Prevention of Resident Sexual Assault/Rape (PREA) Policy

Policy:

Residential juvenile justice staff must have zero tolerance for sexual abuse and sexual harassment of residents. Facilities must ensure that preventive plans are in place and, should allegations regarding sexual abuse or harassment be made, that staff are appropriately trained to take actions to rapidly restore safety, attend to and support the victim, and promptly initiate the investigative process.

PURPOSE

To prevent incidents of sexual abuse and sexual harassment and to take prompt, effective, and compassionate action if allegations of sexual abuse or harassment are made.

DEFINITIONS

Resident-on-resident sexually abusive penetration: Any sexual penetration by a resident of another resident. The sexual acts included are: contact between the penis and the vagina or the anus; contact between the mouth and the penis, vagina, or anus; or, penetration of the anal or genital opening of another person by a hand, finger, or other object, without the resident’s consent.

Resident-on-resident sexually abusive contact: Non-penetrative touching (either directly or through the clothing) of the genitalia, anus, groin, breast, inner thigh, or buttocks without penetration by a resident of another resident, without the latter’s consent, or of a resident who is coerced into sexual contact by threats of violence, or of a resident who is unable to refuse.

Resident-on-resident sexual harassment: Repeated and unwelcome sexual advances, requests for sexual favors, verbal comments, or gestures or actions of a derogatory or offensive sexual nature by one resident directed toward another.

Staff-on-resident sexually abusive contact: Includes non-penetrative touching (either directly or through the clothing) of the genitalia, anus, groin, breast, inner thigh, or buttocks by a staff member or a resident that is unrelated to official duties.

Staff-on-resident sexually abusive penetration: Sexual penetration by a staff member of a resident, including contact between the penis and vagina or anus; contact between the mouth and the penis, vagina, or anus; or, penetration of the anal or genital opening of another person by a hand, finger, or other object.

Staff-on-resident indecent exposure: The display by a staff member of his or her uncovered genitalia, buttocks, or breast in the presence of a resident.

Staff-on-resident voyeurism: An invasion of a resident’s privacy by staff for reasons unrelated to official duties or when otherwise not necessary for safety and security reasons

Staff-on-resident sexual harassment: Repeated verbal comments or gestures of a sexual nature to a resident by a staff member. Such statements include demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or profane or obscene language or gestures.

Staff sexual misconduct: Includes any behavior or act of a sexual nature directed toward a juvenile or youthful offender by an employee, volunteer, contractor, official visitor, or other agency representative. Sexual relationships of a romantic nature between staff and youth are included in this definition.

Sexual Exploitation: Includes allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as defined in MCL 750.145c
Note: Wedgwood prohibits sexual activity between residents, however sexual activity between residents does not constitute criminal sexual conduct if it is determined that the activity was not coerced or otherwise involved criminal behavior. Also see JRG, on-line JJ Residential Glossary.

STANDARD OPERATING PROCEDURE

A. Providing Sexual Assault/Rape Prevention Information to Youth

1. The facility youth orientation process includes policy and procedures relating to prevention of and response to reports of sexual assault/rape. This orientation must occur within the first 10 days of a youth’s admittance day and an annual refresher must be provided. The information provided must include but is not limited to:

   a. The agency’s zero-tolerance policy.
   b. Self-protection including avoiding risky situations related to sexual assault prevention/intervention.
   c. Reporting procedures; how to report rape, sexual activity, sexual abuse, or sexual harassment. Multiple reporting options at Facility include: 1) Verbally to any staff, counselor, or administrator; 2) in writing to any staff, counselor, or administrator; 3) in writing through the youth and family grievance process; and, 4) Externally by telephoning Children’s Protective Services. Anonymous and third party reports must also be accepted.
   d. Treatment and counseling, how to obtain counseling services and/or medical assistance if victimized.
   e. Protection against retaliation.
   f. Risks and potential consequences for engaging in any type of sexual activity while at the facility.
   g. Disciplinary action(s) for making false allegations: Clients will not be disciplined for making an allegation of sexual abuse or sexual harassment if the investigation determines that the abuse did not occur, so long as the allegation was based upon a reasonable belief that the abuse occurred and the allegation was made in good faith. The facility will only discipline youth for sexual contact only upon a finding that staff did not consent to such contact.

2. The information must be provided verbally and in written form, and the information must be in a language and format that the youth can understand.

