



# Office of Children and Family Services

Policy and Procedures Manual

## Prevention, Detection, and Response to Sexual Abuse and Sexual Harassment (PPM 3247.01)

<p>Approved By: <i>Suzanne Miles-Gustave, Esq.</i> <i>(signed)</i> Suzanne Miles-Gustave, Esq. Acting Commissioner</p>	<p>Date Issued:  May 30, 2023</p>	<p>Number of Pages:  18</p>	<p>Appendix Pages:  3</p>
<p>Related Laws: Correction Law § 168-a (2)-(3) Penal Law Article 130, Sex Offenses Prison Rape Elimination Act of 2003 (34 U.S.C. § 30301, et seq.)</p>	<p>Division/Office: Division of Juvenile Justice and Opportunities for Youth</p>	<p>Contact Office/Bureau/Unit: Office of Facilities Management</p>	
<p>Supporting Regulations: N/A</p>	<p>American Correctional Association Standards (ACA): 4-JCF-3D-01-3D-09, 3-JCRF-1C-04</p>		
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<p>Related Policies: <a href="#">PPM 1810.00, Reporting Crimes</a> <a href="#">PPM 2021.04, Employee Screening for Child Abuse and Maltreatment</a> <a href="#">PPM 2026.03, Criminal History Screening-Employees/Candidates/Volunteers/Contractors</a> <a href="#">PPM 2615.00, Workplace Violence Prevention Programs</a> <a href="#">PPM 2651.00, Employee Discipline</a> <a href="#">PPM 3243.42, Communicable Disease Prevention and Control</a> <a href="#">PPM 3246.00, Ready Emergency Data (R.E.D.) Book</a> <a href="#">PPM 3247.03, Supervision of Youth</a> <a href="#">PPM 3402.00, Limited Secure and Non-Secure Facilities Admission and Orientation</a> <a href="#">PPM 3402.01, Secure Facilities</a></p>	<p>Related Forms: <a href="#">OCFS-2167, Video Surveillance and Staffing Plan</a> <a href="#">OCFS-4708, Prison Rape Elimination Act (PREA) Training</a> <a href="#">OCFS-4902, What You Should Know About Sexual Abuse</a> <a href="#">OCFS-4928, Facility Classification Form</a> <a href="#">OCFS-4928.1, PREA Vulnerability Assessment Instrument Supplement</a> <a href="#">OCFS-4984, Prison Rape Elimination Act (PREA) Standard 115.363 - Report of Sexual Abuse</a> <a href="#">OCFS-4985, Prison Rape Elimination Act (PREA) Sexual Abuse Retaliation Monitoring</a> <a href="#">OCFS-4986, Prison Rape Elimination Act (PREA) Sexual Abuse Incident Review</a> <a href="#">OCFS-4987, Prison Rape Elimination Act (PREA) Notification of Determination</a></p>		

<p><a href="#"><u>Admission and Orientation</u></a>  <a href="#"><u>PPM 3429.00, Reportable Incidents</u></a>  <a href="#"><u>PPM 3442.00, Lesbian, Gay, Bisexual, Transgender, and Questioning Youth; Promoting Dignity and Respect</u></a>  <a href="#"><u>PPM 3450.00, Case Records Management</u></a>  <a href="#"><u>PPM 3456.01, Justice Center-Related Reportable Incidents in OCFS Residential Facilities and Programs</u></a></p>	
<p>Supersedes: <b>PPM 3247.01, Prevention, Detection and Response to Sexual Abuse and Sexual Harassment (06/20/2016)</b></p>	
<p>Summary: <b>This policy outlines the Office of Children and Family Services' (OCFS) zero-tolerance policy concerning sexual abuse and sexual harassment of youth in its custody, as well as procedures for prevention, detection, and response within OCFS operated facilities.</b></p>	

**I. POLICY**

The Office of Children and Family Services (OCFS) has a zero-tolerance policy concerning sexual abuse and sexual harassment of OCFS youth and is committed to the prevention and elimination of sexual abuse and sexual harassment within the Division of Juvenile Justice and Opportunities for Youth (DJJOY) facilities through compliance with the Prison Rape Elimination Act of 2003 (PREA). OCFS is committed to the equal opportunity to participate in and benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Violations of this policy may result in disciplinary sanctions for staff and youth perpetrators and/or criminal prosecution.

**II. DEFINITIONS**

**NOTE:** The definitions used in this policy are taken from the PREA Juvenile Facility Standards and only apply to this policy. They are not interchangeable with the definitions of the same words as used in Social Services Law or other OCFS policies.

- A. Contractor** – Any person who is not an employee providing any service on a recurring basis for agreed-upon compensation pursuant to a contractual agreement with OCFS.
- B. Employee** – Any person compensated by OCFS via state payroll regardless of civil service status who works directly for OCFS, or any person compensated by another state agency whose job duties entail providing services in OCFS facilities.
- C. Exigent Circumstances** – Any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.
- D. Gender Nonconforming** – A person whose appearance or manner does not conform to traditional societal gender expectations.
- E. 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.

