing and video monitoring to protect youth against sexual abuse.
- (ii) Deviations from the staffing plan are permitted only during limited and discrete exigent circumstances. The facility documents each deviation and the reason for the deviation.
- (iii) At least once each year, the division director over residential services, in consultation with the TJJJ PREA coordinator, reviews and documents whether any adjustments are needed to each TJJJ-operated facility's:
- (I) staffing plan;
  - (II) prevailing staffing patterns;
  - (III) deployment of video monitoring systems and other monitoring technologies; and
  - (IV) resources available to ensure adherence to the staffing plan.

(B) **Staff Ratios.**

Each TJJJ-operated high restriction facility maintains staff ratios in accordance with [§380.9955](#) of this title.

(C) **Unannounced Rounds.**

- (i) At each TJJJ-operated high restriction facility, a staff member with management responsibilities conducts and documents unannounced rounds to identify and deter sexual abuse and sexual harassment. The unannounced rounds must be conducted at least twice per month on each shift.
- (ii) At each TJJJ-operated medium restriction facility, a staff member with management responsibilities conducts and documents unannounced rounds to identify and deter sexual abuse and sexual harassment. The unannounced rounds must be conducted at least once per month on each shift.
- (iii) Staff members are prohibited from notifying other staff members that unannounced rounds are occurring, unless such notification is related to the legitimate operational functions of the facility.

(4) **Limits to Cross-Gender Viewing and Searches.**

- (A) TJJJ maintains restrictions and limitations on cross-gender searches in accordance with [§380.9709](#) of this title.
- (B) TJJJ does not search or physically examine a transgender or intersex youth for the sole purpose of determining the youth's genital status. The status may be determined during

conversations with the youth, by reviewing medical records, or as part of a broader medical examination conducted in private by a medical practitioner.

- (C) In TJJD-operated residential facilities, staffing patterns and physical barriers are implemented to enable youth to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine room checks.
  - (D) In TJJD-operated residential facilities, staff who are not the same gender as the youth must announce their presence when entering:
    - (i) a dormitory pod or wing at a high restriction facility, but only if there are no other staff of the opposite gender already in the pod or wing; or
    - (ii) a sleeping room at a medium restriction facility.
- (5) **Youth with Disabilities and Youth who are Limited English Proficient.**
- (A) TJJD takes appropriate steps to ensure that youth with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps include providing access to:
    - (i) interpreters; and
    - (ii) written materials provided in formats or through methods that ensure effective communication.
  - (B) TJJD takes reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment for youth who are limited English proficient, including the use of interpreters.
  - (C) When using interpreters to meet requirements of this paragraph:
    - (i) TJJD attempts to select interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary; and
    - (ii) TJJD does not use other youth to interpret, read, or otherwise assist except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise safety, the performance of first-response duties, or an investigation.
- (6) **Hiring and Promotion Decisions.**
- (A) TJJD does not hire or promote anyone who may have contact with youth and does not use the services of any contractor who may have contact with youth if the person:
    - (i) has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution, as defined in 42 U.S.C. 1997; or
    - (ii) has been convicted or civilly or administratively adjudicated of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse.
  - (B) For any person who may have contact with juveniles, TJJD considers any incidents of sexual harassment in determining whether to hire, promote, or contract for services.
  - (C) Before hiring new employees who may have contact with youth, TJJD:
    - (i) performs a criminal background records check;

