

# Prison Rape Elimination Act

## 1300.1 PURPOSE AND SCOPE

This policy provides guidance for compliance with the Prison Rape Elimination Act of 2003 (PREA) and the implementing regulation that establishes standards (PREA Rule) to prevent, detect, and respond to sexual abuse and sexual harassment (28 CFR 115).

Sexual contact, sexual harassment, and acts of sexually abusive behavior among residents and/or between residents and staff, volunteers, contractors, interns, or official guests/visitors, regardless of consensual status is prohibited. The Department will immediately respond to allegations and fully investigate.

### 1300.1.1 DEFINITIONS

Definitions related to this policy include:

**Intersex** - A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

**Sexual abuse** - Any of the following acts, if the youth 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
- (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 (28 CFR 115.6)
- (e) Voyeurism (28 CFR 115.6; 15 CCR 1302)

Sexual abuse also includes abuse by a staff member, contractor, or volunteer as follows, with or without consent of the youth:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
- Contact between the mouth and the penis, vulva, or anus
- 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
- 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

# County of Santa Clara Probation Department

CURRENT Juvenile Detention Policy

## *Prison Rape Elimination Act*

---

- 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
- Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described above
- Any display by staff members, contractors, or volunteers of their uncovered genitalia, buttocks, or breast in the presence of a youth
- Voyeurism by a staff member, contractor, volunteer, intern, or official guest/visitor

**Sexual harassment** - Repeated and unwelcome sexual advances; requests for sexual favors; verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one youth that are directed toward another; 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 (28 CFR 115.6).

**Transgender** - A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.

**Voyeurism** - An invasion of privacy of a youth by another individual during private activities such as using the toilet or undressing, or by staff for reasons unrelated to official duties, such as peering at a youth who is using a toilet in his or her room to perform bodily functions; requiring the youth to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a youth's naked body or of a youth performing bodily functions. Exceptions would include exigent circumstances or when such viewing is incidental to routine room safety checks (15 CCR 1302).

### **1300.2 POLICY**

This department has zero tolerance with regard to sexual abuse and sexual harassment in this facility and with contracted programs. This department will take appropriate affirmative measures to protect all youth from sexual abuse and harassment, and promptly and thoroughly investigate all allegations of sexual abuse and sexual harassment.

### **1300.3 PRESERVATION OF ABILITY TO PROTECT YOUTH**

The Department shall not enter into or renew any collective bargaining agreement, memorandum of understanding, or other agreement that limits the department's ability to remove alleged staff sexual abusers from contact with any youth pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted (28 CFR 115.366).

### **1300.4 PREA COORDINATOR**

The Deputy Chief shall appoint a Probation Manager with sufficient time and authority to develop, implement, and oversee department efforts as a PREA Coordinator to comply with the PREA

# County of Santa Clara Probation Department

CURRENT Juvenile Detention Policy

## *Prison Rape Elimination Act*

---

standards. The PREA coordinator shall review facility policies and practices, and make appropriate compliance recommendations to the Deputy Chief (28 CFR 115.311).

The PREA coordinator's responsibilities shall include:

- (a) Developing, implementing and overseeing the Department's efforts to comply with the PREA standards for both Juvenile Hall and the Ranch.
- (b) Developing a written plan to coordinate response among staff first responders, medical and behavioral/mental health practitioners, investigators, and facility management to an incident of sexual abuse. The plan must also outline the department's approach to identifying imminent sexual abuse toward youth and preventing and detecting such incidents (28 CFR 115.311; 28 CFR 115.365; 28 CFR 115.362).
- (c) Ensuring that within 10 days of intake, youth are provided with comprehensive, age-appropriate education, either in person or through video, regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding the department's policies and procedures for responding to such incidents. The Department shall maintain documentation of youth participation in these educational sessions (28 CFR 115.333).
- (d) Developing a staffing plan to provide adequate levels of staffing and video monitoring, where applicable, in order to protect youth from sexual abuse. This includes maintaining the minimum required security-staff-to-youth ratios, documenting deviations from the staffing plan and the reasons for those deviations, and reviewing the staffing plan a minimum of once per year. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration (28 CFR 115.313):
  1. Generally accepted juvenile detention and secure residential practices.
  2. Any judicial findings of inadequacy.
  3. Any findings of inadequacy from federal investigative agencies.
  4. Any findings of inadequacy from internal or external oversight bodies.
  5. All components of the facility's physical plant, including blind spots or areas where staff members or youth may be isolated.
  6. The composition of the youth population.
  7. The number and placement of supervisory staff.
  8. Institution programs occurring on a particular shift.
  9. Any applicable state or local laws, regulations, or standards.
  10. The prevalence of substantiated and unsubstantiated incidents of sexual abuse.
  11. Any other relevant factors.
- (e) Ensuring that, when designing, acquiring, expanding, or modifying facilities, or when installing or updating a video-monitoring system, electronic surveillance system, or other monitoring technology, consideration is given to the department's ability to protect youth from sexual abuse (28 CFR 115.318).

