

BUREAU OF JUVENILE JUSTICE SERVICES

POLICY AND PROCEDURE

Title: Reporting and Investigating Alleged Child/Resident Abuse, Sexual Abuse and/or Sexual Harassment

Manual Section: Program Management

Manual Number: 1.06B

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Approved By:



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Attachments: Appendix A: First Responder Evidence Protocol for Sexual Assault

Authority:

The authority of the Bureau of Juvenile Justice Services (BJJS) to issue this policy and procedure is given by Article VII of the Public Welfare Code, Act of 1967, P.L. 31, No. 21, the Juvenile Act, 42 Pa.C.S. Sections 6301 et seq, and the Prison Rape Elimination Act of 2003 (PREA) Juvenile Facility Standards.

Applicability:

Youth Development Centers/Youth Forestry Camps (YDC/YFC) system and contracted programs under the jurisdiction of BJJS.

Rationale:

To ensure the safety, security and well-being of residents; incidents of alleged abuse are to be appropriately reported and investigated.

Definitions:

Adult (As defined by the Adult Protective Services - Act 70) – A resident of the Commonwealth of Pennsylvania between 18 and 59 years of age who has a physical or mental impairment that substantially limits one or more major life activities.

Adult Protective Services (APS) – Those activities, resources and supports provided by the Department of Human Services (DHS), Adult Protective Services (APS) Division, to adults under the Adult Protective Services Act to detect, prevent, reduce or eliminate abuse, neglect, exploitation and abandonment.

Bureau of Juvenile Justice Services (BJJS) Director – A director who has oversight responsibility for the Bureau of Juvenile Justice Services.

Child – An individual who meets one of the following conditions:

- Is under 18 years of age.
- Is under 21 years of age and committed an act of delinquency before reaching 18 years of age and remains under the jurisdiction of the juvenile court.
- Was adjudicated dependent before reaching 18 years of age and while engaged in instruction or treatment, requests the court to retain jurisdiction until the instruction or treatment is completed, but a child may not remain in a course of instruction or treatment past 21 years of age.
- Has mental retardation, a mental illness or a serious emotional disturbance, with a transfer plan to move to an adult setting by 21 years of age.

Child Abuse – Any recent act, or failure to act, by a perpetrator, which causes non-accidental serious physical injury to a child less than 18 years of age.

Any act or failure to act by a perpetrator, which causes non-accidental serious mental injury to or sexual abuse or sexual exploitation of a child less than 18 years of age.

Any recent act, failure to act or a series of such acts or failures to act by a perpetrator, which causes an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child less than 18 years of age.

Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide essentials of life, including adequate

Qualified Medical Practitioner (Sexual Abuse) – A health professional who has successfully completed specialized training for treating sexual abuse victims.

Resident – A person committed by court order and placed in a facility under the jurisdiction of the Bureau of Juvenile Justice Services.

Resident Abuse – An act by an employee toward, or with a resident, that does not have as its legitimate goal the healthful, proper and humane care and treatment of the resident, or any act or omission that reasonably may cause or causes physical or emotional harm or injury to a resident, or deprives a resident of his or her rights, as defined by DHS, or any non-action, which results in emotional or physical injury to a resident.

Sexual Harassment – Repeated and unwelcome sexual advances, requests for sexual favors, verbal comments, physical conduct, gestures, actions of a derogatory/offensive sexual nature or creating an intimidating, hostile or offensive environment, by one person directed toward another.

Repeated verbal comments or gestures of a sexual nature to a resident 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.

Unfounded Allegation – There is no evidence or sufficient evidence to support a report of suspected abuse following an allegation that was investigated.

Policy:

All facilities under the jurisdiction of BJJS shall report and independently investigate all allegations of resident abuse.

Procedure:

A. Reporting Alleged Child/Resident Abuse, Sexual Abuse, and/or Sexual Harassment

1. Resident Reporting

- a. The agency shall provide multiple ways for residents to report abuse, sexual abuse, and/or sexual harassment; retaliation by other residents or staff for reporting abuse, sexual abuse, and/or sexual harassment; and staff neglect or violation of responsibilities that may have contributed to such incidents.

These methods include, but are not limited to:

medical care, which endangers a child's life or development or impairs the child's functioning.

Child Protective Services (CPS) – Those services and activities provided by the Department of Human Services (DHS) and each county children and youth agency for children reported to be neglected, abused or exploited.

Designated Electronic Reporting System – An electronic management information system that captures data related to residents and incidents involving residents, employees and facilities.

