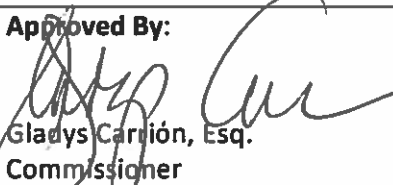


**Prevention, Detection, and Response to Sexual Misconduct in the Division of Youth and Family Justice Detention Services**

<p><b>Approved By:</b>  Gladys Carrión, Esq. Commissioner</p>	<p><b>Date Issued:</b> July 2, 2015</p>	<p><b>Number of Pages:</b> 32</p>	<p><b>Number of Attachments:</b> 2</p>
<p><b>Related Laws:</b> Public Law 108-79 - Prison Rape Elimination Act (PREA) of 2003 Penal Law Article 130, Sex Offenses, Sections 130.00 (1) through 130.90 (2)</p>	<p><b>ACS Divisions/Provider Agencies:</b> Division of Youth and Family Justice Secure Detention and Non-Secure Detention Staff</p>	<p><b>Contact Office /Unit:</b> Stephanie Prussack Associate Commissioner Detention Services <a href="mailto:stephanie.prussack@acs.nyc.gov">stephanie.prussack@acs.nyc.gov</a></p>	
<p><b>Supporting Regulations:</b> 28 CFR Part 115 (Prison Rape Elimination Act National Standards)</p>	<p><b>Supporting Case Law:</b> N/A</p>	<p><b>Key Words:</b> PREA, prison rape elimination act, sexual misconduct, misconduct, sexual harassment, harassment, prevention, sexual abuse, retaliation, reporting, employee discipline, detention, DYFJ, secure detention, non-secure detention, NSD</p>	
<p><b>Bulletins &amp; Directives:</b> DYFJ Directive #11.1 Personal Resident Searches; DJJ Directive #08/08 Searches in DJJ Facilities; DJJ Directive #06/08 Housing Area Logbook Policy; DJJ Order #02/08 Room Confinement; DYFJ Directive #07/08 Resident Advocacy Program; DJJ Operations Order #04/05: The Agency's Revised Behavior Management Program; DYFJ Administrative Order #01/12 Reporting of Incidents and Data Management for GOALS; DJJ Directive #010 Undue Familiarity; DJJ Directive #05/07 Confidential Nature of Resident's Information Including Immigration Status; DJJ Order #08/07 Resident Case</p>	<p><b>Related Policies:</b> DJJ Policy #3.3 Juvenile Counselor Staffing Assignment Protocol; ACS Policy #2012/01 Promoting a Safe and Respectful Environment for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth (LGBTQ) and Their Families Involved with the Child Welfare, Detention, and Juvenile Justice System, 11/21/12.</p>	<p><b>Supersedes:</b> N/A</p>	

<p>Confidentiality;  DJJ Operations Order #04/04  Manager’s Report of Incident;  DJJ Operations Order #04/02  Supervision During Resident  Programming; DJJ Directive #  01/09 Reporting/Processing  Child Abuse and/or  Maltreatment/ Neglect  Allegations; DJJ Directive  #01/08 Vigilant Supervision of  Youth on Mental Health  Watches Including Suicide  Prevention; ACS Code of  Conduct; DJJ Code of Conduct;  Justice Center Code of Conduct.</p>		
<p><b>Related Forms:</b> Search Request Form for Transgender and Intersex Youth</p>		
<p><b>SUMMARY:</b>  Staff of the Administration for Children’s Services (ACS), volunteers, interns, contractors, and youth may not engage in sexual abuse or sexual harassment of youth in the care and custody of ACS. Staff in the ACS Division of Youth and Family Justice (DYFJ) shall report and engage in appropriate follow-up with respect to allegations of sexual abuse and sexual harassment of youth as required by this policy, and shall provide alleged victims and youth perpetrators with needed services and supports. DYFJ shall employ supervision and search practices that minimize the possibility of harm to youth in their care, and shall educate youth and staff about their rights and responsibilities under this policy.</p>		
<p><b>SCOPE:</b>  This policy applies to all youth in ACS detention facilities, in court, and during transportation to and from detention facilities pursuant to Article 3 of the Family Court Act. This policy applies to ACS staff, provider agency and contractor staff, and volunteers and interns in those settings.</p>		

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## I. PURPOSE

The purpose of this policy is to outline the approach of the Administration for Children’s Services (ACS) to maintaining zero tolerance for sexual misconduct in non-secure and secure detention facilities that house youth in the care of ACS. The policy sets forth ACS’ approach to sexual misconduct prevention, detection, and response for youth in non-secure and secure detention.