# County of Santa Clara Probation Department

## CURRENT Juvenile Detention Policy

### *Prison Rape Elimination Act*

---

- (f) Ensuring that any contract for the confinement of youth includes the requirement to adopt and comply with the PREA standards, including obtaining incident-based and aggregated data, as required in 28 CFR 115.387. Any new contract or contract renewal shall provide for department contract monitoring to ensure that the contractor is complying with the PREA standards (28 CFR 115.312).
- (g) Making reasonable efforts to enter into agreements with community service providers to provide youth with confidential emotional support services related to sexual abuse. The facility shall provide youth with access to outside victim advocates for emotional support services related to sexual abuse by giving youth mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, state, or national victim advocacy or rape crisis organizations. Persons detained solely for civil immigration purposes shall be given contact information for immigrant services agencies. The facility shall enable reasonable communication between youth and these organizations and agencies in as confidential a manner as possible. The facility 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 (28 CFR 115.353).
- (h) Implementing a process by which youth are provided with reasonable and confidential access to their attorneys (or other legal representation), and with reasonable access to parents or legal guardians (28 CFR 115.353).
- (i) Implementing a process by which youth may report sexual abuse and sexual harassment to a public/private entity or an office that is not part of the Department, and by which the outside entity or office is able to receive and immediately forward youth reports of sexual abuse and sexual harassment to the Deputy Chief, allowing the youth anonymity (28 CFR 115.351).
- (j) Establishing a process to ensure accurate, uniform data is collected for every allegation of sexual abuse at facilities under the direct control of this department, using a standardized instrument and set of definitions. Upon request, the Department shall provide all such data from the previous calendar year to the U.S. Department of Justice (DOJ) no later than June 30 (28 CFR 115.387).
  - 1. The data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the U.S. DOJ.
  - 2. The data shall be aggregated at least annually.
- (k) Establishing a process to monitor the conduct and treatment of youth or staff who have reported sexual abuse, and the conduct and treatment of detainees who were reported to have suffered sexual abuse.
- (l) Ensuring that the following are published on the department's website or by other means, if no website exists:
  - 1. Department policy governing investigations of allegations of sexual abuse and sexual harassment or the referral of such investigations of sexual abuse or

# County of Santa Clara Probation Department

CURRENT Juvenile Detention Policy

## *Prison Rape Elimination Act*

---

sexual harassment (unless the allegation does not involve potentially criminal behavior) (28 CFR 115.322)

2. Information on how to report sexual abuse and sexual harassment on behalf of a youth (28 CFR 115.354)
- (m) Ensuring audits are conducted pursuant to 28 CFR 115.401 through 28 CFR 115.405 (28 CFR 115.393).
- (n) Implementing a protocol requiring mid-level or higher-level supervisors to conduct and document unannounced inspections to identify and deter sexual abuse and sexual harassment. The protocol shall prohibit announcing when such inspections are to occur, unless it is necessary for operational considerations (28 CFR 115.313).
- (o) Ensuring agreements with outside investigating agencies include PREA requirements, including a requirement to keep the County of Santa Clara Probation Department informed of the progress of the investigation (28 CFR 115.371).
- (p) Ensuring the Department conducts follow-up criminal background records checks at least once every five years on staff members or contractors who may have contact with youth or has in place a system for otherwise capturing such information (28 CFR 115.317).

### 1300.4.1 PREA COMPLIANCE MANAGER (SUPERVISOR)

The PREA compliance manager (supervisor) need not be "upper-level," but should have access to facility staff, managers, and supervisors in order to guide implementation within the facility. The department designated supervisor will have sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards.