Employee – A person employed by the Commonwealth of Pennsylvania, who is assigned to a YDC/YFC facility, BJJS or an education provider.

Facility Program Director – An employee who has oversight responsibility of a youth forestry camp, one or more areas of a secure treatment facility, or one or more areas of a youth development center.

Founded Report – A child abuse report made pursuant to 23Pa. C.S. 6303, if there has been any judicial adjudication based on a finding that a child who is the subject of the report has been abused, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegation of child abuse.

Indicated Report – A child abuse report made pursuant to 23 Pa. C.S. 6303, an investigation by the county children and youth agency or DHS determines that substantial evidence of the alleged child abuse exists based on any of the following:

- Available medical evidence.
- The county children and youth agency investigation.
- An admission of the acts of abuse by the perpetrator.

Mandated Reporter- A person who is required to make a report of suspected child abuse.

Medical Practitioner – A health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of their professional practice.

Perpetrator (As defined by Child Protective Services Law) – a person who has committed child abuse; can be a parent of a child, a person responsible for a child's welfare, an individual 14 years of age or older residing in the same home as a child, or paramour of a child's parent.

Perpetrator – A person who has committed an act of misconduct, offense, or crime.

- 1.) Direct reporting to an employee or contracted entity
- 2.) Private reporting to a public or private entity, or office that is not part of the agency
- 3.) The grievance process

2. Employee Reporting

- a. When an employee observes, or has any reason to suspect child/resident abuse, sexual abuse, sexual harassment, and/or retaliation against residents or staff who report such an incident, that employee shall immediately ensure the individual's safety and report the suspected abuse to ChildLine. After making the report to ChildLine the employee should immediately notify the Facility Program Director or designee. If a Facility Program Director is the alleged perpetrator, then the employee positioned in the next highest level of authority will be notified.
- b. Apart from reporting to designated supervisors or officials and designated State or local services agencies, staff shall be prohibited from revealing any information related to an abuse, sexual abuse, and/or sexual harassment report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.
- c. Upon receiving any allegation of abuse, sexual abuse and/or sexual harassment, the employee shall immediately make an oral or written report to ChildLine. Employees making an oral report shall also make a written report to ChildLine within 48 hours. Written reports may be submitted electronically.
- d. The Facility Program Director or designee will make an oral report to the alleged victim's parents or legal guardians unless the parent or legal guardian is the alleged perpetrator or the facility has official documentation showing the parents or legal guardian should not be notified. If a juvenile court retains jurisdiction over the alleged victim, the Facility Program Director or designee shall also report the allegation to the juvenile's attorney or other legal representative of record within 48 hours of receiving the allegation.
- e. When abuse is suspected and the employee determines a resident is an adult, as defined in the Adult Protective Services Act (Act 70), the employee shall ensure the safety of the individual and immediately make an oral report to the Protective Services Hotline. The employee shall immediately notify the Facility Program Director or designee following the report to the APS agency. Within 48 hours, the Facility Program Director or designee shall submit a written report to the designated APS Agency.

An oral report to law enforcement is required immediately if the employee suspects the resident/adult is the victim of sexual abuse, serious injury or serious bodily injury, or that a death is suspicious. The employee shall notify the Facility Program Director or designee following this report unless notification would jeopardize the investigation or pose further risk to the resident.

- f. No employee regardless of job title or classification has discretionary power in screening reports of suspected child/resident abuse, sexual abuse, and/or sexual harassment brought to their attention.
- g. If the employee or the Facility Program Director or designee suspects that a violation of either the Pennsylvania Crimes Code or Motor Vehicle Code has occurred, the Pennsylvania State Police (PSP)/local law enforcement shall be notified.

3. Third Party Reporting

Agency employees must accept reports made verbally, in writing, and anonymously, from third parties and shall immediately make an oral report of suspected abuse to the DHS via the appropriate Statewide toll-free telephone number or submit a written report using electronic technologies.

- a. Third parties, including, but not limited to, fellow residents, staff members, family members, parents, legal guardian, attorneys, probation officers and outside advocates, shall be permitted to assist residents in filing reports of abuse, sexual abuse and/or sexual harassment, and requests for administrative remedies relating to allegations of abuse, sexual abuse, and/or sexual harassment, and shall also be permitted to file such requests on behalf of residents.
- b. The agency shall distribute information on how to report abuse, sexual abuse and/or sexual harassment.