- F. 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. A “qualified medical practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.
- G. Mental Health Practitioner** – A mental 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. A “qualified mental health practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.
- H. Pat Search\*** – A search conducted by a staff member by running the hands over the clothed body of a youth to determine if the youth possesses contraband.
- I. OCFS PREA Coordinator** – An upper-level DJJOY employee designated with sufficient time and authority to develop, implement, and oversee OCFS’s efforts to comply with PREA standards in all DJJOY facilities.
- J. Facility PREA Compliance Manager** – The facility-level employee designated with sufficient time and authority to coordinate the facility’s efforts to comply with the PREA standards.
- K. Sexual Abuse** –
1. Sexual abuse of a youth by another youth includes any of the following acts if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:
    - a. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
    - b. Contact between the mouth and the penis, vulva, or anus.
    - c. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument.
    - d. Any other intentional touching, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, excluding contact incidental to a physical altercation.
  2. Sexual abuse of a youth by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the youth:
    - a. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
    - b. Contact between the mouth and the penis, vulva, or anus

- c. Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire
- d. Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire
- e. Any other intentional contact, either directly or through clothing, of or with the genitalia, anus, groin, breast, inner thigh, or buttocks that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire
- f. Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (a)-(e) of this section
- g. Any display by a staff member, contractor, or volunteer of their uncovered genitalia, buttocks, or breast in the presence of a youth
- h. Voyeurism of youth by a staff member, contractor, or volunteer. means an invasion of privacy of a sexual nature of a youth by a staff member, contractor, or volunteer for reasons unrelated to their official duties, such as peering at a youth who is using a toilet to perform bodily functions; requiring a 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.

**NOTE:** Youth in DJJOY facilities are unable to consent regardless of age. Youth are prohibited from engaging in sexual activity with other youth, staff, volunteers, or contractors. However, for such activity to constitute sexual abuse between youth, it must be determined that the activity was coerced.

#### **L. Sexual Harassment**

1. Repeated and unwelcome sexual advances, requests for sexual favors, and other comments, gestures, or actions of a sexual nature or actions that are directed toward a youth because of their sex or gender, which are derogatory or offensive, by one youth directed toward another.
2. Repeated comments, gestures, or actions of a sexual nature directed towards a youth by a staff member, contractor, or volunteer, including demeaning references to a youth's sex or gender, sexually suggestive or derogatory comments about the body or clothing, or obscene language or gestures.

**M. Sex Offense** – Any act identified as a sex offense by Article 130 of the New York State Penal Law or as defined by New York State Correction Law § 168-a (2)-(3).

**N. Strip Search** – A search that requires a youth to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, and/or genitalia.

**O. Substantiated\*** – Having been investigated and determined to have occurred.

- P. Transgender** – Denoting or relating to a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person’s assigned sex at birth.
- Q. Unfounded\*** – Having been investigated and determined NOT to have occurred.
- R. Unsubstantiated\*** – Having been investigated and the investigation produced insufficient evidence to make a final determination as to whether the event occurred.
- S. Visitor** – Any person having access to any DJJOY facility, office, or program who is not a contractor, employee, or volunteer as defined in this policy.
- T. Volunteer** – Any person who donates time and effort on a recurring basis to enhance the activities and programs of the agency/facility.
- U. Voyeurism** – An invasion of privacy of a sexual nature of a youth by a staff member, contractor, or volunteer for reasons unrelated to official duties, such as peering at a youth who is using a toilet to perform bodily functions; requiring a youth to expose their buttocks, genitals, groin, or breasts; or taking images of all or part of the youth’s naked body or of a youth performing bodily functions.
- V. Youth** – Persons who are or have recently been in OCFS custody.

\* **NOTE:** The above definitions are taken from the Prison Rape Elimination Act Juvenile Facility Standards and only apply to this policy. They are not interchangeable with the definitions of the same words as used in Social Services Law or other OCFS policies.

### III. PROHIBITIONS

The following acts are prohibited:

- A.** Sexual conduct with OCFS youth by OCFS staff, volunteers, visitors, or contractors. OCFS staff, volunteers, and contractors must also comply with [PPM 3247.03, Supervision of Youth](#).
- B.** Sexual conduct among OCFS youth in OCFS facilities.
- C.** Cross-gender strip searches and pat searches except for thoroughly documented exigent circumstances.
- D.** Opposite-gender viewing of youth under circumstances when breasts, buttocks, or genitalia would normally be exposed (showering, using a toilet to perform bodily functions, and changing clothes). Each facility director must develop local operating procedures designed to prevent such viewing. Such procedures must require that staff of the opposite gender announce their presence when entering the housing unit and any area where youth are likely to be showering, performing bodily functions, or changing clothing.
- E.** Searching or physically examining a transgender or intersex youth for the sole purpose of determining the youth’s genital status.

