



SANTA CLARA COUNTY PROBATION DEPARTMENT

“WHAT STAFF NEED TO KNOW ABOUT THE PREA STANDARDS”

A. ZERO TOLERANCE POLICY:

- 1) The Santa Clara County Probation Department (SCC-PD) has a written policy that mandates zero tolerance toward all forms of sexual abuse and sexual harassment perpetrated against residents (youth in custody) in our juvenile facilities. Any staff who violates this policy shall be subject to disciplinary sanctions up to and including termination.

B. PREA COORDINATOR AND PREA COMPLIANCE MANAGERS

- 1) The SCC-PD has a PREA Coordinator, who is a Probation Manager. The PREA Coordinator develops, implements and oversees the Department's efforts to comply with the PREA standards in the Department and within its juvenile facilities (i.e. Juvenile Hall and the Ranch).
- 2) The Department also has PREA Compliance Managers. They are the Ranch Probation Manager and the Juvenile Hall Probation Manager assigned to Control.

C. SUPERVISION AND MONITORING

- 1) PREA requires each facility (i.e. Juvenile Hall and the Ranch) to develop, implement, and document a staffing plan that provides for adequate levels of staffing, and, where applicable video monitoring, to protect residents against sexual abuse. Beginning October 1, 2017, PREA requires each secure facility to maintain staff ratios of a minimum of 1:8 during resident waking hours, and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances which shall be fully documented.
- 2) Each facility (i.e. Juvenile Hall and the Ranch) is required to implement a policy and practice of having senior staff, i.e. senior Group/Probation Counselors and Supervisors conduct and document unannounced rounds during all shifts to identify and deter staff sexual abuse and sexual harassment. The established policy shall prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

D. LIMITS TO CROSS-GENDER SEARCHES

- 1) Facilities shall not conduct cross-gender strip searches or cross-gender visual cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners. (Note that both Juvenile Hall and the Ranch) prohibit cross-gender searches of any kind; please refer to your facility's policy and procedures manual).
- 2) Facilities shall not conduct cross-gender pat-down searches except in exigent circumstances. (Please refer to your facility's policy and procedures manual).
- 3) Each facility (i.e. Juvenile Hall and the Ranch) shall document and justify all cross-gender strip searches, cross-gender visual body cavity searches, and cross-gender pat-down searches. (Note that cross-gender Strip searches and Visual body cavity searches are prohibited) (Refer to your facility's policy and procedures manual)

- 4) No facility shall search or physically examine a transgender or intersex resident for the sole purpose of determining the resident's genital status. If the resident's genital status is unknown,, it may be determined during conversations with the resident, by reviewing medical records or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.
- 5) The Department shall train counselors/supervising counselors and all staff, who provide direct supervision of residents as part of their job responsibilities, in how to conduct cross-gender pat-down searches and searches of transgender and intersex residents, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

E. TAKING SHOWERS / PERFORMING BODILY FUNCTIONS AND CHANGING CLOTHING

- 1) Facilities shall implement policies and procedures that enable residents to shower, perform bodily functions and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering a resident housing unit.

F. RESIDENTS WITH DISABILITIES

- 1) PREA requires that the Department shall take appropriate steps to ensure that residents with disabilities including, for example, residents who are deaf, or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities, have an equal opportunity to participate in, or benefit from all aspects of the Department's efforts to prevent, detect and respond to sexual abuse and sexual harassment. Such shall include, when necessary, to ensure effective communication with residents who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary. In addition, the Department shall ensure that written materials are provided in formats or through methods that ensure effective communication with residents with disabilities, including residents who have intellectual disabilities, limited reading skills, or who are blind or have low vision
- 2) PREA also requires the Department to take reasonable steps to ensure meaningful access to all aspects of the Department's efforts to prevent, detect and respond to sexual abuse and sexual harassment to residents who are limited English proficient (LEP).
- 3) No facility shall rely on resident interpreters, resident readers, or other types of resident assistants, except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the resident's safety, the performance of first response duties, or the investigation of the resident's allegations.

