

3-B Juvenile Detention Center	Chapter # 2	Policy # 2-19
		Pages: 7
	Topic: Sexual Assault and Harassment Prevention plan, Response, Investigation, and Discipline	
	Related ID Code, IDAPA, or ACA Standards: IDAPA 11.01.02.05.220, Prison Rape Elimination Act, Idaho Code 18-6110	
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GENERAL

I Policy

To see establish a zero tolerance policy for incidents of physical abuse, sexual abuse, sexual harassment, retaliation by other juveniles or staff for reporting sexual abuse or sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents are reported to the appropriate agency for investigation.

Definitions related to sexual abuse. (PREA § 115.6) For purposes of this part, the term—

Sexual abuse includes—

- (1) Sexual abuse of a resident by another resident; and
- (2) Sexual abuse of a resident by a staff member, contractor, or volunteer.

Sexual abuse of a resident by another resident 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:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) 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.

Sexual abuse of a resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the resident:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;
- (7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of a resident, and
- (8) Voyeurism by a staff member, contractor, or volunteer.

Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of a resident by staff for reasons unrelated to official duties, such as peering at a resident who is using a toilet in his or her cell to perform bodily functions; requiring a resident to expose his or her buttocks, genitals, or breasts; or taking

images of all or part of a resident's naked body or of a resident performing bodily functions.

Sexual harassment includes—

- (1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one resident directed toward another; and
- (2) 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.

II. Prevention Planning

A. Zero tolerance of sexual abuse and sexual harassment; PREA coordinator

1. The 3B tolerates no form sexual abuse or sexual harassment within the facility. Juveniles held in the 3B are under the age of 18, and therefore cannot consent to any sexual activity. Therefore, all sexual activity between juveniles is prohibited and will be cause for disciplinary action and shall be referred for prosecution. Also all sexual activity between staff and juveniles is strictly prohibited and staff shall be disciplined and prosecuted, unless there is a finding that the staff member did not consent to such activity.
2. 3B will use education material and screening tools to help educate juveniles and identify positional at risk juveniles as part of the ongoing prevention plan.
3. Staffing ratios, shift schedules, along with monitoring systems will be evaluated on an annual bases as part of the prevention plan.
4. Staff, contractors, and volunteers will be trained on their responsibilities of prevention, detection, response and reporting requirements.
5. The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.
6. The 3B shall designate an upper level agency wide PREA Coordinator and allow that individual sufficient time and authority to develop, implement, and oversee facility efforts to comply with the PREA standards.

B. Contracting with other entities for the confinement of residents.

1. If the 3B is, at any time, in a position where it is necessary to contract for the confinement of its residents with other entities, including other government agencies, those entities shall be obligated to adopt and comply with the PREA standards. Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.

III. Responsive Following a Resident Report

A. Upon learning of an allegation that a resident was sexually abused, the first staff member to respond to the report shall be required to:

1. Separate the alleged victim and abuser
2. Secure and preserve any crime scene until appropriate steps can be taken to collect evidence by law enforcement.
3. If abuse occurred within a time period that allows for physical evidence collection, request that the alleged victim not take any actions that could destroy physical evidence to include: brushing teeth, washing, changing clothes, urinating, defecating, smoking, drinking or eating
4. If abuse occurred within a time period that allows for physical evidence collection, ensure that the alleged abuser do not take any actions that could destroy physical evidence to include: brushing teeth, washing, changing clothes, urinating, defecating, smoking, drinking or eating

- B. If the first staff responder is NOT a security staff member, the responder is required to request that the alleged victim not take any action that could destroy physical evidence, and then notify security staff
- C. Control room staff shall commence the coordination of medical and mental health services immediately.
- D. If the incident involved staff on juvenile sexual abuse, the on-duty supervisor, or Director shall take the necessary steps to prohibit the alleged abuser from having any contact with any juveniles.
- E. Contact the Director (if the allegation is against your supervisor).
- F. Complete Form (Supervisor Check list PREA) Create detailed Incident Report prior to the end of shift
- G. Take further action as directed by your supervisor or Director.

The first responder should not:

- 1. Conduct in-depth interviews or attempt to determine anything beyond the basic information listed on the previous slide.
- 2. Attempt to determine the validity of the allegation.
- 3. Play any role in deciding whether an allegation should be reported to investigators.
- 4. Make any conclusions in the report.

The first responder should remember:

- 1. Treat all victims with dignity and respect
- 2. Refer to what we learned about the dynamics of sexual abuse and harassment in confinement.
- 3. Females may want to process and discuss - they may describe more details and emotions; it may take more time to establish trust due to a previous abuse history; prefer relational language
- 4. Males may use fewer words and may provide fewer details; may act out vs. talking, males may be reluctant to discuss the incident due to shame

B. Upon receipt of a report of sexual abuse, Bonneville County sheriff's office will be notified, and will arrange to provide all victims of sexual abuse a forensic medical examination to be conducted by an appropriately trained examiner, preferably a Sexual Assault Forensic Examiner (SAFE) or a Sexual Abuse Nurse Examiner (SANE).