## IV. PROCEDURE

### A. Prevention – Supervision and Monitoring

DJJOY must develop, implement, and document a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring to protect youth against sexual abuse. [OCFS-2167, Video Surveillance and Staffing Plan](#), must be completed and submitted to the OCFS PREA coordinator by January 31<sup>st</sup> of each year. In determining adequate staffing levels and the need for video monitoring, facilities must take into consideration the following:

1. Generally accepted juvenile detention and correctional/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" and/or areas where staff or youth may be isolated).
6. Composition of the different populations within its facilities.
7. Number and placement of supervisory staff.
8. Programs occurring on each shift.
9. Relevant laws, regulations, and standards.
10. Prevalence of substantiated and unsubstantiated incidents of sexual abuse.
11. Minimum staff-to-youth ratios must be 1 to 8 during waking hours and 1 to 16 during sleeping hours. Any deviations from the plan due to limited and discrete exigent circumstances must be documented on the *Video Surveillance and Staffing Plan* form ([OCFS-2167](#)). Only security staff must be included in these ratios.

### B. Video Surveillance and Staffing Plan

1. Whenever necessary, but no less frequently than once a year, in consultation with the OCFS PREA coordinator DJJOY facilities will assess, determine, and document whether adjustments are needed to the following:
  - a. The staffing plans
  - b. Prevailing staffing patterns
  - c. The facility's deployment of video monitoring systems and other monitoring technologies

- d. Resources the facility has available to adhere to its staffing plan
- e. The OCFS--2167, Video Surveillance and Staffing Plan, which must be submitted to the OCFS PREA coordinator by January 31st of each year

Intermediate-level or higher-level supervisors must conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such unannounced rounds must be implemented for all shifts (day and night). Facility staff are prohibited from alerting other staff members that these supervisory rounds are occurring unless these announcements are related to legitimate operational functions of the facility.

2. Staff of opposite gender must announce their presence when entering a living unit or area where youth change clothes, shower, or perform bodily functions.
3. When designing or acquiring a new facility or planning any substantial expansion or modification to existing facilities, OCFS must consider the effect of the design, acquisition, modification, or expansion upon the facility's ability to protect youth from sexual abuse. When installing or updating a facility's video monitoring system or other monitoring systems, OCFS must consider how such technology will enhance OCFS's ability to protect youth from sexual abuse.

### **C. Admission/Housing/Vulnerability and Youth Education**

1. Youth are to be screened for potential vulnerabilities to victimization and propensity to victimize others with sexually aggressive behavior upon arrival/intake at a DJJOY facility. This screening will be documented using [OCFS-4928, Facility Classification Form](#), and entered into the Juvenile Justice Information System (JJIS) within 72 hours of admission. Living unit and room assignments must be made accordingly. This form must be reviewed every 30 days and the review must be documented in the Juvenile Justice Information System (JJIS).
2. Additionally, upon a youth's admission to a DJJOY facility, designated staff will complete [OCFS-4928.1, PREA Vulnerability Assessment Instrument Supplement](#), and enter it into JJIS within 72 hours of admission. [OCFS-4928.1](#) must be completed every six months from the youth's admission date and entered into JJIS. At a minimum, the facility must attempt to ascertain information about
  - a. prior sexual victimization or abusiveness.
  - b. any gender nonconforming appearance or manner, or identification as lesbian, gay, bisexual, transgender, or intersex, as determined by interview, direct questions, or youth disclosure, and whether the youth may therefore be vulnerable to sexual abuse or sexual harassment.
  - c. current charges and offense history.
  - d. age.
  - e. level of emotional and cognitive development.
  - f. physical size and stature.

- g. mental illness or mental disabilities.
  - h. physical disabilities.
  - i. the youth's own perception of vulnerability; and
  - j. any other specific information about the individual youth that may indicate needs for heightened supervision, additional safety precautions, or separation from certain other youth.
3. This information must **only** be shared with authorized employees and **must be maintained in a manner that ensures that sensitive information is not exploited to the youth's detriment by staff or other youth.** This information will be used to make housing, bed, program, education, and work assignments for youth with the goal of keeping all youth safe and free from sexual abuse and sexual harassment.
  4. Youth may be isolated from other youth only as a last resort when less restrictive measures are inadequate to keep them and other youth safe, and then, only until an alternative means of keeping all youth safe can be arranged. During any period of isolation, youth must receive large muscle exercise, educational programming, daily visits from medical and/or mental health staff, and access to other programs to the extent possible. If a youth is isolated, the facility must clearly document the basis for the facility's concern for the youth's safety and the reason why no other alternative means of separation can be arranged. At least once every 30 days, the facility must afford a youth who is isolated as described above a review of the circumstances to determine whether there is a need for continued separation from the general population.
  5. Lesbian, gay, transgender, bisexual, or intersex youth must not be placed in particular housing, bed, or other assignments solely on the basis of such identification or status, or their perceived or actual sexual orientation, nor must the facility consider lesbian, gay, transgender, bisexual, or intersex identification or status as an indicator of likelihood of being sexually abusive. ([PPM 3442.00., Lesbian, Gay, Transgender or Questioning Youth; Promoting Dignity and Respect.](#))

In deciding whether to assign a transgender, non-binary, or intersex youth to a facility for biological male or female youth, and in making other housing and programming assignments, OCFS must consider on a case-by-case basis whether the placement would promote the youth's health and safety, and whether the placement would present management and/or security problems. Placement and programming for transgender, non-binary, and intersex youth must be reassessed at least twice a year, or sooner if a complaint has been made, to review any threats to safety experienced by the youth. Transgender, non-binary, and intersex youth's views with respect to their own safety must be given serious consideration. This reassessment is to be documented on [OCFS-4928.1](#).