## II. POLICY

ACS staff, volunteers, interns, contractors, and youth may not engage in sexual abuse or sexual harassment of youth in detention who are in the care and custody of ACS. Detention staff shall report and engage in appropriate follow-up with respect to allegations of sexual abuse and sexual harassment of youth as required by this policy and shall provide alleged victims and youth perpetrators with needed services and supports. Detention staff shall employ supervision and search practices that minimize the possibility of harm to youth in their care and shall educate youth and staff about their rights and responsibilities under this policy.

## III. DEFINITIONS

- A. **Body Cavity Search** – Any touching or probing of a youth’s anal and/or vaginal body cavity areas for the purpose of locating contraband. Visual searches of the oral cavity (mouth) and ear canal do not fall under the category of a body cavity search.
- B. **Contractor** – A person who provides services on a recurring basis pursuant to a contractual agreement with ACS. This includes provider agencies and their staff.
- C. **Detention or Detention Facility** – Both secure and non-secure detention (NSD) facilities operated or overseen by ACS.
- D. **Detention Staff** – Employees and contractors of the secure and non-secure detention facilities overseen or operated by ACS, as well as staff of the Court Services, Admissions, and the Movement and Control Communications Unit (CAM), Residential Care Advocates assigned to the secure and non-secure detention facilities, and DYFJ administrators responsible for oversight of DYFJ detention facilities.
- E. **Exigent Circumstances** – Any set of temporary and unforeseeable circumstances that require immediate action in order to combat a serious threat to the security of a facility.
- F. **Gender Expression** – Aspects of behavior and outward presentation that may (intentionally or unintentionally) communicate gender to others in a given culture or society, including clothing, body language, hairstyles, socialization, interests and

presence in gendered spaces (e.g. restrooms, places of worship, etc.) A person's gender expression may vary from the gender norms traditionally associated with that person's biological sex.

- G. **Gender Identity** – Individuals' internal view of their gender; individuals' innermost sense of being male or female.
- H. **Gender Non-Conforming** – Having or perceived to have gender characteristics and/or behaviors that do not conform to traditional or societal expectations.
- I. **Interns** – Students who assist provider agencies and/or DYFJ pursuant to an agreement with the student's school.
- J. **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.
- K. **Pat-Frisk Search** – Any manual inspection of a youth's clothed body that consists of physically patting down his or her clothing. The youth may be required to remove his or her outer clothing such as a coat, hat, and shoes. A pat-frisk search does not require reasonable suspicion and is part of the routine operation of all DYFJ detention facilities.
- L. **Prison Rape Elimination Act (PREA)** – A law passed by the United States Congress in 2003 to promote the prevention, detection, investigation, and appropriate response to sexual misconduct in custodial settings, including juvenile facilities.
- M. **Residential Care Advocate** – An advocate for youth in DYFJ's secure and NSD facilities overseen by the ACS Office of Advocacy. The Residential Care Advocate is part of the Resident Care Advocacy Program, which advocates for the rights of detained youth by monitoring the overall living conditions within the DYFJ secure and NSD facilities and advocating for improvements in the quality of care in accordance with ACS' policies and procedures.
- N. **Room Confinement** – Confinement of a youth in a room, including the youth's own room, when locked or when the youth is authoritatively told not to leave.
- O. **Security Search** – Any non-medical inspection that requires the youth to wear a medical gown or robe after removing his or her outer garments, and then subsequently removing all of his or her undergarments. Such searches are conducted to maintain the safety and security of staff and youth and do not require individualized reasonable suspicion that a youth is in possession of contraband. Security searches do not include any visual inspection of a youth's breasts, buttocks, or genitalia during a search. If such inspection occurs, the search becomes a strip search.

P. **Sexual Abuse** – The definition of sexual abuse for purposes of this policy includes sexual abuse of a youth by another youth and sexual abuse of a youth by an ACS staff member, contractor, volunteer, or intern.