3. Video presentations may be used to supplement the content of the presentation but direct verbal and written information must be included.

4. Each resident must sign a written acknowledgement form for the sexual assault/rape prevention portion of the orientation.
5. The use of resident interpreters is prohibited except in limited circumstances when delay in translation could compromise resident safety or the performance of first responder duties.

6. The signed acknowledgment form must be filed in the youth’s case record.

B. Youth Assessment

1. The resident’s behavior history must be reviewed, within 72 hours of arrival at the facility, as part of orientation to determine the resident’s potential risk of sexual vulnerability based on the following risk factors:
   a. Prior sexual victimization or abusiveness
   b. Any gender non-conforming appearance or manner or identification as lesbian, gay, bisexual, transgender, or intersex, and whether the resident may therefore be more vulnerable to sexual abuse
   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 resident’s own perception of vulnerabilities
   j. Any other specific information about individual residents that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other residents

Note: All residents that disclose any prior sexual victimization during a screening must be offered a follow-up meeting with a medical or mental health practitioner within 14 days. All residents that disclose during screening that they previously perpetrated sexual abuse are offered a follow-up meeting with a mental health practitioner. These referrals must be documented.

2. The youth must be evaluated as part of orientation to determine if the youth is prone to victimize other youth, especially in regard to sexual behavior, based on the following risk factors:
   a. History of sexually aggressive behavior
   b. History of violence as related to a sexual offense
   c. Anti-social attitudes indicative of sexually aggressive behavior

3. The agency must use all information obtained to make housing, bed, program, education, and work assignments for residents with the goal of keeping residents safe and free from sexual abuse.
4. Lesbian, gay, bisexual, transgender, or intersex (LGBTI) residents may not be housed solely on the basis of such identification or status. In addition, the agency must:

a. Decide on a case-by-case basis whether to place a transgender or intersex youth in a facility for male or female residents. Placement decisions are based on whether the placement would ensure the resident’s health and safety, and whether the placement would present management or security problems. The youth’s own view of his gender identity should be considered when determining placement.

b. Review placement and programming assignments at least twice each year to assess any threats to safety experienced by the resident.

c. Allow transgender and intersex youths the opportunity to shower separately from other residents.

d. Staff must not search or physically examine a transgender or intersex resident for the sole purpose of determining a youth’s genital status. If a youth’s genital status is unknown, it may be determined during conversations with the youth, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

5. A youth may be isolated from other youth as a preventive and protective measure, but only as a last resort when other less restrictive measures are inadequate to keep the youth safe from other youths, and then only until an alternate means of keeping all youths safe can be arranged. During any periods of protective isolation, facility staff may not deny a youth otherwise under control, access to daily large-muscle exercise and legally-required educational programming or special education services.

6. Assessment activities must be documented.

C. Staff Training on Offender Sexual Assault/Rape Prevention and Reporting

1. All facility staff, and contractors and volunteers that have regular contact with youths, must complete initial and annual training for sexual assault/rape prevention, incident response, and reporting. At the conclusion of each training session, all trainees must sign that they attended and understood the training. This signature sheet must be kept on file for a period determined by the agency’s Record Retention Schedule.

2. All facility staff must read this policy and any related local facility written policy or procedure articles prior to assuming duties with youth, when the policy or procedure changes, and on at least an annual basis. Staff must sign a written acknowledgment that they read and understood the policies.
and procedures. This signature sheet must be kept on file for a period determined by the Record Retention Schedule.

3. When staff that have been trained later transfer to work at a facility or unit housing a different gender, then additional gender-specific training is required.

4. Direct care staff is trained in how to conduct a pat down search. Cross gender pat searches are prohibited, except in exigent circumstances. In that event, exigent circumstances shall be documented with justification of the circumstances leading to cross gender pat search.

5. Searches of transgender and intersex residents must be conducted in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

6. All full and part time medical and mental health care practitioners who work regularly with WHS residents must receive specialized training on: Detecting signs of sexual abuse, preserving physical evidence, effective response, and reporting. Training will be documented in personnel records.

D. Staff Supervision Relative to PREA Standards

1. Staff must recognize that sexual assault/rape can occur in virtually any area in a residential facility. Facility requirements for line of sight supervision and staff-to-youth ratios apply at all times according to Wedgwood’s policy.