In tandem with the PREA Coordinator, the responsibilities of the Compliance Manager shall include the following:

1. Provide oversight of designated facility's implementation and compliance efforts as they relate to PREA standards.
2. Coordinate and communicate on a regular basis with the PREA Coordinator as to the facility's compliance with PREA standards.
3. Responsible for hands-on involvement with auditors conducting reviews at their facility and for developing corrective action plans necessary as a result of the audit report
4. Responsible for ensuring all PREA training is conducted for facility staff and that all staff have been properly trained on PREA prior to their interaction with residents.
5. Responsible for ensuring that residents have access to information regarding PREA, the Department's zero-tolerance policy on sexual abuse and sexual harassment, and that information is readily available to residents if they need to report any incident.
6. Responds and reviews all reported sexual related incidents i.e., grievances, sick call slips and verbal reports; and
7. Conducts fact finding on alleged sexual abuse or sexual harassment in respective facility.

# County of Santa Clara Probation Department

CURRENT Juvenile Detention Policy

## *Prison Rape Elimination Act*

---

8. Responsible for ensuring confidentiality of reported information and monitoring any retaliation that may happen as a result of a reported incident.

### **1300.5 REPORTING SEXUAL ABUSE, HARASSMENT, AND RETALIATION**

Any employee, including medical and behavioral/mental health staff, department representative, volunteer, or contractor who becomes aware of an incident of sexual abuse, sexual harassment, or retaliation against youth or staff shall immediately notify a supervisor, who will forward the matter to the appropriate agency(s) (28 CFR 115.361). Staff members may also privately report sexual abuse and sexual harassment of youth (e.g., Manager or Deputy Chief) (28 CFR 115.351).

Youth may report sexual abuse or sexual harassment incidents anonymously or to any staff member they choose. Staff shall accommodate all youth requests to report allegations of sexual abuse or harassment. Staff shall accept reports made verbally, in writing, anonymously, or from third parties, and shall promptly document all verbal reports. The juvenile facility shall provide youth with reasonable access to tools necessary to make a written report (28 CFR 115.351).

Threats or allegations of sexual abuse and sexual harassment, regardless of the source, shall be documented and referred for investigation. Sexual abuse and sexual harassment reports shall only be made available to those who have a legitimate need to know, and in accordance with this policy and applicable law (28 CFR 115.361).

#### **1300.5.1 REPORTING TO OTHER FACILITIES**

If there is an allegation that a youth was sexually abused while confined at another facility, the Deputy Chief or authorized designee shall notify the head of that facility as soon as possible but not later than 72 hours after receiving the allegation. The Deputy Chief or authorized designee shall ensure that the notification has been documented (28 CFR 115.363).

#### **1300.5.2 ADDITIONAL REPORTING REQUIREMENTS FOR YOUTH VICTIMS**

Upon receiving any allegation of sexual abuse of a youth (28 CFR 115.361):

- (a) All staff members shall comply with mandatory child abuse reporting laws (Penal Code § 11166).
- (b) The Deputy Chief or authorized designee shall report the allegation to the victim's parents or legal guardians unless the Department is in possession of official documentation that the parents or legal guardians should not be notified.
- (c) If the victim is under the guardianship of the child welfare system, the Deputy Chief or authorized designee shall report the allegation to the victim's caseworker (instead of parents or legal guardians).
- (d) If a juvenile court retains jurisdiction over the victim, the Deputy Chief or authorized designee shall also report the allegation to the victim's attorney or other legal representative within 14 days of receiving the allegation.

### **1300.6 RETALIATION**

All youth and staff who report sexual abuse or sexual harassment, or who cooperate with sexual abuse or sexual harassment investigations, shall be protected from retaliation.

# County of Santa Clara Probation Department

CURRENT Juvenile Detention Policy

## *Prison Rape Elimination Act*

---

Protective measures, including housing changes, transfers, removal of alleged abusers from contact with victims, administrative reassignment or reassignment of the victim or alleged perpetrator to another housing area, and support services for youth or staff who fear retaliation, shall be utilized (28 CFR 115.367).

The Deputy Chief or the authorized designee shall assign a supervisor to monitor, for at least 90 days, the conduct and treatment of youth or staff who report sexual abuse or sexual harassment, as well as youth who were reported to have suffered sexual abuse, to determine if there is any possible retaliation. The supervisor shall act promptly to remedy any such retaliation. The assigned supervisor should consider youth disciplinary reports, housing or program changes, negative staff performance reviews, or reassignment of staff members. Monitoring may continue beyond 90 days if needed. Youth monitoring shall also include periodic status checks. The Deputy Chief or authorized designee should take reasonable steps to limit the number of people with access to the names of individuals being monitored and should make reasonable efforts to ensure that staff members who pose a threat of retaliation are not entrusted with monitoring responsibilities.