- (ii) consults the child abuse registry maintained by Texas Department of Family and Protective Services (DFPS); and
    - (iii) makes its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.
  - (D) Before enlisting the services of a contractor who may have contact with youth, TJJD:
    - (i) performs a criminal background records check; and
    - (ii) consults the DFPS child abuse registry.
  - (E) TJJD conducts periodic criminal background records checks on current employees and contractors in accordance with [§385.8181](#) of this title.
  - (F) TJJD asks applicants and employees who may have contact with youth directly about previous misconduct described in subparagraph (A) of this paragraph in written applications or interviews for hiring or promotion and in any interviews or written self-evaluations conducted as part of reviews of current employees. TJJD employees have a continuing affirmative duty to disclose any such misconduct. Material omissions regarding such misconduct or the provision of materially false information is grounds for termination of employment.
  - (G) Unless prohibited by law, TJJD provides information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom the former employee has applied to work.
- (7) **Upgrades to Facilities and Technologies.**
  - (A) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, TJJD considers the effect of the design, acquisition, expansion, or modification on 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, TJJD considers how such technology may enhance the agency's ability to protect youth from sexual abuse.
- (f) **Responsive Planning.**
  - (1) **Evidence Protocol and Forensic Medical Examinations.**
    - (A) TJJD follows a uniform evidence protocol when responding to allegations of sexual abuse. The evidence protocol must be developmentally appropriate for youth.
    - (B) When evidentiarily or medically appropriate, TJJD transports youth who experience sexual abuse to a hospital, clinic, or emergency room that can provide for medical examination by a Sexual Assault Nurse Examiner (SANE), Sexual Assault Forensic Examiner (SAFE), or other qualified medical practitioners. All such medical examinations are provided at no financial cost to the youth.
    - (C) If requested by a youth who experiences sexual abuse, a victim advocate will accompany and support the youth through the forensic medical examination and investigatory interviews. The victim advocate provides emotional support, crisis intervention, information, and referrals.
    - (D) TJJD seeks to secure victim advocacy services from local rape crisis centers. If a rape crisis center is not available, TJJD makes these services available through a qualified staff member from a community-based organization or from a qualified TJJD staff member who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues.

**(2) Policies to Ensure Referrals of Allegations for Investigations.**

- (A) The TJJJ Office of Inspector General (OIG) reviews all allegations of sexual abuse and sexual harassment and assigns each allegation to the appropriate TJJJ department to complete a criminal investigation, administrative investigation, or both.
- (B) Under Texas Human Resources Code §242.102, the OIG is authorized to conduct criminal investigations.

**(g) Training and Education.****(1) Employee Training.**

- (A) TJJJ provides PREA-related training to all employees who may have contact with youth. The training is tailored to the unique needs and attributes of youth in juvenile facilities and to the specific gender(s) represented at the facility. The training addresses:
  - (i) the zero-tolerance policy for sexual abuse, sexual harassment, and sexual activity;
  - (ii) how to fulfill employees' responsibilities to prevent, detect, report, and respond to sexual abuse and sexual harassment;
  - (iii) youths' 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; and
  - (xi) relevant laws and rules regarding consent.
- (B) TJJJ requires all employees to receive the PREA-related training annually. An employee must receive additional training if he/she is reassigned from a male-only facility to a female-only facility or vice versa.
- (C) TJJJ documents employees' written verification that they understand the training they have received.

**(2) Volunteer and Contractor Training.**

TJJJ ensures and documents that all volunteers and contractors who have direct access to youth have been trained on and understand their responsibilities under this rule and any other related TJJJ policies and procedures.

**(3) Youth Education.**

- (A) During the admission process, TJJD provides youth with age-appropriate information about the agency's zero-tolerance policy and how to report incidents or suspicions of sexual abuse, sexual harassment, or sexual activity.
- (B) Within 10 calendar days after admission, TJJD provides comprehensive, age-appropriate education to youth about:
  - (i) their rights to be free from sexual abuse, sexual harassment, and retaliation for reporting such incidents; and
  - (ii) agency policies and procedures for responding to such incidents.
- (C) When a youth is transferred to a different TJJD-operated facility, TJJD provides the information in subparagraphs (A) and (B) of this paragraph to youth.
- (D) TJJD provides the information in formats accessible to all youth, including those who:
  - (i) are limited English proficient;
  - (ii) are deaf, visually impaired, or otherwise disabled; and
  - (iii) have limited reading skills.

**(4) Specialized Training: Investigations.**

- (A) TJJD staff members who investigate allegations of sexual abuse receive specialized training that includes:
  - (i) techniques for interviewing juvenile sexual abuse victims;
  - (ii) proper use of *Miranda* and *Garrity* warnings;
  - (iii) sexual abuse evidence collection in confinement settings; and
  - (iv) criteria and evidence required to substantiate a case for administrative action or prosecution referral.
- (B) TJJD maintains documentation that such training has been completed.

**(5) Specialized Training: Medical and Mental Health Care.**

TJJD ensures and maintains documentation that all full and part-time medical and mental health practitioners who work in TJJD-operated facilities have been trained in how to:

- (A) detect and assess signs of sexual abuse and sexual harassment;
- (B) preserve physical evidence of sexual abuse;
- (C) respond effectively and professionally to juvenile victims of sexual abuse and sexual harassment; and
- (D) report allegations or suspicions of sexual abuse and sexual harassment and to whom such reports must be made.