1. Sexual abuse of a youth by another youth includes any of the following acts, if the victim does not expressly or impliedly acquiesce in the alleged perpetrator's conduct; is four (4) or more years younger than the alleged perpetrator; is unable to consent or refuse because of being mentally disabled, mentally incapacitated, or physically helpless; is coerced into such act by overt or implied threats of or actual use of force or violence; or is under the age of 11:
  - 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 vagina, urethra, penis, rectum or anus of another person, however slight, by a hand, finger, object, or other instrument; and
  - d. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of any person. Sexual abuse does not include contact incidental to non-sexual horseplay or a physical altercation such as a kick in the groin or touching someone's breasts while pushing her away.
2. Sexual abuse of a youth by an ACS staff member, contractor, volunteer, or intern includes any of the following acts, with or without the consent of the youth:
  - a. Sexual touching by an ACS staff member, contractor, volunteer, or intern, including any of the following:
    - i. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
    - ii. Penetration of the vagina, urethra, penis, rectum or anus of another person, however slight, by a hand, finger, object, or other instrument, except when conducted by a medical professional as part of a medical examination or medical treatment;
    - iii. Contact between the mouth and the penis, vulva, or anus;
    - iv. The emission of ejaculate by the staff member, contractor, volunteer, or intern upon any part of a youth, clothed or unclothed;
    - v. Any other intentional touching not required by official duties, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of any person. Sexual abuse does not include conduct required

by or incidental to official duties. It would not be sexual misconduct for a staff member to touch a youth's body as required in order to conduct a proper pat-frisk search, or when a staff member's hand slips unavoidably while he or she is breaking up a fight; and

- vi. Any other contact where the ACS staff member, contractor, or volunteer has the intent to degrade or abuse the youth or to arouse or gratify sexual desire.
- b. Any attempt, threat, or request by an ACS staff member, contractor, volunteer, or intern to engage in sexual touching.
- c. Indecent exposure by an ACS staff member, contractor, volunteer, or intern, which means the display of his or her uncovered genitalia, buttocks, or breast in the presence of a youth.
- d. Voyeurism by an ACS staff member, contractor, volunteer, or intern, which means an invasion of a youth's privacy for reasons that do not involve the performance of official duties. Voyeurism may include peering at a youth who is using a toilet or changing in his or her room or bathing, except when staff are required to maintain constant visual supervision of a youth pursuant to DJJ Directive #01/08 Vigilant Supervision of Youth on Mental Health Watches Including Suicide Prevention; requiring a youth to expose his or her buttocks, genitals, or breasts for reasons other than a properly administered strip search, body cavity search, or medical examination; or taking images of all or part of a youth's naked body or of a youth performing bodily functions except when staff are required to maintain constant visual supervision of a youth as above.
- e. Any conduct or communication by an ACS staff member, contractor, volunteer, or intern that advances, profits from, uses, patronizes or encourages a youth to engage in any act of sexual exploitation, sex trafficking, or prostitution as defined in Article 230 of the Penal Law.
- f. Any conduct or communication by an ACS staff member, contractor, volunteer, or intern that allows, permits, promotes, produces, uses, or encourages a youth to engage in any sexual performance as defined in Article 263 of the Penal Law; having such material involving a youth in his or her possession or control; or having accessed such material with the intent to view it.
- g. Any conduct by an ACS staff member, contractor, volunteer, or intern that subjects a youth to incest as defined by Article 255 of the Penal Law.
- h. Commission of any other sex offense as defined by Article 130 of the Penal Law by an ACS staff member, contractor, volunteer, or intern against a youth.

Q. **Sexual Harassment** – The definition of 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 youth in ACS' custody toward another youth in ACS' custody; and
2. Verbal comments or gestures of a sexual nature to a youth by an ACS staff member, contractor, volunteer, or intern, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

R. **Sexual Misconduct** – Actions constituting either sexual harassment or sexual abuse.

S. **Strip Search** – Any visual inspection that requires the youth to remove all clothing. The removed clothing is carefully inspected and the body is visually inspected, including inspection of the breasts, buttocks, or genitalia, without probing any of the body cavities.

T. **Substantiated\*** – An allegation that was investigated and determined to have occurred.

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

V. **Unfounded\*** – An allegation that was investigated and determined not to have occurred.

W. **Unsubstantiated\*** – An allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

**Note: Definitions denoted with an asterisk (\*)** are derived from the regulations implementing the Prison Rape Elimination Act as it applies to Juvenile Facilities. The definitions only apply to this policy. They are not interchangeable with the definitions of the same words as used in Social Services Law.