If any other individual who cooperates with an investigation expresses a fear of retaliation, the juvenile facility shall take reasonable measures to protect that individual against retaliation (28 CFR 115.367).

### **1300.7 FIRST RESPONDERS**

If an allegation of youth sexual abuse is made, the first sworn staff member to respond shall follow approved PREA response procedures (28 CFR 115.364). Refer to PREA Procedures for further guidance:

- (a) Separate the parties.
- (b) Request medical assistance as appropriate. If no qualified health care or behavioral/mental health professionals are on-duty when a report of recent abuse is made, staff first responders shall take preliminary steps to protect the victim and shall immediately notify the appropriate qualified health care and behavioral/mental health professionals (28 CFR 115.382).
- (c) Establish a crime scene to preserve and protect any evidence. Identify and secure witnesses until steps can be taken to collect any evidence.
- (d) If the time period allows for collection of physical evidence, request that the alleged victim, and ensure that the alleged abuser, do not take any actions that could destroy physical evidence (e.g., washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, eating).

If the first responder is not a sworn staff member, the responder shall request the alleged victim to refrain from any actions that could destroy physical evidence and then immediately notify a sworn staff member.

Should an investigation involve youth who have disabilities or who have limited English proficiency, the Department 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 interpreter

# County of Santa Clara Probation Department

CURRENT Juvenile Detention Policy

## *Prison Rape Elimination Act*

---

could compromise youth safety, the performance of first responder duties, or the investigation of sexual abuse or sexual harassment allegations (28 CFR 115.316).

### **1300.8 SEXUAL ABUSE VICTIMS**

Youth who are victims of sexual abuse shall be transported to the nearest appropriate location for treatment of injuries and collection of evidence, and for crisis intervention services (28 CFR 115.382). Depending on the severity of the injuries, transportation may occur by a staff member or by ambulance, in either case with appropriate security to protect the staff, the youth, and the public, and to prevent escape.

A victim advocate from a rape crisis center should be made available to the victim. If a rape crisis center is not available, the Department shall make available a qualified member of a community-based organization, or a qualified health care or behavioral/mental health professional from the Department, to provide victim advocate services. Efforts to secure services from a rape crisis center shall be documented. A rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 34 USC § 12511, to sexual assault victims of all ages. A rape crisis center that is part of a government unit may be used if it is not part of the criminal justice system (such as a law enforcement agency) and it offers a level of confidentiality comparable to the level at a nongovernmental entity that provides similar victim services (28 CFR 115.321).

### **1300.9 EXAMINATION, TESTING, AND TREATMENT**

Examination, testing, and treatment shall be conducted according to approved federal, state, local laws and Department procedures:

- (a) Forensic medical examinations shall be performed as evidentiary or medically appropriate, without financial cost to the victim. Where possible, these examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANE)s. If neither SAFEs nor SANEs are available, other qualified medical practitioners can perform the examination. The Department shall document its efforts to provide SAFEs or SANEs (28 CFR 115.321).
  1. Any evidentiary examination and the initial treatment of victims of sexual assault shall be conducted at a health facility separate from the juvenile facility that is properly equipped and staffed with personnel trained and experienced in treating victims of sexual assaults.
- (b) If requested by the victim, a victim advocate, a qualified department staff member, or a qualified community organization staff member shall accompany the victim through the forensic medical examination process and investigatory interviews. That person will provide emotional support, crisis intervention, information, and referrals (28 CFR 115.321).
- (c) Provisions shall be made for testing the victim for sexually transmitted diseases (28 CFR 115.382).



# County of Santa Clara Probation Department

## CURRENT Juvenile Detention Policy

### *Prison Rape Elimination Act*

---

- (d) Counseling for the treatment of sexually transmitted diseases, if appropriate, shall be provided.
- (e) Victims shall be offered information about, and given access to, emergency contraception, prophylaxis for sexually transmitted infections, and follow-up treatment for sexually transmitted diseases (28 CFR 115.382; 28 CFR 115.383). This shall be done in a timely manner.
- (f) Victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests. If pregnancy results from the abuse, such victims shall receive comprehensive information about, and access to, all lawful pregnancy-related medical services (28 CFR 115.383). This shall be done in a timely manner.
- (g) Victims shall be provided with follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities or their release from in-custody (28 CFR 115.383).
- (h) 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 (28 CFR 115.382; 28 CFR 115.383).
- (i) The Physician/Health administrator or behavioral/mental health staff shall obtain informed consent from youth before reporting information to juvenile facility staff about prior sexual victimization that occurred somewhere other than an institutional setting, unless the youth is under the age of 18 (28 CFR 115.381).
- (j) Sharing of medical and behavioral/mental health information related to sexual victimization that occurred in an institutional setting shall be limited to medical and behavioral/mental health staff and juvenile facility staff to the extent necessary to inform treatment plans and security or management decisions (28 CFR 115.381).
  - 1. Youth shall be informed at the initiation of services of the duty to report and the limits of confidentiality (28 CFR 115.361).