6. Transgender and intersex youth must be given the opportunity to shower separately from other youth.
7. Upon admission, and no later than 72 hours, youth must be provided basic



information in an age-appropriate manner regarding PREA. This is accomplished by providing the youth with, and having them sign for receipt of, [OCFS-4902, \*What You Should Know About Sexual Abuse\*](#), within the first 72 hours of admission.

8. During the admissions process, but no later than 72 hours of admission, youth must receive more comprehensive PREA education in an age-appropriate manner, either in person or by video, about their rights to be free from sexual abuse and sexual harassment, and free from retaliation for reporting allegations of sexual abuse and sexual harassment. Youth must be provided information concerning prevention, intervention, self-protection, and reporting of sexual abuse and sexual harassment, and the agency's zero-tolerance policy. This is accomplished by providing and reviewing with the youth Publication 5170, *Checking in for: Your Safety in an OCFS Facility*. This session and receipt of materials is to be documented in JJIS by either the case manager/youth counselor, administrator on duty, mental health staff, or other designated staff with JJIS access.
9. Youth must also receive information regarding treatment and counseling for victims of sexual abuse.
10. The required information must be communicated orally and in writing in a language clearly understood by the youth during the admission process. Language assistance resources are available through the OCFS Public Information Office. Facilities must not rely upon youth interpreters, youth readers, or other types of youth assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could jeopardize a youth's safety, the performance of first responder duties pursuant to section 115.364 of the PREA Juvenile Facility Standards, or the investigation of a youth's allegations. All education and information must be made available in formats accessible to all youth (including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as those with limited reading skills).
11. Youth must be clearly advised upon admission that sexual conduct encompassing all acts identified in this policy, whether committed by adults or other youth in OCFS facilities, is prohibited, and that youth are encouraged and should feel comfortable to report any such activity to their youth counselor or clinician, the OCFS Office of the Ombudsman (OOTO), or any staff member.
12. Facilities must make certain that key information is continuously and readily available and visible to youth through posters, youth handbooks, or other written formats.
13. Youth who are transferred to another facility must receive this information again, to the extent that the information from the sending facility differs from that of the receiving facility.
14. With regards to PREA, youth must be referred to a mental health clinician, under the following circumstances:
  - a. The youth is identified as a high-risk youth with a history of sexually assaultive behavior. Such youth must be monitored, counseled, and provided appropriate treatment.

- b. The youth is identified as at risk for sexual victimization. Such youth must be monitored and counseled and provided with appropriate treatment.
15. Receipt of the education and information required by this section must be documented in JJIS by the staff providing the information for each youth.

#### **D. Employee Training**

1. All employees must receive training that is specific to youth and the gender of the population they are working with. Employees must sign an acknowledgement on OCFS-4708, *Prison Rape Elimination Act (PREA) Training*, verifying that they understood the training they received. Staff must be retrained when they transfer to a facility with a different gender population. Current employees must receive this training and receive refresher training annually. The training must include the following:
  - a. OCFS's zero-tolerance policy on sexual abuse and sexual harassment
  - b. Staff responsibilities under OCFS's sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures
  - c. Youth's right to be free from sexual abuse and sexual harassment
  - d. Rights of youth and employees to be free from retaliation for reporting sexual abuse and sexual harassment
  - e. Dynamics of sexual abuse and sexual harassment in juvenile facilities
  - f. Common reactions of juvenile victims of sexual abuse and sexual harassment
  - g. How to detect and respond to signs of threatened and actual sexual abuse and how to distinguish between consensual sexual contact and sexual abuse between youth
  - h. How to avoid inappropriate relationships with youth
  - i. Effective and professional communication with youth including those who identify as lesbian, gay, bisexual, transgender, non-binary, or intersex and/or are gender non-conforming
  - j. Compliance with relevant laws related to mandatory reporting of sexual abuse and sexual harassment to outside authorities
  - k. Relevant laws regarding the applicable age of consent for OCFS youth, as it pertains to sexual activity involving youth
2. All volunteers and contractors who have intended contact with youth must be trained on their responsibilities under this policy. The level and type of training must be based on the services they provide and the level of contact they have with youth. Regardless of level of contact, all volunteers and contractors who may have contact with youth must be notified in writing of OCFS's zero-tolerance policy and the procedures to report incidents or suspicions of sexual abuse or sexual

harassment. The facility must maintain documentation on OCFS-4708, confirming that contractors and volunteers understood the training they received.