- 1. If such examination is not covered for payment by the Bonneville County, the 3B shall bear the cost of the examination.
- 2. If a victim advocate/rape crisis advocate is not available through Bonneville County sheriff's office normal process, one will be provided through DVRC.
- 3. If any member of the 3B has been screened for appropriateness and has received appropriate training and education concerning sexual assault and forensic examinations issues in general, they may be assigned at the victim's request to accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.

C. Resident access to outside support services and legal representation

- 1. The 3B shall enter into, maintain, and make accessible an MOU with the Domestic Violence/ Rape Crises (DVRC) to provide confidential emotional support services related to sexual abuse.
- 2. The 3B shall also provide residents with access to the following outside victim advocates by posting non-monitored, free-access phone numbers for the following services, and making their telephone numbers free access numbers through the Getting out (Telemate) system or 3B phone lines:
 - a. Domestic Violence/Rape Crisis 208-235-2412
 - b. The National Sex Assault Hotline. 1-800-656-4673
- 3. Informational posters shall be posted in the phone room which outlines 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.

D. Agency protection against retaliation

1. All residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations shall be protected from retaliation by other residents or staff.
 - a. The PREA Coordinator shall be designated to monitor juveniles and their treatment to ensure that they are protected from retaliation for a period of at least 90 days.
2. The Coordinator shall monitor and be aware of any disciplinary measures taken against the juvenile, any housing, placement or program changes, any involvement with altercations, arguments or problems with other juveniles or staff members, and shall include periodic interviews with the juvenile.
 - a. The Director shall be designated to monitor staff members and their treatment to ensure that they are protected from retaliation for a period of at least 90 days.
 - b. The Director shall conduct interviews with the staff members, and shall also monitor staff reassignments, negative performance evaluations, schedule changes or any other reports or notes that supervisors may have regarding the staff member.
3. The 3B shall employ multiple protection measures, including, but not limited to:
 - a. Such as housing changes or transfers for resident victims or abusers,
 - b. Removal of alleged staff or resident abusers from contact with victims, and
 - c. Emotional support services for residents or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.
4. If any other individual who cooperates with an investigation expresses a fear of retaliation, the 3B shall take appropriate measures to protect that individual against retaliation.
5. The 3B's obligation to monitor shall terminate if the allegation is determined to be unfounded.

IV. Investigations

A. Criminal investigations

1. Procedures governing the referral of cases involving sexual abuse and sexual harassment are found in Policy 6-18.
2. Where sexual abuse is alleged, the Bonneville County sheriff's office shall use investigators pursuant to their policies and procedures. It is anticipated that those policies and procedures will govern the following items:
 - a. Specialized training in sexual abuse investigations involving juvenile victims.
 - b. Gathering and preservation of direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data;
 - c. Interviewing alleged victims, suspected perpetrators, and witnesses; and
 - d. Review of prior complaints and reports of sexual abuse involving the suspected perpetrator.
 - e. Assessing the credibility of an alleged victim, suspect, or witness on an individual basis, and not simply by the person's status as an in custody juvenile or staff.
 - f. The prohibition of requiring a juvenile who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
 - g. The degree to which the 3B can be informed of the progress of the investigation.

h. To the extent allowed by the investigating agency, the 3B shall endeavor to remain informed of the progress and outcome of the investigation.

3. The 3B shall cooperate fully in any investigation, and shall participate in any investigative process when requested to do so by the main investigative agency, including conducting compelled interviews as directed by the Bonneville County Prosecuting Attorney's Office or Bonneville County Human Resources Department as long as the compelled interviews will not be an obstacle for subsequent criminal prosecution when the quality of evidence appears to support criminal prosecution.
4. Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.
5. Any State entity or Department of Justice component that conducts administrative or criminal investigations of alleged sexual assault or sexual harassment does so pursuant to the requirements of standard 115.371.
6. Any State entity or Department of Justice component that conducts administrative or criminal investigations of alleged sexual assault or sexual harassment does so pursuant to the requirements of standard 115.371.