B. Responding to Allegations of Child/Resident Abuse, Sexual Abuse, and/or Sexual Harassment

- 1. Once the Facility Program Director or designee has been notified of an alleged incident of child/resident abuse, including sexual abuse, immediate arrangements shall be made by supervisory and/or management employees to have the child/resident examined by a medical practitioner at the facility or the resident is to be transported to a medical facility to be examined by a medical practitioner. The medical practitioner examining the child/resident shall be advised by the designated supervisory/management employee, of the alleged abuse and shall document the findings, including the types of injuries and treatment provided. In instances of sexual abuse, the examination shall

be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The facility shall document its efforts to provide SAFEs or SANEs.

2. If determined to be relevant to the investigation, a supervisory/ management employee or designee shall:
 - Secure the site of the incident to preserve any evidence
 - Remove the alleged perpetrator from the site of the alleged incident
 - Photograph the site of the incident
 - Photograph the child/resident as appropriate. Note: In cases of suspected sexual abuse, agency personnel will not photograph a child/resident's breast, buttocks, or genitalia. In cases where sexual abuse is not suspected, photographs of breasts or buttocks may only be taken by Health Services with a Health Services Supervisor approval. Pictures shall not be shared without the approval of the Facility Program Director and/or the BJJS Director of Health Services.
 - All employees who have witnessed or have knowledge concerning the incident shall complete an incident report in the designated electronic reporting system. These reports shall be written prior to the end of the employee's shift. Note: Where instructed, supervisory/management employees are to direct employees on duty to remain beyond their scheduled shifts to facilitate the investigation of the incident.
 - In addition to the standard procedure, first responders to incidents of recent sexual abuse (generally, within 72 hours) shall follow the First Responder Evidence Protocol for Sexual Assault (Appendix A) to maximize the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

Findings of the internal investigation are to be shared upon request with investigating agencies. Designated investigators shall be trained in DHS resident abuse investigation.

3. The alleged perpetrator shall have no direct contact with the alleged victim. Direct contact includes the care, supervision, guidance or control of children or routine interaction with children. Based upon available information, the alleged perpetrator may also be denied direct contact with all residents and/or be suspended pending the outcome of the investigation.
4. A written plan to ensure the safety and well-being of the child/resident must be prepared and implemented immediately. The written plan is subject to the county children and youth agency's approval.

5. The facility shall provide residents access to outside victim advocates for emotional support services related to child/resident abuse, sexual abuse and/or sexual harassment, by providing, posting, or otherwise making accessible mailing addresses and telephone numbers, including toll free hotline numbers of local, State, or national victim advocacy or rape crisis organizations agencies with which BJJS has formal agreements.

The facility shall enable reasonable communication between residents and these organizations and agencies, in as confidential a manner as possible.

The facility shall inform residents, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse shall be forwarded to authorities in accordance with mandatory reporting laws.

6. The facility shall maintain and/or enter into agreements with community service providers that are able to provide residents with confidential emotional support services related to sexual abuse. The facility shall maintain records of such agreements.
7. The facility shall also provide residents with confidential access to their attorneys or other legal representation and reasonable access to parents or legal guardians.
8. The facility shall protect all residents and staff who report abuse, sexual abuse, or sexual harassment or cooperate with investigations from retaliation by other residents or staff. Protective measures may include housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting abuse, sexual abuse, and/or sexual harassment or for cooperating with investigations.
9. For at least 90 days following a report of abuse, sexual abuse, or sexual harassment. The facility shall monitor the conduct or treatment of residents or staff who reported the abuse and of residents who were reported to have suffered abuse to see if there are changes suggesting possible retaliation by residents or staff, and shall act promptly to remedy any such retaliation. Items the facility should monitor include any resident disciplinary reports, housing, or program changes, negative performance reviews or reassignments of staff. The facility shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need. Findings shall be documented on the MCPC/MDT Attendance Sheet and as necessary on the MDT/MCPC Monthly Supplement Form.
10. A facility's obligation to monitor shall cease if the allegation is determined to be unfounded.