3. Investigators who are assigned to cases involving allegations of violations of this policy must receive specialized training (in addition to the training provided to all employees) concomitant with their roles in conducting investigations in facility settings. The specialized training must include
  - a. techniques for interviewing juvenile sexual abuse victims,
  - b. proper use of Miranda and Garrity warnings,
  - c. sexual abuse evidence collection in facility settings, and
  - d. criteria and evidence required to substantiate a case for administrative action and/or referral for criminal prosecution.
  
4. Medical and mental health practitioners must receive specialized training (in addition to the training provided to all employees) in the following:
  - a. Detecting and assessing signs of sexual abuse and sexual harassment
  - b. Preserving physical evidence of sexual abuse
  - c. Responding effectively and professionally to victims of sexual abuse and sexual harassment
  - d. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment

OCFS shall maintain documentation that medical and mental health practitioners have completed the required specialized training above.

#### **E. Allegations of Inappropriate Conduct**

Youth who believe they have been subjected to conduct prohibited by this policy have the option to report the incident to a staff member other than an immediate point-of-contact line staff member. That includes, but is not limited to, the unit/office supervisor, youth counselor, mental health clinician, medical personnel, any facility administrator, or OOTO. Reports may be made verbally or in writing. The necessary materials to submit written reports will be provided to all youth. Youth also have the option of reporting allegations to OOTO and/or the OCFS Special Investigations Unit (SIU) via their respective toll-free numbers posted on all living units. Additionally, youth, their families, and the public have the ability to report allegations via the toll-free number for the vulnerable persons central register (VPCR), which is part of the New York State Justice Center for the Protection of People with Special Needs (Justice Center). ([PPM 3456.01, Justice Center-Related Reportable Incidents in OCFS Residential Facilities and Programs](#))

Facility staff must accept reports, including reports made regarding other OCFS or non-

OCFS facilities, that are made verbally, in writing, anonymously, or from third parties. Verbal reports must be promptly documented.

Each facility must provide a manner for staff to privately report sexual abuse and sexual harassment of youth.

1. For all allegations of sexual abuse or where there has been penetration or contact between the mouth and penis, vulva or anus, or where there is an injury that may indicate penetration or contact between the mouth and penis, vulva or anus, the victim will be immediately referred to an outside medical facility that was previously identified for clinical assessment and gathering of forensic evidence by professionals who are trained and experienced in the management of victims of sexual abuse. The outside medical facility's trained examiner will make the final determination regarding evidence collection. Staff who can provide support to the victim must accompany the youth. In the event that a youth refuses to be examined at the medical facility, such refusal must be properly documented on the appropriate form(s). Facilities must make efforts to establish a memorandum of agreement (MOA) with the medical facility. These efforts must be documented and part of the local operating procedure.

To preserve evidence, an allegation of rape or penetration requires that a youth not be allowed to engage in any activities such as hygiene, washing, bathing, showering, brushing teeth, chewing gum, and eating or drinking (unless medically necessary). Youth should also be discouraged from urinating or defecating as that may destroy evidence prior to being presented at a hospital or clinic for the gathering of such evidence.

2. In all other cases of alleged sexual abuse that do not involve penetration as described above in section IVE1(4), the victim must be brought to the facility medical department for examination.
3. Staff must attempt to make available a victim advocate from a rape crisis center and must document efforts to provide rape crisis services.
4. OCFS health staff must follow the procedures in [PPM 3243.42, Communicable Diseases and Disease Control](#), as needed for management of high-risk exposures, paying particular attention to the following areas:
  - a. The Bureau of Health Services must be notified of the occurrence of a high-risk exposure.
  - b. Provision must be made for testing for sexually transmitted diseases (for example, HIV, gonorrhea, hepatitis, and other diseases) and release of information for purposes of medical management of both the victim and alleged perpetrator.
  - c. Prophylactic treatment and follow-up for sexually transmitted diseases must be offered to all victims, as appropriate, if not already done in the emergency room.
  - d. Follow-up must be made by a mental health professional to assess the need for crisis intervention counseling and long-term follow-up.

- e. A report must be made to the facility or program administrator or designee to assure separation of the victim from their alleged abuser. Parents/legal guardians must be notified of any allegations of inappropriate conduct involving their minor child or, with consent, a youth over the age of 18.
5. Pregnancy testing as well as comprehensive information and access to all lawful pregnancy-related medical services and timely contraception and STD prophylaxis, must be provided in a timely manner, if applicable.
6. All medical, mental health, and counseling services must be provided at no cost to the youth.

#### **F. Staff First Responder Duties**

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

1. separate the victim and alleged abuser.
2. preserve and protect the scene until appropriate steps can be taken to collect any evidence.
3. request the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, swimming, drinking, or eating; and
4. take steps to prevent the alleged abuser from destroying physical evidence, such as washing, brushing teeth, changing clothes, urinating, defecating, smoking, swimming, drinking, or eating.