X. **Volunteer** – An individual who donates time and effort on a recurring basis to enhance the activities and programs of detention facilities.

Y. **Vulnerable Persons Central Register** – An entity of the New York State Justice Center for the Protection of People with Special Needs (Justice Center) that is designated to receive reports of abuse, neglect, and other significant incidents involving youth in residential settings.



- Z. **Youth** – Any child in detention under ACS’ supervision who is in the custody of ACS pursuant to Article 3 of the Family Court Act.

#### **IV. COORDINATION**

- A. The Deputy Commissioner of DYFJ shall designate a senior administrator as the PREA Coordinator in DYFJ to coordinate the development, implementation, and oversight of measures to prevent, detect, and respond to incidents and allegations of sexual misconduct in detention facilities operated or overseen by ACS.
- B. The Director of Operations at each DYFJ secure detention facility shall, as the PREA Compliance Manager, oversee the facility’s compliance with ACS’ policies on preventing, detecting, and responding to sexual misconduct.
- C. The Executive Director of Non-Secure Detention shall oversee efforts to prevent, detect, and respond to incidents and allegations of sexual misconduct in ACS’ NSD facilities. Each NSD facility director shall manage the facility’s compliance with ACS’ policies on preventing, detecting, and responding to sexual misconduct.
- D. The Executive Director of Court Services, Admissions, and the Movement and Control Communications Unit (CAM) shall manage compliance with ACS’ policies on preventing, detecting, and responding to sexual misconduct in situations involving detention staff who interact with youth in court and during transportation to and from detention.

#### **V. TOURS OF INSPECTION**

- A. In the process of creating and reviewing staffing plans for detention facilities operated and overseen by ACS, the Associate Commissioner for Detention or his or her designee shall consider the following factors on an annual basis, in consultation with the PREA Coordinator, the Executive Directors of the secure detention facilities, the Executive Director of Non-Secure Detention, and the Executive Director of CAM:
  - 1. Any minimum staffing levels required by law, regulation, or policy;
  - 2. Generally accepted juvenile detention and correctional/secure residential practices;
  - 3. Any judicial findings of inadequacy;
  - 4. Any findings of inadequacy from Federal investigative agencies;
  - 5. Any findings of inadequacy from internal or external oversight bodies;
  - 6. All components of the facility’s physical plant (including “blind spots” or areas where staff or youth may be isolated);
  - 7. The composition of the youth population in detention facilities operated or overseen by ACS;
  - 8. The number and placement of supervisory staff;
  - 9. The deployment and quality of video monitoring;

10. Programs occurring on a particular tour;
  11. The prevalence of substantiated and unsubstantiated incidents of sexual abuse;
  12. Whether additional resources or adjustments to video monitoring or staffing patterns are needed; and
  13. Any other relevant factors.
- B. The Associate Commissioner for Detention or his or her designee shall increase or adjust staffing levels and video monitoring as necessary to fill gaps identified through the review described above in Section V(A).
  - C. When ACS is planning any new building, building modification, conversion of existing spaces, or change in video monitoring capabilities for detention facilities, the Associate Commissioner for Detention or his or her designee shall consider whether any proposed change will have an impact on the changes on ACS' ability to protect youth from sexual misconduct.
  - D. Supervisors in secure detention shall conduct unannounced tours of inspection on all tours, as required by DJJ Directive #06/08 Housing Area Logbook Policy. No detention staff member shall alert other staff members that tours of inspection are occurring, unless such announcement is related to the legitimate operational functions of the facility.

## **VI. SEARCHES**

- A. No youth shall be subject to a body cavity search by detention staff. Body cavity searches may only be performed by medically trained personnel at a hospital and pursuant to DYFJ Directive #11.1 Personal Resident Searches and DJJ Directive #08/08 Searches in DJJ Facilities.
- B. No youth shall be subject to a strip search or pat-frisk search by detention staff of the opposite gender except in exigent circumstances.
- C. All cross-gender strip searches and pat-frisk searches of youth and the justification for those searches shall be logged in the appropriate unit logbook and also documented according to DYFJ Directive #11.1 Personal Resident Searches and DJJ Directive #08/08 Searches in DJJ Facilities.
- D. No detention staff member will conduct searches of transgender or intersex youth solely for the purpose of determining genital status.
- E. Detention staff shall offer transgender and intersex youth the opportunity to request that staff of a particular gender conduct any pat-frisk or necessary strip search of the youth. Detention staff shall comply with that request whenever possible consistent with

facility safety and security. Upon admission, intake staff shall offer youth who self-identify as transgender or intersex the opportunity to complete Attachment A: Search Request Form for Transgender and Intersex Youth. Any staff to whom youth disclose that they are transgender or intersex thereafter shall arrange for the youth to be offered the opportunity to complete the form if the youth has not already done so.