2. Staff must always be aware of warning signs that may indicate that a youth has been sexually assaulted or is in fear of being sexually assaulted. Warning signs include but are not limited to: Isolation, depression, lashing out at others, refusing to shower, suicidal thoughts or actions, and seeking protection from staff.

3. Staff must be aware of sexually aggressive behavior. Characteristics or warning signs may include but are not limited to: A prior history of committing sex offenses, use of strong arm tactics (extortion), associating or pairing up with a youth that meets the profile of a potential victim, exhibiting voyeuristic and/or exhibitionistic behavior, and a demonstrated inability to control anger.

4. All staff of the opposite gender must announce their presence when entering any areas where residents are likely to be showering, performing bodily functions, or changing clothes.

5. Other than medical staff, opposite gender staff may not view, including camera viewing, residents when they are showering, performing bodily functions except in exigent circumstances or when such viewing is incidental to routine cell checks.
E. Youth Response to Sexual Assault/Rape

1. Youths must be supported and encouraged to report sexual assault/rape, attempted sexual assault/rape, and/or sexual harassment and be protected from retaliation. A youth that believes that they were the victim of a sexual assault/rape, attempted sexual assault/rape or sexual harassment, or believes another youth was the victim or sexual assault/rape, attempted sexual assault/rape, or sexual harassment, may report this information to a staff member. Youths may also write down their report and turn it in to staff, or use the facility grievance process to report. An option must exist for youths to report sexual abuse to someone outside of the facility. The outside reporting option for Facility is to place a call to Children’s Protected Services, 1-855-444-3911. If a youth requests to report outside of the facility, the following must occur:

   a. The staff should contact the on-duty Campus Supervisor, Home Supervisor or Shift Supervisor to facilitate the call. If these persons are not present or cannot be reached the staff can document this fact and then arrange the call themselves.

   b. When arranging the call for the client, staff must make arrangements for the client to make the call in a location where the call is confidential.

   c. The Supervisor/Staff will maintain line of sight supervision of the youth at all times.

   d. Following completion of the call, the Supervisor/Staff will notify the Associate Director of the home and Director of Residential Programming and report that a youth made a call to CPS.

*Note: Calls to CPS are confidential however it could occur that a youth also volunteers information to staff about sexual abuse. If at any time a youth discloses information about sexual abuse to any Facility personnel then staff must respond in accordance with the procedures listed under “Staff Response to Sexual Abuse/Rape”.

2. Following a client’s allegation that a staff member or has committed sexual abuse against the resident, the facility subsequently informs the client (unless the facility has 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.
3. Following a resident’s allegation that he or she has been sexually abused by another resident in the facility, the facility subsequently informs 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.

4. Client Grievances related to sexual abuse allegations:

   a. A grievance alleging sexual abuse can be filed at any time regardless of when the incident allegedly occurred.
   b. Third party grievances alleging sexual abuse are accepted.
   c. A grievance alleging sexual abuse or sexual harassment does not have to be submitted to the person that is the subject of the allegation.
   d. There is no requirement that youth use an informal process for resolving grievances alleging sexual abuse or sexual harassment.
   e. Emergency grievances alleging sexual abuse and/or the imminent threat of sexual abuse must be responded to immediately.

F. Staff Response to Sexual Assault/Rape

Staff must report immediately any knowledge, suspicion, or information that they receive regarding: An incident of sexual abuse or sexual harassment that occurred in a facility, whether or not the facility is part of the agency; retaliation against residents or staff that reported such an incident; and/or, any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

1. Staff receiving a report of a sexual assault/rape or attempted sexual assault/rape, or staff that become aware of sexual activity between residents or between a resident and staff, contractor, visitor, or volunteer must immediately report this event to Supervision. The supervisor must immediately relay the report to the facility Director or manager-level designee. That administrator is responsible for notifying BCAL.

2. The staff member receiving the report of actual or suspected sexual abuse or rape must immediately call Children’s Protective Services and report the incident and/or allegation. The staff member receiving the report of actual or suspected sexual abuse or rape must submit an Incident Report before the end of their work shift and must complete a DHS-3200, Report of Actual or Suspected Child Abuse or Neglect, within 72 hours of becoming aware of the incident.

3. If it is believed or determined that a sexual assault/rape occurred and that the alleged sexual assault/rape occurred within the last 96 hours, the facility Director or designee must make immediate arrangements to
transport the youth to the facility-designated emergency room for a rape kit and the area where the incident occurred must be secured for evidence collection. If it is believed or determined that a sexual assault/rape occurred more than 96 hours previous, the emergency room must be contacted for further instructions.