### **1300.10 SEXUAL ABUSE AND SEXUAL HARASSMENT INVESTIGATIONS**

An administrative investigation, criminal investigation, or both shall be completed for all allegations of sexual abuse and sexual harassment (28 CFR 115.322). Administrative investigations shall include an effort to determine whether the staff's actions or inaction contributed to the abuse. All administrative and/or criminal investigations 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. Only investigators who have completed training on sexual abuse investigation (e.g., Sheriff, District Attorney investigators) shall be assigned to investigate these cases (28 CFR 115.371).

When practicable, an investigator of the same sex as the victim should be assigned to the case. Sexual abuse and sexual harassment investigations should be conducted promptly and continuously until completed. Investigators should evaluate reports or threats of sexual abuse and sexual harassment without regard to a youth's sexual orientation, sex, or gender identity. Investigators should not assume that any sexual activity among youth is consensual.

# County of Santa Clara Probation Department

## CURRENT Juvenile Detention Policy

### *Prison Rape Elimination Act*

---

The departure of the alleged abuser or victim from the employment or control of the juvenile facility or Department shall not provide a basis for terminating an investigation (28 CFR 115.371).

If the investigation is referred to another agency for investigation, the Department shall request that the investigating agency follow the requirements as provided in 28 CFR 115.321 (a) through (e). The referral shall be documented. The Department shall cooperate with the outside agency investigation and shall request to be informed about the progress of the investigation (28 CFR 115.371). If criminal acts are identified as a result of the investigation, the case shall be presented to the appropriate prosecutor's office for filing of new charges (28 CFR 115.371).

It is the responsibility of the Internal Affairs Deputy Chief or Authorized Designee to have direct contact with the law enforcement agency in charge of the pending investigation. This is for the sole purpose of obtaining up to date information regarding the investigation.

Evidence collection shall be based on a uniform evidence protocol that is developmentally appropriate for youth, if applicable, and adapted from or otherwise based on the most recent edition of the DOJ'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 (28 CFR 115.321).

Youth alleging sexual abuse shall not be required to submit to a polygraph examination or other truth-telling device as a condition for proceeding with an investigation (28 CFR 115.371).

#### 1300.10.1 INVESTIGATIVE FINDINGS

All completed written investigations shall be forwarded to the Deputy Chief or, if the allegations may reasonably involve the Deputy Chief, to the higher authority. The higher authority or the authorized designee shall review the investigation and determine whether any allegations of sexual abuse or sexual harassment have been substantiated by a preponderance of evidence (28 CFR 115.371; 28 CFR 115.372).

#### 1300.10.2 DISCIPLINARY SANCTIONS FOR STAFF

The staff members shall be subject to disciplinary sanctions, up to and including termination, for violating this policy. Termination shall be the presumptive disciplinary sanction for staff members who have engaged in sexual abuse. All discipline shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

All terminations for violations of sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to the law enforcement agency that would handle any related investigation and to any relevant licensing bodies (28 CFR 115.376).

#### 1300.10.3 REPORTING TO YOUTH

The Deputy Chief or the authorized designee shall inform a victim youth in writing whether an allegation has been found to be substantiated, unsubstantiated, or unfounded. If

# County of Santa Clara Probation Department

## CURRENT Juvenile Detention Policy

### *Prison Rape Elimination Act*

---

the Department did not conduct the investigation, the Department shall request relevant information from the investigative agency in order to inform the youth.

If a staff member is the accused (unless the Department has determined that the allegation is unfounded), the youth shall also be informed whenever:

- (a) The staff member is no longer assigned to the youth's unit or employed at the facility.
- (b) The Department learns that the staff member has been indicted or convicted on a charge related to sexual abuse within the facility.

If another youth is the accused, the alleged victim shall be notified whenever the Department learns that the alleged abuser has been indicted or convicted on a charge related to sexual abuse within the facility.