C. Investigation Process

1. Upon notification of suspected child abuse, the employee shall notify ChildLine. The county children and youth agency is the sole civil agency responsible to investigate reports of alleged child abuse in facilities operated by DHS. The Facility Program Director or designee will immediately commence an internal investigation or instruct the assigned investigator to conduct an investigation immediately. The internal administrative investigation is not in lieu of the county children and youth agency investigation and is conducted to determine adherence to policies and procedures. This investigation shall not impede the county children and youth agency investigation.
2. Upon notification of a resident/adult who is suspected to be neglected, abused or exploited, the employee shall ensure the individuals safety and immediately notify the Protective Services Hotline and law enforcement officials. Established agency investigation policy and procedure shall be followed. Full notification of investigation activities, documented investigation results and remedial actions shall be made to the designated APS Agency.
3. PSP/Local Law Enforcement Investigations – If PSP/local law enforcement is conducting an investigation, the facility investigation may only continue after authorization from PSP/local law enforcement.
4. Investigation Report – It is the responsibility of the designated investigator to prepare a comprehensive report that shall be submitted to the Facility Program Director within 24 hours after completion of their investigation.
5. At the conclusion of the investigation, the alleged perpetrator shall be advised of the findings. This report shall be maintained on file in a location determined by the Facility Program Director. If after a CPS or APS investigation, the report is determined to be unsubstantiated, the case shall be closed. Documents and all other information relating to the investigation shall be maintained for a period of one year under procedures established by the department.
6. When the county children and youth agency, APS Agency or PSP/local law enforcement, conducts an investigation of alleged abuse, sexual abuse, and/or sexual harassment, the Facility Program Director, employees and residents shall provide full cooperation.

D. Determination of Child Abuse or Resident Abuse Policy Violation

1. The determination of child abuse can only be made by the county children and youth agency. However, the BJJS Director or designee makes

determinations of resident abuse policy violations. This determination is made through reviewing the investigation report. If the incident is determined by the county children and youth agency to be unfounded, the following shall occur:

- a. The Facility Program Director or designee shall immediately inform the alleged perpetrator's supervisor or manager of the decision.
 - b. The supervisor or manager shall meet with the alleged perpetrator and the alleged victim, prior to the employee working with the alleged victim, to ensure that both parties resume a working relationship.
 - c. The notification of unfounded abuse shall be attached to the BJJS Investigative Report and maintained in a file designated "Unfounded Child Abuse". All other reports regarding this investigation shall be destroyed and the employee's record is not to contain any record of the alleged incident or investigation.
2. The determination of unfounded abuse by the county children and youth agency does not preclude an accused employee from any disciplinary or corrective action taken by the employer in situations where DHS, BJJS or facility policies have been violated. A determination of resident abuse, at the conclusion of an internal investigation, may result in disciplinary or corrective action being taken, up to and including termination from employment.
3. If the initial internal investigation provided evidence indicating an employee committed or contributed to the alleged child abuse or resident abuse, the investigation is continued and concluded no later than 30 days after the initial reporting of the incident to the Facility Program Director or designee unless circumstances warrant an extension approved by the BJJS Director. During the period of investigation, the employee may be, depending on the nature of the offense and circumstances:
- a. Permitted to remain on duty in resident care areas, but may not have direct contact with the alleged victim at any time.
 - b. Permitted to remain on duty, but assigned to non-resident duties, if available, as determined by agency management.
 - c. Suspended pending investigation. Suspensions shall be ordered if evidence indicates that the employee committed child abuse or resident abuse. The employee will be notified verbally as soon as possible, and in writing, regarding the suspension. This action must be reported immediately to the DHS Labor Relations Section, Harrisburg.

4. When the county children and youth agency determines the report indicated child abuse as defined by the Child Protective Services Law, the county children and youth agency will request a written statement from the Facility Program Director or designee regarding the steps planned and taken to protect the victim and other residents in the care of the facility from further abuse by the perpetrator. The director or designee shall supply this statement to the county children and youth agency within ten days of the request.

E. Reporting to Residents

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

6. A facility's obligation to report under this standard shall cease if the resident is released from the facility's custody.

F. Interventions and Disciplinary Sanctions for Residents

1. A resident may be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the resident engaged in resident-on-resident sexual abuse, resident-on-resident sexual activity, or following a criminal finding of guilt for resident-on-resident sexual abuse.
2. The facility shall develop accountability measures for a resident filing a grievance related to alleged abuse, sexual abuse, and/or sexual harassment only where the facility demonstrated that the resident filed the grievance in bad faith.
3. Any disciplinary sanctions shall be commensurate with the nature and circumstances, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories. Regardless of disciplinary sanctions, the facility shall not deny the resident daily large-muscle exercise or access to any legally required educational programming or special education services. During any disciplinary sanctions that include seclusion or exclusion, residents shall receive daily visits from a medical or mental health care clinician. Residents shall have access to other programs and work opportunities to the extent possible.
4. The disciplinary process shall consider whether a resident's mental disabilities or mental illness contributed to their behavior when determining what type of sanction, if any, should be imposed.
5. The resident shall be offered therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse or incident. The facility may require participation in such interventions as a condition of access to any behavior-based incentives, but not as a condition to access general programming or education.
6. The facility may discipline a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
7. For the purpose of disciplinary action, a report of abuse, sexual abuse, and/or sexual harassment 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.