- F. Detention staff shall also follow requirements contained in DYFJ Directive #11.1 Personal Resident Searches, DJJ Directive #08/08 Searches in DJJ Facilities, the ACS Code of Conduct, the Justice Center Code of Conduct, and the DJJ Code of Conduct.

## **VII. LIMITS TO CROSS-GENDER VIEWING OF YOUTH**

- A. Detention staff shall help youth understand and abide by the expectation that youth cover themselves when they may be viewed by others, except as appropriate for medical care.
- B. Detention staff of the opposite gender as youth shall avoid viewing youth in a state of undress while youth are toileting, showering, or changing clothing, except in exigent circumstances, when staff are conducting routine bed checks, or when staff are required to maintain continuous direct supervision of a youth pursuant to DJJ Directive #01/08 Vigilant Supervision of Youth on Mental Health Watches Including Suicide Prevention.
- C. Detention staff shall maintain an environment in which youth are not viewed in a state of undress, except as required for security or medical reasons outlined in this and other policies. Detention staff of the opposite gender shall announce their presence in areas and during times when youth may be performing bodily functions, showering, or changing clothing, and shall allow sufficient time for youth to cover themselves before entering those areas, except in exigent circumstances.

## **VIII. COMMUNICATION WITH YOUTH**

- A. Detention staff who come into contact with youth who may have limited English proficiency (LEP) or disabilities shall inform supervisors so that supervisors may make appropriate referrals for assessment and services.
- B. Detention staff shall provide youth with disabilities and LEP youth an opportunity equal to that of other youth to participate in and receive the benefits of the programs and services available in DYFJ facilities, including efforts to prevent, detect, and respond to sexual misconduct.
- C. The Case Manager Supervisor, Director of Programs, and Operations Manager at each secure detention facility, and the Executive Director of Non-Secure Detention shall provide training for admissions staff at secure facilities and case managers, child care

supervisors, and staff who conduct intake at NSD facilities on referring youth for assessment if it appears that youth may have a disability or limited English proficiency.

- D. In order to make appropriate accommodations for LEP youth and youth with disabilities, DYFJ case managers shall do the following:
1. Identify youth with LEP and youth with disabilities upon admission to a DYFJ facility and work with each youth's family, medical, mental health, psychiatry, and other staff as necessary;
  2. In NSD facilities, notify the Facility Director, who will notify the Executive Director of Non-Secure Detention, if it is necessary to arrange for ongoing language interpretation. In secure detention, coordinate with the Case Manager Supervisor to arrange for language interpretation;
  3. Document the youth's special needs in the case manager's case notes and, in consultation with the Case Manager Supervisor and the PREA Coordinator, develop a case plan in accordance with the youth's needs. The case plan shall include arrangements for providing youth with disabilities and youth with LEP with explanations, in a manner that the youth can understand, for how to report if they are feeling unsafe, how to access medical and mental health care, how to use the Residential Care Advocacy Program, and strategies for effective communication;
  4. Coordinate the agency's efforts to meet the needs of the youth, including youth with disabilities and youth with LEP, consulting with the Case Manager Supervisor, Director of Programs, Operations Manager, medical staff, mental health staff, psychiatry staff, and family members of the youth and others as necessary.
- E. The Director of Operations and Operations Managers at each secure facility and the Facility Director of each non-secure facility shall post and make readily available information for telephone interpretation services for all individuals who work with youth. The Operations Managers in secure detention and Facility Directors in NSD shall arrange for training of staff on how to use available resources to communicate with youth with LEP and their families and shall arrange for staff to provide such youth with meaningful access to programs and services.
- F. Detention staff, volunteers, interns, and contractors shall use interpretation resources to communicate with youth with LEP at all stages of a youth's stay at a detention facility unless the staff, volunteer, intern, or contractor speaks the youth's native language.
- G. Detention staff, volunteers, interns, and contractors shall not rely on youth, family, friends or neighbors to provide translation or interpretation except in limited circumstances where an extended delay in obtaining an effective interpreter could

compromise the youth's safety, the performance of first responder duties following an allegation that a youth was sexually abused, or the investigation of the youth's allegations. The PREA Coordinator or designee shall communicate with the contractor(s) and agency contracting entity to confirm that interpreters can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