B. Administrative agency investigations and evidentiary standard for administrative investigations

1. Administrative investigations shall be conducted by the Bonneville County Prosecuting Attorney's Office.
 - a. 3B shall cooperate fully with administrative investigations.
 - b. 3B shall participate in any investigative process involving administrative investigations only as directed by the Bonneville County Prosecuting Attorney's Office.
2. Such administrative investigations shall include, but not be limited to the following items:
 - a. An effort to determine whether staff actions or failures to act contributed to the abuse,
 - b. Written descriptions of the physical and testimonial evidence,
 - c. Documentation of the reasoning behind credibility assessments, and
 - d. Investigative facts and findings.
3. Substantiated allegations of conduct that appears to be criminal shall be referred to the Bonneville County Prosecuting Attorney's Office for prosecution.
4. For administrative investigations, the 3B and/or the Bonneville County Prosecuting Attorney's Office shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

C. Investigation reports

1. Any and all written reports that the 3B receives as a result of any criminal or administrative investigation completed as a result of an allegation, report of grievance involving sexual abuse shall be kept for at least five years past the juvenile's 18th birthday.
2. Reports of investigations involving sexual abuse by staff shall be turned over to the Bonneville County Human Resources Department for inclusion in the staff's member's file.

D. Reporting to residents

1. Following an investigation into a juvenile's allegation of sexual abuse suffered in the 3B, the juvenile shall be informed by 3B staff as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
 - a. If the 3B did not conduct the investigation, the 3B shall request the relevant information from the investigative agency in order to inform the juvenile.

2. Following a juvenile's allegation that a staff member has committed sexual abuse against the juvenile, the 3B shall subsequently inform the juvenile (unless it has been determined that the allegation is unfounded or the juvenile has been released) whenever:
 - a. The staff member is no longer employed at the 3B;
 - b. The 3B learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
 - c. The 3B learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
3. Following a juvenile's allegation that he or she has been sexually abused by another juvenile, the 3B shall subsequently inform the alleged victim (unless it has been determined that the allegation is unfounded or the juvenile has been released) whenever:
 - a. The 3B learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
 - b. The 3B 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 shall be documented. E. Termination of investigations
5. The 3B shall not seek or request the investigating agency to terminate an investigation solely because the source of the allegation recants the allegation.
6. The departure of the alleged abuser or victim from the employment or control of the 3B shall not provide a basis for terminating an investigation.

V. Discipline

A. Disciplinary sanctions for staff

1. Any 3B staff member who is found to have committed any act of sexual abuse will be terminated,
 - a. Any act of sexual abuse of a resident by staff is also a violation of Idaho Code 18-6110 and shall be referred to the appropriate authorities for criminal prosecution.
2. Any 3B staff member who is found to have committed any act of sexual harassment of residents, other staff members, visitors or contractors, shall be subject to disciplinary sanctions which shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history and any sanctions that have been imposed for comparable offenses by other staff with similar histories.
3. All terminations including those for violations of the 3B sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, are required to be, and shall be reported, along with the reason and supporting documentation, to the Idaho Peace Officers Standards and Training on the approved Separation/Change of Status Form.

B. Corrective action for contractors and volunteers

1. Any contractor or volunteer who engages in sexual abuse shall be prohibited from having access to the 3B and shall be reported to law enforcement agencies for possible criminal prosecution, and to relevant licensing bodies.
 - a. The 3B shall take appropriate remedial measures, if any exist, and shall consider whether to prohibit further contact with juveniles, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.

C. Interventions and disciplinary sanctions for residents

- D. If, during the course of any investigation, it is reported by the investigators or prosecutors that there is a preponderance of the evidence to substantiate an administrative finding that the juvenile engaged in juvenile-on-juvenile sexual abuse, or following a criminal finding of guilt for juvenile-on-juvenile sexual

abuse, the juvenile shall be subject to disciplinary sanctions pursuant to the formal disciplinary process outlined in Policy 7-02.

- E. Any disciplinary sanctions shall be commensurate with the nature and circumstances of the abuse committed, the juvenile's disciplinary history, the sanctions imposed for comparable offenses by other juveniles with similar histories, and shall consider whether a juvenile's mental disabilities or mental illness contributed to his or her behavior.
 - 1. In the event a disciplinary sanction results in the isolation of a juvenile, the 3B shall not deny the juvenile daily large-muscle exercise or access to any legally required educational programming or special education services, unless the juvenile has demonstrated that his/her behavior clearly jeopardizes the safety and security of staff or other juveniles.
 - 2. Juveniles in isolation shall receive daily visits from a medical or mental health care clinician.
 - 3. Juveniles shall also have access to other programs and work opportunities to the extent possible.
- F. To the extent possible, the 3B shall consider whether to offer the offending juvenile participation in interventions such as therapy, counseling, or other programs designed to address and correct underlying reasons or motivations for the abuse, but only to the extent available.
- G. The 3B may require participation in such interventions, if available, as a condition of access to any rewards-based behavior management system such as the Level System, but not as a condition to access to general programming or education.
- H. A juvenile may be disciplined for sexual contact with a staff member only upon a finding that the staff member did not consent to such contact.
 - a. Such a finding shall also require a referral for prosecution of the juvenile.
- I. A report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, and may not be the grounds for disciplinary action, even if an investigation does not establish evidence sufficient to substantiate the allegation of the incident.