4. Following emergency response and completion of the rape kit (if applicable) a youth believed or determined to have been the victim of a sexual assault/rape must also be examined by medical staff for possible injuries, regardless of when the alleged sexual assault occurred. Female youths must be provided with pregnancy tests.

5. Victims and perpetrators of sexual assault must be encouraged to complete tests for sexually transmitted diseases, including an HIV test. In the case of a substantiated incident of sexual assault, the perpetrator must be requested to complete an HIV test. If the perpetrator will not voluntarily take an HIV test, the facility Director or designee must seek a court order compelling the test.

6. The victim of sexual assault/rape or attempted sexual assault/rape must be provided mental health assistance and counseling as determined necessary and appropriate. Medical and mental health treatment, and forensic exams must be provided at no charge to residents.

7. The facility Director or designee must notify the MDHHS Juvenile Justice Programs Director of the incident.

8. The facility Director or designee also ensures that incidents of sexual abuse/rape, findings from investigations, and other pertinent information is reported to the youth’s court of jurisdiction, the youth’s worker, and the youth’s parent or legal guardian. The facility Director or designee also ensures that incidents of sexual abuse/rape, findings from investigations, and other pertinent information is reported to the youth’s court of jurisdiction, the youth’s worker, and the youth’s parent or legal guardian. The youth is also informed of the findings from investigations of sexual abuse or sexual harassment investigations.

9. Records of allegations involving an employee must be kept for as long as the employee is employed or the youth is in residence, plus five years.

10. If a report is received of sexual abuse from another facility, the facility Director must report Director-to-Director to the other facility within 72 hours. (All other applicable reporting requirements still apply.)

11. A designated facility employee must monitor staff and youth to prevent retaliation for a minimum of 90 days after a sexual abuse report is made.

G. **Alternate Housing Placement of Victims and Perpetrators**

The facility Director or designee must take immediate steps to protect the alleged victim from further potential sexual assault or rape (if still at the facility) by separating the alleged victim from the alleged perpetrator(s) including arranging for separate housing and/or other elements of daily routine to the extent necessary to ensure protection. The facility Director or designee must provide the same
protections and accommodations to a youth that is in imminent danger of being sexually abused.

H. Investigation Protocols

Each incident of alleged or reported sexual abuse or sexual assault/rape must be investigated to the fullest extent possible. Evidence collected must be maintained under strict control. All allegations of sexual abuse must be referred for investigation. All investigations of sexual abuse allegations must be completed. Based on the results of the investigation, agency Administration and prosecuting authorities will meet to determine if prosecution is appropriate. In administrative investigations the facility imposes a standard of a preponderance of the evidence or a lower standard of proof for determining whether allegations of sexual abuse or sexual harassment are substantiated.

1. Suspected or alleged youth-on-youth rape, sexual assault, or forced sexual activity with or without sexual penetration:

   a. The victim and alleged perpetrator must be separated, kept isolated from each other, and prevented from communicating.
   b. Reporting must occur as listed in Section F above.
   c. If the assault is alleged to have occurred within the past 96 hours, the victim must be transported to YWCA West Central Michigan (or alternate if directed by Administration or emergency personnel) for examination by qualified personnel. If the assault is alleged to have occurred more than 96 hours earlier, the YWCA is contacted for instructions.
   d. Qualified investigators must take victim statements, open an investigation, and if applicable collect physical evidence.
   e. The area where the suspected assault took place is sealed off until investigators can gather evidence. Note: Staff or medical personnel can enter the area if it is necessary to ensure youth safety, for example if a victim needed medical attention or first aid before being transported, but efforts must be made to disturb the area as little as possible.
   f. Any clothing or articles belonging to the victim are left in place and not handled or disturbed until investigators have gathered evidence. Request that the victim must not shower, wash, brush teeth, or change clothing before being transported to the hospital.
   g. Staff must not extensively interview victims or alleged perpetrators for incident details beyond obtaining the basic information necessary to inform further actions that must be taken, such as separation of victims and perpetrators, facilitating for victim medical needs, etc.
   h. Staff must submit an Incident Report before the end of their shift. Incident Reports must contain all facts as known, including the
victim’s statement of allegation in the victim’s own words. Incident Reports must not express the writer’s opinion.

i. Staff must not discuss the details of sexual abuse allegations or incidents, beyond the extent needed to maintain safety and security at the facility, with persons other than Supervision/Management, investigators, and prosecuting officials.