G. HIRING AND PROMOTION DECISIONS

- 1) The Department shall not hire or promote anyone who may have contact with residents, and shall not enlist the services of any contractor who may have contact with residents, who –
 - (a) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution;

- (b) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
 - (c) Has been civilly or administratively adjudicated to have engaged in the activity described in (b).
- 2) PREA requires the Department to consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with residents.
 - 3) Before hiring new employees who may have contact with residents, the Department shall:
 - i. Perform a criminal background records check (a) Consult any child abuse registry maintained by the State or locality in which the employee would work; and (b) Consistent with Federal, State, and local law, the Department shall make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.
 - ii. The Department shall also perform a criminal background records check, and consult applicable child abuse registries, before enlisting the services of any contractor who may have contact with residents.
 - iii. The Department shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with residents or have in place a system for otherwise capturing such information for current employees.
 - iv. PREA requires the Department to ask all applicants and employees who may have contact with residents directly about previous sexual misconduct in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The Department is required to impose upon employees a continuing affirmative duty to disclose any such misconduct. Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.
 - v. Unless prohibited by law, the Department is required to provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

H. SERVICES FOR RESIDENT VICTIMS OF SEXUAL ABUSE

- 1) The Department is required to offer all residents who experience sexual abuse timely, unimpeded access to emergency medical treatment to include access to forensic medical examinations without financial cost to the victim. Such examinations shall be performed by Sexual Abuse Forensic Examiners (SAFE) or Sexual Abuse Nurse Examiners (SANE).
- 2) The Department shall attempt to make available to the victim a victim advocate from a Rape Crisis Center
- 3) Resident victims of sexual abuse while in custody shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections and prophylaxis
- 4) Resident victims of sexually abusive vaginal penetration while in custody shall be offered pregnancy tests. If pregnancy results from conduct specified, such victims shall receive timely and information about and timely access to lawful pregnancy related medical services.

I. EMPLOYEE TRAINING

- 1) PREA requires the Department to train employees who may have contact with residents on such topics as, but not limited to:
 - The Department's Zero Tolerance Policy
 - Staff responsibilities regarding prevention, detection and reporting incidents of sexual abuse and sexual harassment
 - Residents' rights to be free from sexual abuse and sexual harassment
 - The rights of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment.

J. RESIDENT EDUCATION ABOUT SEXUAL ABUSE, SEXUAL HARASSMENT AND RETALIATION

- 1) During the intake process, residents are required to receive information explaining, in an age appropriate fashion, the Department's Zero Tolerance Policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.
- 2) Within 10 days of intake, residents are to be provided comprehensive, age appropriate education, either in person or through a video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents. The Department has produced an orientation video and brochures to educate residents upon admission to Juvenile Hall and the Ranch.

K. SCREENING OF RESIDENTS FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS

- 1) Within 72 hours of a resident's arrival at Juvenile Hall, and periodically throughout the resident's confinement, the Department shall conduct screening/assessment by using an objective screening instrument to obtain information about each resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident.
- 2) The Department shall ensure that appropriate controls are implemented to ensure that sensitive information obtained from residents is not exploited to the resident's detriment by staff or other residents.
- 3) The information obtained from the screening of residents shall be used to make housing, bed, program, education, and work assignments for residents with the goal of keeping all residents safe and free from sexual abuse.

L. RESIDENTS PLACED IN ISOLATION / PROTECTIVE CUSTODY / HOUSING/UNIT ASSIGNMENTS

- 1) Residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other residents safe and then only until an alternative means of keeping all residents safe can be arranged.
- 2) During any period of isolation, the Department/facility shall not deny residents daily large muscle exercise and any legally required educational programming or special education services. Residents in isolation shall receive daily visits from a medical or mental health care clinician. Residents in isolation shall also have access to other programs and work opportunities to the extent possible.
- 3) Lesbian, gay, bisexual, transgender or intersex (LGBTI) residents shall not be placed in a particular housing, bed, or other assignments solely on the basis of such identification or status,

nor shall the Department consider LGBTI identification or status as an indicator or likelihood of being sexually abusive.