**(h) Screening for Risk of Sexual Victimization and Abusiveness.****(1) Obtaining Information from Youth.**

- (A) Within 72 hours after a youth's admission to TJJD, TJJD uses an objective screening instrument to obtain information about the youth's personal history and behavior to reduce the risk of sexual abuse by or upon another youth. Periodically throughout the youth's stay, information from the screening instrument is used to reassess housing and supervision assignments.

- (B) TJJJ establishes appropriate controls to prevent sensitive information obtained from these screenings from being exploited to the youth's detriment by staff or other youth.

(2) **Placement of Youth in Housing, Bed, Program, Education, and Work Assignments.**

- (A) TJJJ uses all information obtained under paragraph (1) of this subsection to make housing, bed, program, education, and work assignments for youth.
- (B) Except under limited situations involving self-injury set forth in [§380.9745](#) of this title, TJJJ does not place youth in isolation as a means of protection.
- (C) Lesbian, gay, bisexual, transgender, or intersex youth are not placed in particular housing, bed, or other assignments solely on the basis of such identification or status. TJJJ does not consider such identification or status as an indicator of likelihood of being sexually abusive.
- (D) For each transgender or intersex youth, TJJJ:
  - (i) makes a case-by-case determination when assigning the youth to a male or female facility and when making other housing and programming assignments, considering the youth's health and safety and any management or security concerns;
  - (ii) gives serious consideration to the youth's own views concerning his/her own safety when making placement and programming assignments;
  - (iii) reassesses the placement and programming assignments at least twice each year to review any threats to safety experienced by the youth; and
  - (iv) provides the opportunity to shower separately from other youth.

(i) **Reporting.**

(1) **Reports from Youth and Third Parties.**

- (A) Youth may report sexual abuse, sexual harassment, retaliation by others for reporting sexual abuse or harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents by:
  - (i) filing a written grievance in accordance with [§380.9331](#) of this title;
  - (ii) calling the 24-hour, toll-free hotline maintained by the OIG without being heard by staff or other youth;
  - (iii) telling any staff member, volunteer, or contract employee, who must then call the OIG hotline; or
  - (iv) calling the toll-free number maintained by the Office of Independent Ombudsman (OIO), which is a separate state agency, without being heard by staff or other youth.
- (B) TJJJ accepts verbal and written reports made anonymously or by third parties and promptly documents verbal reports. Anonymous and third-party reports may be submitted to TJJJ by calling the toll-free hotline maintained by the OIG. TJJJ publicly distributes information on how to report alleged abuse or sexual harassment on behalf of a youth by posting this information on the agency's website.
- (C) TJJJ provides youth with access to grievance forms in accordance with [§380.9331](#) of this title. TJJJ provides all staff with access to telephones to privately call the OIG hotline immediately if the staff member has reason to believe a youth has been a victim of sexual abuse or harassment.

**(2) Administrative Remedies.**

- (A) TJJD investigates all allegations of sexual abuse regardless of how much time has passed since the alleged incident.
- (B) As established by [§380.9331](#) of this title, youth are not required to use the youth grievance system or the informal conference request system to report an allegation of sexual abuse. Youth are not required to attempt to resolve the allegation with staff.
- (C) If a youth uses the grievance system or the conference request system to report an allegation of sexual abuse, the allegation is immediately forwarded to the OIG for assignment and investigation.
- (D) TJJD does not refer allegations of sexual abuse to staff members who are the subject of the allegation.

**(3) Youth Access to Outside Support Services and Legal Representation.**

- (A) TJJD provides youth with access to outside victim advocates for emotional support services related to sexual abuse by making available mailing addresses and telephone numbers, including toll-free numbers of any local, state, or national victim advocacy or rape crisis organizations. TJJD also provides youth with on-site access to representatives of such advocacy organizations in accordance with [§385.8183](#) of this title. TJJD enables reasonable communication between youth and these organizations and agencies in as confidential a manner as possible. TJJD informs youth, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.
- (B) TJJD maintains or seeks to enter into agreements with community service providers that are able to provide youth with confidential emotional support services related to sexual abuse. TJJD maintains documentation of such agreements or attempts to enter into such agreements.
- (C) TJJD provides youth with reasonable and confidential access to their:
  - (i) attorneys or other legal representatives, in accordance with [§380.9311](#) of this title; and
  - (ii) parents or legal guardians, in accordance with §§[380.9312](#), [380.9313](#), and [380.9315](#) of this title.