2. Suspected or alleged staff-on-youth sexual activity of any type:

   a. Reporting must occur immediately, as listed in Section F above.
   b. The facility Director or designee must make all required notifications, including notification to the suspected employee restricting work activities.
   b. Pending notification from the Director or designee, the suspected employee must not be in direct contact with facility residents.
   c. If there has been suspected or alleged sexual activity of any type the victim is transported for a forensic examination and evidence is protected using the same procedures as listed in items c through g in Section H, Number 1, above.
   d. Dismissal is the presumptive employee discipline upon a substantiated finding of sexual abuse of a resident.

3. Any other intentional youth-on-youth sexual touching (non-penetrative touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks without penetration by a resident of another resident, with or without the latter’s consent) and/or alleged or suspected youth-on-youth sexually abusive contact:

   a. If reported by youth, observed, or suspected, duty staff must alert Supervision. Supervision must ensure that duty staff document information in an Incident Report and must ensure that youth safety is restored or maintained.
   b. The facility Director or designee must be notified immediately.
   c. The facility Director or designee determines applicable reporting responsibilities and ensures that reporting occurs as required.
   d. The facility Director or designee makes required notifications as applicable.

I. Independent Audits and Agency Monitoring and Reporting, Data Collection

1. In addition to internal administrative review and analysis, and BCAL reviews, an independent and qualified auditor must audit the agency at least every three years. Auditors must be able to access and tour the facility, review documents and records, and interview residents and staff.

2. The facility must designate a PREA compliance manager that has the time and authority to oversee facility compliance efforts.
3. The agency must distribute information to the public on how to report sexual abuse and sexual harassment on behalf of residents, information on its zero tolerance policy for sexual abuse/rape of residents, and sexual abuse data reports.

4. Facility management must review each incident of sexual abuse for cause, staffing, and physical barriers, and make recommendations for prevention and implementation of remedy(s).

5. The facility must develop, document, and implement a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring to protect residents from sexual abuse. At least annually, facility Administration and the facility PREA compliance manager must review the plan to ensure:
   a. Generally accepted secure residential practices are met.
   b. Findings of inadequacy are addressed.
   c. Adequate numbers of Supervisory personnel.
   d. Physical plant inadequacies, such as “blind spots” on video monitoring systems are addressed to the maximum extent possible.
   e. Responses are made where there is a prevalence of sexual abuse reporting on a certain shift, in a certain location, with certain personnel, or as pertaining to other factors.

6. Mid or upper level Supervision must make documented unannounced rounds to identify and deter staff sexual misconduct and sexual abuse.

7. The conduct and treatment of residents or staff that report an abuse incident, or are cooperating witnesses, must be monitored by mid or upper-level management for at least 90 days.

8. The facility must collect accurate, uniform data for every allegation of sexual abuse. At a minimum the data must be sufficient to answer all questions on the annually-required Survey of Sexual Violence. Aggregated data must be:
   a. Reviewed in order to assess and improve sexual abuse prevention, detection, and response practices.
   b. Made available to the public through a public Website or some other means at least annually. (Note: Personal identifiers must be removed.)

J. Exhaustion of Administrative Remedies

1. The facility must issue a final decision (initial decision and appeal decision if appealed) on the merits of a grievance alleging sexual abuse or harassment within 90 calendar days of the initial filing of the grievance.

2. The facility may claim an extension of time to respond of up to 70 calendar days if the normal time period for a response is insufficient to
make a decision. The facility must notify the youth and the youth’s parent/guardian in writing of any such extension.

3. Third parties, including fellow youths, staff, family, attorneys, and outside advocates may assist a youth filing grievances relating to allegations of sexual abuse and harassment. If a third party, other than the parent or guardian, files a grievance on the youth’s behalf, the facility must request as a condition of processing that the alleged victim agree to the grievance filed on his behalf and may also require that the alleged victim pursue any subsequent steps in the remedy process. If the alleged victim declines to have the grievance processed on his behalf, the facility must document the youth’s decision.

**AUTHORITY**

1939 PA 280, Social Welfare Act, MCL 400.115a(1)(g)
45 USC 15601, Prison Rape Elimination Act