## **IX. TRAINING OF DETENTION STAFF**

A. DYFJ's Executive Director of Administration and Staff Development, in consultation with the ACS Executive Director of Training and Workforce Innovation, shall require that all detention staff who may have contact with residents receive initial and biannual refresher training on:

1. DYFJ's zero tolerance for sexual misconduct and retaliation.
2. How to fulfill responsibilities regarding prevention, detection, reporting and response to sexual misconduct.
3. Youths' right to be free from sexual misconduct.
4. The right of youth and employees to be free from retaliation for reporting sexual misconduct.
5. The dynamics of sexual abuse and sexual harassment in juvenile facilities.
6. The factors that make youth vulnerable to sexual abuse and sexual harassment.
7. Adolescent development for girls and boys that includes developmentally normative sexual behavior for adolescents, how to distinguish between developmentally normative adolescent behavior and sexually aggressive and dangerous behaviors, and the ways in which sexual victimization can affect healthy development. The training shall be informed by the extent to which cultural, social, and family influences interfere with a youth's functioning.
8. The prevalence of trauma and abuse histories among youth in juvenile justice facilities, possible behaviors of youth with trauma and abuse histories, and appropriate gender specific ways of responding to those behaviors.
9. The common reactions of youth victims of sexual abuse and sexual harassment.
10. How to detect and respond to signs of threatened and actual sexual abuse and sexual harassment and how to distinguish between consensual sexual contact and sexual abuse between youth.
11. How to communicate effectively and professionally with youth, including lesbian, gay, bisexual, transgender, intersex and gender nonconforming youth.
12. How to handle disclosures of victimization by youth in a sensitive manner.
13. How to preserve evidence associated with instances of sexual abuse.
14. How to avoid inappropriate relationships with youth and how to maintain professional relationships and boundaries with youth, including the ACS Code of Conduct, the DJJ Code of Conduct, the Justice Center Code of Conduct, and DJJ Directive #010 Undue Familiarity.

15. Relevant laws and policies related to age of consent (being clear that no youth in DYFJ care can consent to sexual conduct with any adult) and mandatory reporting of sexual abuse to outside authorities.
  16. Conducting professional, respectful and minimally intrusive cross-gender pat-frisk searches and searches of transgender and intersex youth.
- B. Detention staff shall receive additional training if staff are reassigned from a facility that houses only male youth to a facility that houses only female youth, or vice versa.
  - C. The ACS Executive Director of Training and Workforce Innovation shall provide detention staff with information on the agency's current sexual misconduct policies during the years in which they do not receive the refresher trainings outlined above in Section IX(A).
  - D. DYFJ's Executive Director of Administration and Staff Development, in consultation with the ACS Executive Director of Training and Workforce Innovation, shall require that all full- and part-time medical, mental health, and psychiatry contractors who work with youth in detention receive trainings on these topics:
    1. How to detect and assess signs of sexual abuse;
    2. How to determine when youth require protection from sexual abuse;
    3. How to preserve physical evidence of sexual abuse;
    4. How to respond effectively and professionally to youth victims and alleged perpetrators of sexual abuse, both in terms of the procedures to follow and the treatment to administer; and
    5. How and to whom to report allegations or suspicions of sexual abuse.
  - E. Administrative staff or contractors who do not have contact with youth shall receive the training for volunteers described below in Section X.
  - F. The Director of Admissions and the Executive Director of Non-Secure Detention, in consultation with the facility executive directors, shall require that admissions staff in secure detention facilities and case managers and child care supervisors at NSD facilities be trained to provide this information provided below in Section XII(A) in an age-appropriate, trauma-informed and sensitive manner.
  - G. The ACS Executive Director of Training and Workforce Innovation shall develop a method of determining that detention staff understand and exhibit competence in the information and skills provided in the trainings. The Executive Directors of the secure detention facilities shall require that facilities retain records of the trainings described above including documentation that individuals understood the training they received. The Executive Director of Non-Secure Detention shall require that facility directors

retain records of the trainings described above, including documentation that individuals understood the training they received.