**(j) Official Response Following a Report of Alleged Sexual Abuse or Sexual Harassment.****(1) Staff and Agency Reporting Duties.**

- (A) All TJJD staff members must immediately report to OIG, in accordance with agency policy, any knowledge, suspicion, or information they receive regarding:
  - (i) an incident of sexual abuse;
  - (ii) an incident of sexual harassment;
  - (iii) retaliation against youth or staff who reported such an incident; and
  - (iv) any staff neglect or violation of responsibilities that may have contributed to such an incident or retaliation.
- (B) The requirement to report applies to incidents occurring in any residential facility, whether or not it is operated by TJJD.
- (C) The requirement to report includes staff members whose personal communications may otherwise be privileged, such as an attorney, member of the clergy, medical practitioner, social

worker, or mental health practitioner. Upon the initiation of services, these staff members must inform the youth of the staff member's duty to report abuse and the limits of confidentiality.

- (D) In addition to the reporting requirement in subparagraph (A) of this paragraph, TJJD staff must comply with mandatory child abuse reporting laws in Texas Family Code Chapter 261 and with applicable professional licensure requirements.
- (E) Any TJJD staff who receives a report of alleged sexual abuse is prohibited from revealing any information to anyone other than to the extent necessary, as specified in [§380.9333](#) of this title, to make treatment, investigation, and other security and management decisions.
- (F) Upon receiving an allegation of sexual abuse, the facility administrator or his/her designee must promptly report the allegation to the alleged victim's parents or legal guardians, unless the facility has official documentation showing the parents or legal guardians should not be notified. If the alleged victim is under the conservatorship of DFPS, the report is made to DFPS.
- (G) OIG assigns all reports of alleged sexual abuse and sexual harassment, including third-party and anonymous reports, to the appropriate investigator.

(2) **Agency Protection Duties.**

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

(3) **Reporting to Other Confinement Facilities.**

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

(4) **Staff First Responder Duties.**

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

- (A) separate the alleged victim and alleged abuser;
- (B) preserve and protect any crime scene until appropriate steps can be taken to collect any evidence; and
- (C) if the alleged abuse occurs within a time period that still allows for the collection of physical evidence:
  - (i) request that the alleged victim not take any actions that could destroy physical evidence, including as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
  - (ii) ensure that the alleged abuser does not take any actions that could destroy physical evidence.

(5) **Coordinated Response.**

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

(6) **Preservation of Ability to Protect Youth from Contact with Abusers.**

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

(7) **Agency Protection against Retaliation.**

Retaliation by a youth or staff member against a youth or staff member who reports sexual abuse or sexual harassment or who cooperates with an investigation is strictly prohibited. To help prevent retaliation, TJJD:

- (A) designates certain staff members to monitor the person who reported the allegation and the alleged victim to determine whether retaliation is occurring;
- (B) uses multiple measures to protect youth and staff from retaliation, such as housing transfers, removal of the alleged abuser from contact with the alleged victim, and emotional support services for youth or staff who fear retaliation;
- (C) for at least 90 days (except when the allegation is determined to be unfounded):
  - (i) monitors the reporter and the alleged victim for signs of retaliation including items such as disciplinary reports, housing or program changes, staff reassignments, and negative performance reviews; and
  - (ii) conducts periodic status checks on the alleged victim;
- (D) acts promptly to remedy any retaliation; and
- (E) takes appropriate measures to protect any other individual who cooperates with the investigation who expresses a fear of retaliation.