All notifications or attempted notifications shall be documented. When notification is made while the youth is in in-custody, the youth shall be requested to sign a copy of the notification letter. The letter will be added to the case file (28 CFR 115.373).

#### **1300.11 SEXUAL ABUSE AND SEXUAL HARASSMENT BETWEEN STAFF AND YOUTHS**

Sexual abuse and sexual harassment between staff, volunteers, or contract personnel and youth is strictly prohibited (28 CFR 115.311; 28 CFR 115.376). The fact that a youth may have initiated a relationship or sexual contact is not a defense to violating this policy.

Any incident involving allegations of staff-on-youth sexual abuse or sexual harassment shall be referred to the Internal Affairs unit for investigation.

##### **1300.11.1 SEXUAL ABUSE BY CONTRACTOR OR VOLUNTEER**

Any contractor or volunteer who engages in sexual abuse within the facility shall be immediately prohibited from having any contact with youth. The contractor or volunteer shall be promptly reported to the law enforcement agency that would investigate such allegations and brought to the attention of any relevant licensing bodies (28 CFR 115.377).

#### **1300.12 SEXUAL ABUSE INCIDENT REVIEW**

An incident review shall be conducted at the conclusion of every sexual abuse investigation unless the allegation has been determined to be unfounded (28 CFR 115.386). The review should occur within 30 days of the conclusion of the investigation.

The review team shall include upper-level management officials and seek input from line supervisors, investigators, and qualified health care and/or behavioral/mental health professionals, as appropriate:

- (a) Consider whether the investigation indicates a need to change policy or practice in order to better prevent, detect, or respond to sexual abuse.
- (b) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification status or perceived status; gang affiliation; or other group dynamics at the facility.

# County of Santa Clara Probation Department

CURRENT Juvenile Detention Policy

## *Prison Rape Elimination Act*

---

- (c) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers may enable abuse.
- (d) Assess the adequacy of staffing levels in the area during different shifts.
- (e) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff.
- (f) Prepare a written report of the team's findings, including but not limited to determinations made pursuant to paragraphs (a)-(e) of this section, and any recommendations for improvement. The report should be submitted to the Chief Probation Officer and the PREA coordinator.

The Deputy Chief or the authorized designee shall implement the recommendations for improvement or document the reasons for not doing so.

### **1300.13 DATA REVIEWS**

This department shall conduct an annual review of collected and aggregated incident-based sexual abuse data. The purpose of these reviews is to assess and improve the effectiveness of sexual abuse prevention, detection, and response policies, practices, and training by:

- (a) Identifying problem areas.
- (b) Identifying corrective actions taken.
- (c) Recommending corrective actions.
- (d) Comparing current annual data and corrective actions with those from prior years.
- (e) Assessing the department's progress in addressing sexual abuse.

The reports shall be approved by the Deputy Chief and made available through the department's website. Material may be redacted from the reports when publication would present a clear and specific threat to the safety and security of the facility. However, the nature of the redacted material shall be indicated (28 CFR 115.388).

All aggregated sexual abuse data from County of Santa Clara Probation Department facilities and private facilities with which it contracts shall be made available to the public at least annually through the department's website. Before making aggregated sexual abuse data publicly available, the Department shall remove all personal identifiers (28 CFR 115.389).

### **1300.14 RECORDS**

All case records and reports associated with a claim of sexual abuse and sexual harassment, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment or counseling shall be retained in accordance with confidentiality laws.

The Department shall retain all written reports from administrative and criminal investigations pursuant to this policy for as long as the alleged abuser is held or employed by the Department,

# County of Santa Clara Probation Department

CURRENT Juvenile Detention Policy

## *Prison Rape Elimination Act*

---

plus five years unless the abuse was committed by a youth and applicable law requires a shorter period of retention (28 CFR 115.371).

All other data collected pursuant to this policy shall be securely maintained for at least 10 years after the date of the initial collection, unless federal, state, or local law requires otherwise (28 CFR 115.389).

### **1300.15 REFERENCES**

Refer to the Prison Rape Elimination Act Procedures in the **Juvenile Hall Procedure Manual**.

Refer to the Sexual Assault Coordinated Response Plan Procedure in the **James Ranch Procedure Manual**.

Refer to the Transgender, Gender Nonconforming, and Intersex (TGNCI) Youth in Confinement Facilities Procedure in the **Juvenile Hall and James Ranch Procedure Manuals**.

[County of Santa Clara Probation Department Forms Repository](#)