- H. The Executive Director of Program Services for Detention, in consultation with the Business Law Unit, shall require that as new contracts for medical, mental health, psychiatric and other services are developed, they include requirements that contractors whose jobs will include contact with youth receive the training required under this policy and the United States Department of Justice PREA regulations in their most current form.

## **X. TRAINING OF VOLUNTEERS**

- A. Each volunteer working with youth in a detention facility shall receive a written document providing information about the agency's sexual misconduct prevention policy, including how to report suspected misconduct; the agency's zero tolerance for sexual misconduct; and rules about confidentiality. Volunteers shall sign a document acknowledging receipt and understanding of this information.
- B. Each secure detention facility's Director of Programs shall require that any volunteer working with youth at the facility has a brief verbal contact with a detention staff member to introduce the document described above, and that each volunteer has signed it prior to contact with youth at the facility. The chaplain at each secure facility shall be responsible for making verbal contact with and obtaining signed documentation for religious volunteers.
- C. Each secure detention facility's Director of Programs shall require that volunteer groups that collaborate with the agency on an ongoing basis receive an in-person orientation to the facility and annual training about sexual misconduct prevention and reporting. It is not required that every member of the volunteer group have received the annual, in-person training prior to having contact with youth, as long as they have signed the document and received the brief verbal introduction described above and attend the first available training, which shall be offered semiannually. Volunteers shall participate in the training once every two (2) years.
- D. For NSD facilities, the Facility Director shall be responsible for completion of the forms and training of volunteers in accordance with the above provisions. The Executive Director of Non-Secure Detention shall require that contracts with NSD providers include requirements that the facilities implement this policy and comply with other aspects of PREA.

## **XI. TRAINING OF INTERNS**

- A. Interns who will have unsupervised interactions with youth shall receive a training based on the training provided to medical, mental health, and psychiatric contractors described above in Section IX. The interns' direct supervisor shall make arrangements for these interns to receive the training prior to beginning work with DYFJ or a provider agency. The intern's direct supervisor shall retain records of the training, including documentation that interns understood the training they received.
- B. Interns who will not have unsupervised interactions with youth shall receive the training for volunteers described above in Section X. The intern's direct supervisor shall make arrangements for these interns to receive the training prior to beginning work with DYFJ or a provider agency. The intern's direct supervisor shall retain records of the training, including documentation that interns understood the training they received.

## **XII. YOUTH EDUCATION**

- A. Upon admission, admissions staff in the secure facilities and case managers and child care supervisors at the NSD intake facilities shall provide age-appropriate information to youth explaining the agency's zero tolerance policy regarding sexual misconduct, a youth's right to be free from any form of sexual abuse, and how to report incidents or suspicions of sexual misconduct or situations where a youth does not feel safe. In the event that a youth is moved from an NSD intake facility before receiving this information, the Facility Director of the receiving NSD facility shall require that the youth receives this information.
- B. As part of the intake process in secure detention facilities, case managers shall require that youth sign a form confirming receipt and understanding of the information described in Section XII(A). As part of the intake process in NSD facilities, Facility Directors shall require that youth sign a form confirming receipt and understanding of information described in Section XII(A). In the event a youth refuses to sign, the staff must note the youth's refusal on the form, and initial and date the note.
- C. Within seven (7) days of a youth's arrival at a detention facility, youth shall receive more in-depth information about their rights to be free from sexual misconduct and retaliation for reporting incidents, the importance of and avenues for reporting, ACS policies for responding to incidents, including the youth's right to medical, mental health, and psychiatric care regardless of the status of an investigation, and where to go if they have questions. The Associate Commissioner for Detention shall determine who will deliver the youth education. The Director of Programs at each secure facility and the Executive Director of Non-Secure Detention shall arrange for youth already housed in the facilities to receive the same information within 60 days of the promulgation of this policy.



- D. The DYFJ PREA Coordinator shall oversee development and posting of informational posters regarding the agency's sexual misconduct prevention and response policies. Such posters will include key information and be continuously and readily visible to youth.
- E. The Executive Director of Program Services for Detention shall:
  - 1. In conjunction with the secure facilities' Directors of Programs and the Executive Director of Non-Secure Detention, oversee the development of a youth education program that incorporates the elements described in Section XII(C);
  - 2. Review and update annually the youth education program materials to reflect any changes to this and other relevant policies;
  - 3. Oversee the updating of the youth handbook to reflect the elements of this policy; and
  - 4. Disseminate the updated youth education program materials and youth handbook following any revisions.
- F. In secure facilities, the Case Manager Supervisor, in conjunction with the facility's Director of Programs, shall oversee the ongoing implementation of the youth education program described in Section XII(C). In NSD facilities, the Facility Directors, in conjunction with the Executive Director for Non-Secure Detention, shall oversee the ongoing implementation of the orientation described in Section XII(C).
- G. Case managers shall work with the agency's PREA Coordinator to provide youth with disabilities, youth with low reading skills, and youth with limited English proficiency with the information outlined Section XII in formats that they can understand.