#### **G. Reporting and Investigations**

1. All OCFS employees, contractors, and volunteers are required to report knowledge of any alleged, threatened, or actual violations of this policy to their supervisor, any on-duty employee above them in the chain of command, the administrator on call (AOC) or the facility/program director. They also have the ability to privately report sexual abuse and sexual harassment of youth to the Justice Center. OCFS employees are mandated reporters, and as such, they must report incidents of sexual abuse and sexual harassment to the Justice Center. Failure to report may result in administrative, criminal, or disciplinary sanctions appropriate to the individual's status. ([PPM 3456.01, Justice Center-Related Reportable Incidents in OCFS Residential Facilities and Programs](#))
2. Every allegation of threatened or actual sexual abuse constitutes a reportable incident and must be called in to the Central Communications Unit (CCU) in accordance with [PPM 3429.00, Reportable Incidents](#). CCU staff must then enter all available information regarding the incident in JJIS.

OCFS requires that an investigation be conducted and documented whenever a violation of this policy is alleged. The Justice Center has responsibility for investigation of all PREA-related allegations and incidents. A report is to be made

in accordance with [PPM 3456.01, Justice Center- Related Reportable Incidents in OCFS Residential Facilities & Programs](#).

3. Upon receiving an allegation that a youth was sexually abused while confined at another facility, the facility director of the facility that received the allegation must notify the facility director of the other facility or appropriate office of the agency (if not an OCFS-operated facility) where the alleged abuse occurred and must also notify the appropriate investigative agency. Such notification must be provided as soon as possible, but no later than 72 hours after receiving the allegation. The notification must be documented on [OCFS-4984, Prison Rape Elimination Act \(PREA\) Standard 115.363 - Report of Sexual Abuse](#), and a *Reportable Incident Report* must be generated. [OCFS-4984](#) is to be sent to the facility administrator where the abuse occurred or other appropriate office, with a copy maintained by the originating facility.
4. Multiple Sexual Allegations Response Plan – In the event that (a) youth within a DJJOY facility make(s) multiple allegations regarding sexual abuse or sexual harassment by staff (two within a week or three within a month) at one DJJOY facility, the facility may employ the Multiple Sexual Allegations Response Plan. This plan has been developed to allow for the Justice Center to perform an expedited and thorough investigation into specific allegations to minimize the disruptive impact upon facility operations and programming. The decision to utilize this specialized plan requires the authorization of the associate commissioner of facilities management. This plan must be maintained in the facility R.E.D. Book. ([PPM 3246.00, Ready Emergency Data Book \(R.E.D. Book\)](#))
5. If the notified facility is an OCFS-operated facility, the facility director that receives such notification must refer the matter for investigation as required by this policy.

#### **H. Protection Against Retaliation**

1. OCFS has established policies to protect all youth and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other youth or staff (see [PPM 3443.00, Youth Rules](#), and [PPM 2615.00, Workplace Violence Prevention Programs](#)). Each facility must designate which staff members or departments are charged with monitoring retaliation.
2. OCFS must employ multiple protection measures, such as housing changes or transfers for youth victims or abusers, removal of alleged staff or youth abusers from contact with victims, and emotional support services for youth or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations (see [PPM 3456.01, Justice Center-Related Reportable Incidents in OCFS Residential Facilities and Programs](#), and [PPM 2615.00, Workplace Violence Prevention Program](#)).
3. For at least 90 days following a report of sexual abuse, the facility must monitor the conduct or treatment of youth or staff who reported the sexual abuse and of youth who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by youth or staff and must act promptly to remedy any such retaliation. The facility must monitor items including any youth disciplinary reports, housing or program changes, negative performance reviews, and

reassignments of staff. The facility must assign a monitor for such tasks. The monitor shall complete [OCFS-4985, PREA Sexual Abuse Retaliation Monitoring Form](#), for each instance, and the facility PREA compliance manager shall maintain such forms.

OCFS home office staff must conduct periodic status checks on such youth. OCFS must continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

4. The agency's obligation to monitor will terminate if the agency or the Justice Center determine that the allegation is unfounded.

#### **I. Sexual Abuse Incident Reviews**

1. Within 30 days of the conclusion/receipt of the investigation determination, the facility must conduct a sexual abuse incident review of all allegations (substantiated and unsubstantiated) unless the allegation has been determined to be unfounded. Reviews must be conducted by a team of staff, grade 18 and above, and must include input from direct care staff, investigators, and medical and mental health practitioners. The review team must
  - a. consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
  - b. consider whether the incident or allegation was motivated by actual or perceived race, ethnicity, sex (e.g., intersex), gender identity (e.g., transgender identity), sexual orientation (e.g., gay, bisexual, lesbian), status, gang affiliation, or was motivated by other group dynamics at the facility;
  - c. examine the area in the facility where the incident allegedly occurred to assess whether physical layout may enable abuse;
  - d. assess the adequacy of staffing levels in that area during different shifts;
  - e. assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and.
  - f. prepare a report of its findings, including but not necessarily limited to determinations made pursuant to this section and any recommendations for improvement, and submit such report to the facility director and PREA compliance manager.
2. The facility must implement the recommendations for improvement made by the review team or must document its reasons for not doing so.
3. This report is to be documented on [OCFS-4986, PREA Sexual Abuse Incident Review](#), and submitted to the OCFS PREA coordinator for final review and approval within 30 days of receipt of the investigation determination.