(8) **Post-Allegation Protective Custody.**

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

(k) **Investigations.**

(1) **Criminal and Administrative Agency Investigations.**

- (A) TJJD conducts prompt, thorough, and objective investigations for all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports.
- (B) For investigations of alleged sexual abuse, TJJD uses investigators who have received special training in sexual abuse investigations involving juvenile victims.
- (C) TJJD investigators must:
  - (i) gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data;

- (ii) interview alleged victims, suspected perpetrators, and witnesses; and
  - (iii) review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- (D) TJJD will not terminate an investigation solely because the source of the allegation recants the allegation.
- (E) When the quality of evidence appears to support criminal prosecution, TJJD may conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- (F) TJJD investigators must assess the credibility of an alleged victim, suspect, or witness on an individual basis and must not determine credibility by the person's status as a youth or staff.
- (G) TJJD does not require youth who allege sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation.
- (H) In addition to meeting requirements set forth in [§380.9333](#) of this title, administrative investigations of sexual abuse must:
- (i) include an effort to determine whether staff actions or failures to act contributed to the abuse; and
  - (ii) be documented in a written report that includes a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
- (I) Criminal investigations conducted by the OIG must be documented in a written report that includes:
- (i) a thorough description of physical, testimonial, and documentary evidence; and
  - (ii) copies of all documentary evidence, when feasible.
- (J) Substantiated allegations of conduct that appear to be criminal are referred for prosecution.
- (K) TJJD maintains all criminal and administrative investigation reports for as long as the alleged abuser is incarcerated by TJJD or employed by TJJD, plus at least five years.
- (L) TJJD does not terminate investigations solely on the basis that the alleged abuser or victim is no longer in the custody of TJJD or employed by TJJD.
- (M) If an outside agency conducts an investigation into an allegation of sexual abuse, TJJD staff must cooperate with the outside investigators. TJJD management will attempt to remain informed about the progress of the investigation.
- (2) **Evidentiary Standard for Administrative Investigations.**

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

(3) **Reporting to Youth.**

The notification requirements in this paragraph apply until the youth is discharged from TJJD. TJJD documents all notifications and attempted notifications.

- (A) Following an investigation into a youth's allegation of sexual abuse suffered in a TJJD facility, TJJD informs the youth whether the allegation is substantiated, unsubstantiated, or unfounded. If TJJD did not conduct the investigation, TJJD management will request the information from the investigating agency so that the youth may be informed.

- (B) Following a youth's allegation that a staff member has committed sexual abuse against the youth, TJJD informs the youth whenever the following events occur, except when the allegation is determined to be unfounded:
  - (i) the staff member is no longer posted within the youth's housing unit;
  - (ii) the staff member is no longer employed at the facility;
  - (iii) TJJD learns that the staff member has been indicted on a charge related to the sexual abuse; or
  - (iv) TJJD learns that the staff member has been convicted on a charge related to the sexual abuse.
  
- (C) Following a youth's allegation that he/she has been sexually abused by another youth, TJJD informs the alleged victim whenever the following events occur:
  - (i) TJJD learns that the alleged abuser has been indicted on a charge related to the sexual abuse; or
  - (ii) TJJD learns that the alleged abuser has been convicted on a charge related to the sexual abuse.

**(I) Discipline.**

**(1) Disciplinary Sanctions for Staff.**

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

**(2) Corrective Action for Contractors and Volunteers.**

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

**(3) Interventions and Disciplinary Sanctions for Youth.**

- (A) A youth may be subject to disciplinary sanctions for engaging in sexual abuse only when:
  - (i) there is a criminal finding of guilt or an administrative finding that the youth engaged in youth-on-youth sexual abuse; and

- (ii) the discipline is determined through a Level II due process hearing held in accordance with [§380.9555](#) of this title.
  - (B) Any disciplinary sanctions must be commensurate with the nature and circumstances of the abuse committed, the youth's disciplinary history, and the sanctions imposed for comparable offenses by other youth with similar histories.
  - (C) The disciplinary process must consider whether a youth's mental disabilities or mental illness contributed to his/her behavior when determining what type of sanction, if any, should be imposed.
  - (D) TJJD does not impose isolation as a disciplinary sanction.
  - (E) TJJD offers youth abusers counseling and other interventions designed to address and correct underlying reasons or motivations for the abuse. TJJD may require participation in such counseling and interventions as a condition of access to behavior-based incentives, but not as a condition to access general programming or education.
  - (F) A youth may be disciplined for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
  - (G) TJJD may not discipline a youth if the youth made a report of sexual abuse in good faith based upon a reasonable belief that the alleged conduct occurred, even if an investigation does not establish evidence sufficient to substantiate the allegation.
  - (H) In accordance with [§380.9503](#) of this title, TJJD may also discipline a youth for engaging in prohibited sexual activity that does not meet the definition of abuse.
- (m) **Medical and Mental Care.**
- (1) **Medical and Mental Health Screenings; History of Sexual Abuse.**
    - (A) Regardless of the results of the screening in subsection [\(h\)\(1\)](#) of this section, TJJD offers all youth an appointment with a medical and mental health practitioner within 14 days after the intake screening.
    - (B) Any information obtained related to sexual victimization or abusiveness that occurred in an institutional setting must be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by law.
    - (C) Medical and mental health practitioners must obtain informed consent from youth before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the youth is under the age of 18.
  - (2) **Access to Emergency Medical and Mental Health Services.**
    - (A) TJJD ensures that youth victims of sexual abuse receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.
    - (B) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, staff first responders must take preliminary steps to protect the victim and must immediately notify the appropriate medical and mental health practitioners.