Related Policies: BJJIS Policy 1.09B Management of Investigations

BJJIS Policy 3.03A Resident Grievances

BJJIS Policy 4.05 Response to Reports of Sexual Abuse and/or
Sexual Harassment

BJJIS Policy 6.01B Restraint Reduction/Restrictive Procedures

BUREAU OF JUVENILE JUSTICE SERVICES

First Responder Protocol for Sexual Assault

1. If you witness a sexual assault in progress, or you suspect a sexual assault has taken place recently (generally, within 72 hours), the first thing that you need to do is ensure that you can safely take action; get help if necessary. If you are not direct supervision staff, call for help immediately.
2. You and other available staff will need to separate the victim and perpetrator as quickly as possible. If it is immediately apparent that someone else has taken part in or witnessed the assault, you may need to separate that individual as well. Maintain separation of all the individuals involved to prevent them from collaborating on the details of the incident or pressuring the victim to change their story.
3. As you control the situation, ensure no one tampers with the scene or with any evidence. This means immediately notifying a supervisor, controlling youth movement out of the immediate area, securing or locking up the crime scene and calling local law enforcement, per policy. If you believe reporting to your supervisor could compromise the integrity of the report, find another appropriate authority and report the incident. Also maintain documentation of who was present, what time they entered the scene and what time they departed the scene.
4. Ask the victim the following questions:
 - a. Are you injured?
 - b. Do you need medical attention?
 - c. Do you believe that you or someone else is in immediate danger?
5. Emergency medical attention for the victim is the first priority of the response. Call for facility medical personnel if available, and if not then 911.
6. Medical experts dealing with sexual assault consider "recent" to mean up to 72 hours from the time of the assault. This is relevant to the collection of medical evidence. If the assault was more than 72 hours but less than 96 hours, call the local hospital for direction. If facility medical personnel are on duty, they can make the call and relay directions.

7. Both the victim's and the perpetrator's bodies should be treated as crime scenes. In addition, their clothing, bedding, towels and other personal objects may be considered part of the crime scene and should be secured for the investigator. If you respond to an assault that was recent, you will need to do your best to ensure that the victim and perpetrator do not compromise the evidence by showering, washing, using the toilet, changing their clothes, eat or drink, brush their teeth, or rinse their mouths until all physical evidence is obtained. Also, do not allow any bedding or sheets to be removed and do not allow any fluids to be cleaned up. Safeguard any items found at the scene or given to you by the victim.
8. Your initial observations of the crime scene can be very helpful to the investigation. The following are some questions you should contemplate and document as appropriate:
 - a. Are there multiple crime scenes?
 - b. Is anything out of place in those areas?
 - c. Are there any objects of note such as bedding or clothing?
 - d. Are there any suspicious items on the floor?
 - e. Are there any obvious objects missing?
 - f. Are there puddles or stains?
 - g. Is there a handprint?
 - h. What time is it?
 - i. Are the lights on or off in the area?
 - j. Who is present in the area?
9. You will also need to denote the victim's appearance and demeanor. Because people respond differently in trauma, it's important to withhold judgment about what happened. Instead, you should observe the facts in anticipation of communicating them to the police and any other authorized investigators. Take note of the behaviors of those involved.
 - a. Can you accurately capture what was told to you by the victim, perpetrator or witnesses?
 - b. Can you describe the physical appearance of those involved?
10. The importance of documentation cannot be overstated. You will need to fully document known details of the incident as soon as possible after insuring the safety and health of the victim and securing the scene. Information that is added later may not have the same level of accuracy or creditability during the investigation and/or legal proceedings. Like other incident reports, remember that your opinion or assumptions should not be included. Document only what you can see and/or what has been communicated.
11. Document the victim's exact words with quotes as precisely as you can. Your report should accurately reflect the language that the victim used.

12. Accurately document your observations including the names of individuals you have spoken with since the response and exactly what was said during the interactions. You should also document other individuals present at the scene even if you did not speak to them. If the victim is seen by medical, mental health, or other staff, document their names, job titles, and contact information to be provided to the investigator.
13. What you do as a responder is critical for setting up the basis for an effective, formal investigation. Be sure that you do not launch your own investigation in any form such as collecting evidence, interviewing additional witnesses about the abuse, or getting more than the basic facts. When the initial response stage is complete, you can aid the investigator most by providing him or her with your documentation.
14. As a first responder, you play an integral role in the investigative process.