#### **J. Documentation**



1. All records associated with claims of sexual abuse, including incident reports, investigative reports, youth information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling must be marked "Confidential" and retained in accordance with an established schedule and PPM 3450.00, *Case Record Management*.
2. [OCFS-4928, Facility Classification Form](#), as a part of the youth's case record, is a confidential document and must be maintained in accordance with PPM 3450.00, *Case Record Management*.

All trainings mandated by this policy must be documented as required by the Bureau of Training.

## **K. Disciplinary Actions**

1. Staff Disciplinary Sanctions
  - a. Staff must be subject to disciplinary sanctions as determined by OCFS and consistent with collective bargaining agreements, up to and including termination, for violating agency sexual abuse or sexual harassment policies.
  - b. Termination is the presumptive disciplinary sanction for staff for whom allegations have been substantiated for sexual abuse.
  - c. Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) must 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 members with similar histories.
  - d. All dismissals/terminations for violations of OCFS sexual abuse or sexual harassment policies, or resignations by staff who would have been dismissed or subject to dismissal proceedings if not for their resignation, must be reported to law enforcement agencies (unless the activity was clearly not criminal) and any relevant licensing bodies.
2. Corrective Action for Contractors and Volunteers
  - a. Any contractor or volunteer who engages in sexual abuse or sexual harassment must be prohibited from contact with youth and must be reported to law enforcement agencies (unless the activity was clearly not criminal) and to any relevant licensing bodies.
  - b. The facility must take appropriate remedial measures and must prohibit further contact with youth.
3. Interventions and Disciplinary Sanctions for Youth
  - a. A youth found to have committed sexual abuse or sexual harassment may be subject to disciplinary sanctions pursuant to OCFS disciplinary procedures.



- b. Disciplinary sanctions imposed by the facility must be commensurate with the nature and circumstances of the abuse or harassment committed, the youth's disciplinary history, and the sanctions imposed for comparable offenses by other youth with similar histories.
- c. The disciplinary process must consider whether developmental disability or mental illness contributed to a youth's behavior when determining what type of sanction, if any, should be imposed.

Consideration must be given to providing the offending youth therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse. However, the facility may not require participation in such interventions as a condition to access general programming or education.

- d. The facility may discipline a youth for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
- e. For the purpose of disciplinary action, a report of sexual abuse or sexual harassment made in good faith based upon a reasonable belief that the alleged conduct occurred must not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.
- f. Sexual activity between youth is prohibited. However, for such activity to constitute sexual abuse, it must be determined that the victim did not consent, was coerced into such act, or was unable to consent or refuse.

#### **L. Notifications to Youth**

1. Following an investigation into a youth's allegation of sexual abuse occurring in a DJJOY facility, OCFS must inform the youth as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. This is to be documented on [OCFS-4987, PREA Notification of Determination](#), and maintained in the youth's case file, with copies to the OCFS PREA coordinator and facility PREA compliance manager.
2. Following a youth's allegation that a staff member has committed sexual abuse against the youth, OCFS must subsequently inform the youth (unless OCFS has determined that the allegation is unfounded) whenever
  - a. the staff member is no longer posted within the youth's unit.
  - b. the staff member is no longer employed at the facility.
  - c. OCFS learns that the staff member has been indicted on a charge related to sexual abuse within the facility; and/or
  - d. OCFS learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
3. Following a youth's allegation that they have been sexually abused by another

youth, OCFS must subsequently inform the alleged victim whenever

- a. OCFS learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
  - b. OCFS learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
4. All such notifications or attempted notifications must be documented. OCFS's obligation to report under this standard must terminate if the youth is released from OCFS custody.

#### **M. Data Collection and Review**

The DJJOY PREA Database is the central repository for all information regarding allegations of sexual abuse. Data must be entered into the DJJOY PREA Database using standardized data fields and standardized definitions.

1. This database of all reported allegations, threats or actual violations of this policy will be maintained by DJJOY for reporting compliance with the provisions of the Prison Rape Elimination Act of 2003.