- 4) In deciding whether to assign a transgender or intersex resident to a facility for male or female residents, and in making other housing and programming assignments, the Department/facility shall consider on a case by case basis whether a placement would ensure the resident's health and safety, and whether the placement would present management or security problems.
- 5) Placement and programming assignments for each transgender or intersex resident shall be reassessed at least twice each year to review any threats to safety experienced by the resident.
- 6) A transgender or intersex resident's own views with respect to his or her own safety shall be given serious consideration.
- 7) Transgender and intersex residents shall be given the opportunity to shower separately from other residents.
- 8) If a resident is isolated, the facility shall clearly document (1) The basis of the facility's concern for the resident's safety; and (2) The reason why no alternative means of separation can be arranged.
- 9) Every 30 days, the facility shall afford each resident isolated a review to determine whether there is a continuing need for separation from the general population.
- 10) When an agency learns that a resident is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the resident.

M. RESIDENT REPORTING

- 1) PREA requires the Department to establish multiple internal mechanisms for residents to privately report abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents. In this regard, both Juvenile Hall and the Ranch has identified the following ways residents can report:
 - 2) (i) Filing a grievance (ii) Completing a Sick-Call Request Form (iii) Dropping a note in the Grievance Box (iv) Telling a teacher, (v) Counselor, (vi) The Manager, (vii) A Supervisor, (viii) Medical and Mental health staff, (ix) the Deputy Chief etc., etc.
- 3) PREA also requires the Department to provide at least one way for residents to report abuse or harassment to a public or private entity or office that is not part of the Probation Department and that is able to receive and immediately forward residents report to the Probation Department. As a result of this requirement, the Probation Department has signed a Service Agreement (SA) with the Santa Clara County YWCA, Rape Crisis Center, to receive such complaints from residents. Residents can use the Red phone Hotline in both clinics in Juvenile Hall and the James Ranch or call (408)-287-3000 to report incidents. Apart from receiving reports from residents, the SA requires the RCC to also provide victim advocates and emotional support services to resident victims of sexual abuse.
- 4) PREA mandates staff to accept reports from residents that are made verbally, in writing, anonymously, and from third parties and staff shall promptly document any verbal reports they receive. Third parties include, fellow residents, family members, attorneys, outside advocates, any trusted adults, etc., etc.
- 5) Facilities are required to provide residents with access to tools (i.e. writing materials) necessary for residents to make a written report.

- 6) The Department is required to provide a method for staff to privately report sexual abuse and sexual harassment of residents. For example, staff can request to talk privately with the Chief, Deputy Chief, etc.
- 7) The Department is required to not impose a time limit on when a resident may submit a grievance regarding an allegation of sexual abuse. In essence, no “statute” of limitation should be imposed.
- 8) According to PREA, the Department shall not require a resident to use any informal grievance process, or to otherwise attempt to resolve with staff, or the staff member who is the subject of the complaint, an alleged incident of sexual abuse.
- 9) The Department is required to establish procedures for the filing of an emergency grievance alleging that a resident is subject to a substantial risk of imminent sexual abuse. Such filing should be reviewed and provided response within 48 hours.
- 10) PREA requires the Department to establish a method to receive third party reports of sexual abuse and sexual harassment and distribute publicly information on how to report such incidents. In compliance with PREA, the Department has published information on its website explaining how third parties can file reports on residents’ behalf.
- 11) PREA requires, and the Department’s policy mandates, all staff to report immediately any knowledge, suspicion, or information staff receive regarding an incident of sexual abuse or sexual harassment that occurred in a facility, retaliation against residents or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
- 12) When the Department/facility learns that a resident is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the resident.

N. STAFF REPORTING RESPONSIBILITIES

In addition to Juvenile Hall policy, the Ranch policy and State’s statute on Child Abuse Reporting Procedures, all staff are required to report immediately any knowledge, suspicion, or information received regarding an incident of sexual abuse or sexual harassment that occurred in a facility; retaliation against resident or staff who reported such incident and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. Such incidents shall be reported to the unit supervisor, the facility manager or in their absence directly to the Deputy Chief for Institution.