- (C) TJJJ ensures that youth victims of sexual abuse while incarcerated are offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.
- (D) TJJJ provides treatment services to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising from the incident.

(3) **Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers.**

- (A) TJJJ offers medical and mental health evaluation and, as appropriate, treatment to all youth who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.
  - (i) The evaluation and treatment of such victims includes, as appropriate:
    - (I) follow-up services;
    - (II) treatment plans; and
    - (III) referrals for continued care following their transfer to other facilities or their release from custody.
  - (ii) TJJJ provides such victims with medical and mental health services consistent with the community level of care.
- (B) TJJJ offers pregnancy tests to youth victims of sexually abusive vaginal penetration while incarcerated. If pregnancy results, TJJJ ensures the youth is provided timely and comprehensive information about and timely access to all lawful pregnancy-related medical services. See [§380.9195](#) of this title for additional information about services for pregnant youth.
- (C) TJJJ ensures that tests for sexually transmitted infections are offered, as medically appropriate, to youth victims of sexual abuse while incarcerated.
- (D) TJJJ provides treatment services to a victim of sexual abuse while incarcerated without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising from the incident.
- (E) TJJJ attempts to conduct a mental health evaluation of all known youth-on-youth abusers within 60 days after learning of such abuse history and offers treatment when deemed appropriate by mental health practitioners.

(n) **Sexual Abuse Incident Reviews.**

- (1) TJJJ conducts an incident review at the conclusion of every sexual abuse investigation unless the allegation is determined to be unfounded.
- (2) Managers, supervisors, investigators, and medical or mental health practitioners participate in the review.
- (3) The review team:
  - (A) considers whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
  - (B) considers whether the incident or allegation was motivated by race; ethnicity; gender identity; status or perceived status as lesbian, gay, bisexual, transgender, or intersex; gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;

- (C) examines the area where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
  - (D) assesses the adequacy of staffing levels in that area during different shifts;
  - (E) assesses whether monitoring technology should be used or enhanced to supplement supervision by staff; and
  - (F) submits a report of its findings and recommendations to the facility administrator, the local PREA compliance manager, and other appropriate staff members.
- (4) The facility where the incident allegedly occurred must implement the review team's recommendations or document its reasons for not doing so.

(o) **Data Collection and Storage.**

- (1) TJJJ collects data for every allegation of sexual abuse at TJJJ-operated facilities using a standardized instrument and set of definitions and aggregates the data at least once each year. TJJJ also maintains, reviews, and collects data as needed from all available incident-based documents, such as reports, investigation files, and sexual abuse incident reviews.
- (2) TJJJ develops its data collection instrument to include the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the U.S. Department of Justice.
- (3) TJJJ obtains incident-based and aggregate data from each residential facility operating under a contract with TJJJ.
- (4) TJJJ securely retains all sexual abuse data it collects.

(p) **Publication of Sexual Abuse Data.**

- (1) TJJJ reviews aggregate sexual abuse data to assess and improve the effectiveness of its policies, practices, and training. Following this review, TJJJ prepares an annual report of its findings and corrective actions for each facility and the agency as a whole. The report will be posted on the agency's website.
- (2) Annually, TJJJ posts on its website all aggregated sexual abuse data from TJJJ-operated and contracted facilities.

(q) **Audits of PREA Standards.**

TJJJ conducts audits pursuant to 28 CFR §§115.401 - 115.405.

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