(Facility name)  
**Local Operating Procedure**

**Prevention, Detection, and Response to Sexual Abuse and Sexual Harassment  
 (PPM 3247.01)**

Approved By:	Date Issued:	Number of Pages: <b>3</b>	Appendix Pages: <b>N/A</b>
Related Laws: <b>Correction Law § 168-a (2)-(3)</b> <b>Penal Law Article 130, Sex Offenses</b> <b>Prison Rape Elimination Act of 2003</b> <b>(34 U.S.C. § 30301, et seq.)</b>	Division/Office: <b>Division of Juvenile Justice and Opportunities for Youth</b>	Contact Office/Bureau/Unit: <b>Office of Facilities Management</b>	
Supporting Regulations: <b>Department of Justice Prison Rape Elimination Act Juvenile Facility Standards (28 C.F.R. Part 115)</b>	American Correctional Association Standards (ACA): <b>4-JCF-3D-01-3D-09</b>		
Regulatory Bulletins & Directives: <b>N/A</b>	Local Operating Practice: <b>Required</b>		
Related Policies: <b>PPM 1810.00, Reporting Crimes</b> <b>PPM 2021.04, Employee Screening for Child Abuse and Maltreatment</b> <b>PPM 2026.03, Criminal History Screening-Employees/Candidates/Volunteers/Contractors</b> <b>PPM 2615.00, Workplace Violence Prevention Programs</b> <b>PPM 2651.00, Employee Discipline</b> <b>PPM 3243.42, Communicable Disease Prevention and Control</b> <b>PPM 3246.00, Ready Emergency Data (R.E.D.) Book</b> <b>PPM 3247.03, Supervision of Youth</b> <b>PPM 3402.00, Limited Secure and Non-Secure Facilities Admission and Orientation</b> <b>PPM 3402.01, Secure Facilities Admission and Orientation</b> <b>PPM 3429.00, Reportable Incidents</b> <b>PPM 3442.00, Lesbian, Gay, Bisexual, Transgender, and Questioning Youth; Promoting Dignity and Respect</b> <b>PPM 3450.00, Case Records</b>	Related Forms: <a href="#"><u>OCFS-2167. Video Surveillance and Staffing Plan</u></a> <a href="#"><u>OCFS-4708. Prison Rape Elimination Act (PREA) Training</u></a> <a href="#"><u>OCFS-4902. What You Should Know About Sexual Abuse</u></a> <a href="#"><u>OCFS-4928. Facility Classification Form</u></a> <a href="#"><u>OCFS-4928.1, PREA Vulnerability Assessment Instrument Supplement</u></a> <a href="#"><u>OCFS-4984 Prison Rape Elimination Act (PREA) Standard 115.63 - Report of Sexual Abuse</u></a> <a href="#"><u>OCFS-4985, Prison Rape Elimination Act (PREA) Sexual Abuse Retaliation Monitoring</u></a> <a href="#"><u>OCFS-4986, Prison Rape Elimination Act (PREA) Sexual Abuse Incident Review</u></a> <a href="#"><u>OCFS-4987, Prison Rape Elimination Act (PREA) Notification of Determination</u></a>		

<p><b>Management</b>  <b>PPM 3456.01, Justice Center-Related Reportable Incidents in OCFS Residential Facilities and Programs</b></p>	
<p>Supersedes:  <b>PPM 3247.01, Prevention, Detection, and Response to Sexual Abuse and Sexual Harassment (6/20/2016)</b></p>	
<p>Summary:  <b>This policy outlines the Office of Children and Family Services' (OCFS) zero-tolerance policy concerning sexual abuse and sexual harassment of youth in its custody as well as procedures for prevention, detection, and response within OCFS-operated facilities.</b></p>	

**I. PRACTICE**

- A. Each facility must designate a PREA compliance manager with sufficient time and authority to coordinate efforts to comply with the PREA standards. The designated compliance manager must be so noted on the facility's organizational chart.
- B. Each facility must develop local procedures for the immediate response to allegations of sexual abuse and sexual harassment as well as procedures for responding to imminent threats of sexual abuse that include the following:
  - 1. Who is notified?
  - 2. Who needs to respond to the scene?
  - 3. Steps to be taken for the immediate safety of the victim.
  - 4. Who is responsible for notifying the Justice Center?
  - 5. Who arranges transportation to the appropriate medical facility?
- C. Opposite-gender viewing of youth under circumstances when breasts, buttocks or genitalia would normally be exposed (showering/hygiene time, performing bodily functions, and changing clothes) is generally prohibited. The following local operating procedures are designed to prevent such viewing:
  - 1.
  - 2.
  - 3.
- D. Admission screening will be conducted upon admission using forms OCFS-4928 and [OCFS-4928.1](#). The following staff members (listed by title and ranked as primary, secondary, and tertiary) are trained and authorized to complete OCFS-4928 and [OCFS-4928.1](#):
  - 1.
  - 2.
  - 3.
- E. Within 72 hours of admission to an OCFS-operated facility, all youth must receive comprehensive, age-appropriate education, either in person or by video, about their rights to be free from sexual abuse and sexual harassment, and free from retaliation for reporting allegations of sexual abuse or sexual harassment. This education will be

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completed using [OCFS-4902, \*What You Should Know About Sexual Abuse\*](#) and OCFS Publication 5170 *Checking in for: Your Safety in an OCFS Facility*. The following youth will receive these programs:

1. Current youth
  2. New admissions
  3. Transfers
- F. For all allegations of sexual abuse, the victim will be immediately referred to the medical facility with which the facility has previously established a memorandum of agreement (MOA) for clinical assessment and gathering of forensic evidence by professionals who are trained and experienced in the management of victims of sexual abuse. The following medical facility(s) and crisis counseling service providers must be utilized:
- 1.
  - 2.
  - 3.
- G. All residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations must be protected from retaliation by other residents or staff. The following staff members or departments are charged with monitoring retaliation:
- 1.
  - 2.
  - 3.