Upon receiving an allegation of sexual abuse in a facility, the supervisor shall notify the facility Probation Manager, who, in turn, will notify the Deputy Chief for Institutions. The Deputy Chief shall notify the following:

- The Probation Chief
- The juvenile court judge that handled the victim’s case or the victim judge of record
- The victim’s parents or guardians, unless there is official documentation showing the parents or legal guardians should not be notified.
- The victim’s case worker if the victim is involved in the child welfare system.

O. CONFIDENTIALITY

- 1) Apart from reporting to designated supervisors or officials and designated State or local service agencies, staff are prohibited from revealing any information related to a sexual abuse report to anyone other than to the extent necessary as specified in the Juvenile Hall and Ranch policies, to make treatment, investigation, and other security and management decisions.

P. STAFF FIRST RESPONDER DUTIES

- 1) PREA requires that upon learning of an allegation that a resident was sexually abused, the first staff member to respond to the report shall:
 - i. Separate the alleged victim and the abuser
 - ii. Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence
 - iii. If the abuse occurred within a time period that still allows for the collection of physical evidence, 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;
 - iv. If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

Q. PROTECTING RESIDENTS FROM CONTACT WITH ABUSERS

- 1) PREA stipulates that no Department or any other governmental entity responsible for collective bargaining on the Department's behalf shall enter into or renew any Collective Bargaining Agreement that limits the Department's ability to remove alleged sexual staff abusers from contact with residents pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.
- 2) Any use of segregated housing/ protective custody/isolation to protect a resident who is alleged to have suffered sexual abuse shall be subject to the requirements under Page 4, Section F of this document.

R. CRIMINAL AND ADMINISTRATIVE AGENCY INVESTIGATIONS

- 1) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as resident or staff.
- 2) No Department or agency shall require a resident who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
- 3) Administrative investigations shall include an effort to determine whether staff actions or failures to act contributed to the abuse.
- 4) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.
- 5) Following a resident's allegation that a staff member has committed sexual abuse against a resident, the Department shall subsequently inform the resident (unless the Department has determined that the allegation is unfounded), whenever:

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

S. DISCIPLINARY SANCTIONS FOR STAFF

(a) PREA requires that staff shall be subject to disciplinary sanctions up to and including termination for violating the Department 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 the Department 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 the Department 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, unless the activity was clearly not criminal, and to any relevant licensing bodies.

T. DISCIPLINARY SANCTIONS FOR RESIDENTS

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

(b) Any disciplinary sanctions shall commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories. In the event a disciplinary sanction results in the isolation of a resident, the Department/facility shall not deny the resident daily large-muscle exercise or access to any legally required educational programming or special education services. Residents in isolation shall receive daily visits from a medical or mental health care clinician. Residents shall also have access to other programs and work opportunities to the extent possible.

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

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

(e) The Department/Facility may discipline a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

- (f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.
- (g) The Department may, in its discretion, prohibit all sexual activity between residents and may discipline residents for such activity. The Department may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

U. REPORTING TO RESIDENTS FOLLOWING SEXUAL ABUSE OF RESIDENTS

- (a). Following an investigation into a resident's allegation of sexual abuse suffered in Juvenile Hall or at the Ranch, the Department shall inform the resident as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
- (b). If the Probation Department did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the resident.
- (c). Following a resident allegation that a staff member has committed sexual abuse against the resident, the Department shall subsequently inform the resident (unless the Department has determined that the allegation is unfounded) whenever:
 - 1. The staff member is no longer posted within the resident's unit;
 - 2. The staff member is no longer employed at the facility;
 - 3. The Department learns that the staff member has been indicted on a charge related to sexual abuse within the facility;
 - 4. The Department learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
- (d). Following a resident's allegation that he or she has been sexually abused by another resident, the Department shall subsequently inform the alleged victim whenever:
 - 1. The Department learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
 - 2. The Department learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
- (e). All such notifications or attempted notifications shall be documented.