### **XIII. OBTAINING INFORMATION FROM YOUTH AND PLACEMENT OF YOUTH IN HOUSING AND PROGRAMMING ASSIGNMENTS**

- A. Within 72 hours of a youth's arrival at a secure detention facility, the youth's case manager, under the supervision of the Case Manager Supervisor and the facility's Director of Programs, shall gather the information outlined in Section XIII(A)(1)-(11) and shall refer the youth for medical, mental health, psychiatric or other services if the information gathered indicates that such services may be necessary. Detention Staff shall consult with the NYC Department of Education if the information gathered through this process raises any concerns about the youth's safety in school. The case manager shall gather the information listed in (1)-(11) below from all available sources and shall avoid interviewing youth about potentially sensitive matters, except when necessary. The case manager shall determine whether the information gathered raises particular

concerns about a youth's safety or the safety of others. The case manager shall share any such concerns with the Tour Commander and others involved in making youths' housing and programming assignments, and those individuals shall take the information into account in making these assignments.

1. Prior sexual victimization or abusiveness;
  2. Any gender nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender, or intersex, and whether the youth may therefore be vulnerable to sexual abuse;
  3. Current charges and offense history;
  4. Age;
  5. Level of emotional and cognitive development;
  6. Physical size and stature;
  7. Mental illness or mental disabilities;
  8. Intellectual or developmental disabilities;
  9. Physical disabilities;
  10. The youth's own perception of vulnerability; and
  11. Any other specific information that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other youth.
- B. Within 72 hours of a youth's arrival at an NSD facility, the Operations Liaisons, in conjunction with the case managers and child care supervisors at the NSD intake facilities, shall determine the appropriate non-secure facility for a youth using information including, but not limited to, the information listed in Section XIII(A)(1)-(11). These individuals shall gather this information from all available sources and shall avoid interviewing youth about potentially sensitive matters, except when necessary. Once a youth is placed at a facility, the youth's case manager and the Facility Director will determine a plan for the youth's housing, supervision, and programming at that facility with the goal of keeping all youth safe and free from sexual abuse using the information listed in Section XIII(A)(1)-(11), to the extent that the information is available.
- C. Secure detention case managers and NSD case managers shall review a youth's housing and programming assignments periodically and work with appropriate detention staff to adjust as necessary based on information that becomes available that affects detention staff's ability to keep all youth safe and free from sexual misconduct.<sup>1</sup>
- D. Detention staff shall not place lesbian, gay, bisexual, transgender, gender non-conforming, or intersex youth in particular housing or other programming assignments solely on the basis of such identification or status. Detention staff shall not consider lesbian, gay, bisexual, transgender, gender non-conforming, or intersex identification or status as an indicator or likelihood of being sexually abusive. Detention staff shall follow

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<sup>1</sup> See *Room Confinement Policy for Secure Detention*.

the provisions outlined in Policy #2012/01 Promoting a Safe and Respectful Environment for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth (LGBTQ) and Their Families Involved with the Child Welfare, Detention, and Juvenile Justice System.

- E. Detention staff shall make housing decisions for transgender and intersex youth based on the each youth's individualized needs and shall prioritize the youth's emotional and physical safety. Detention staff shall take into account the youth's perception of where he or she will be most secure, as well as any recommendations provided by the youth's medical, mental health, or psychiatric care provider. The presumed default housing for transgender and intersex youth will be according to their gender identity, unless there is a compelling reason that this would be inappropriate or unsafe. When a youth is not housed according to his or her identified gender, the facility Executive Director or his or her designee must provide authorization for the housing decision and detention staff must document the decision in the youth's record.
- F. Detention staff shall not automatically house transgender and intersex youth according to the sex they were assigned at birth. For transgender or intersex youth admitted to secure detention during normal business hours, the youth's case manager, Case Manager Supervisor, the Operations Managers, and/or the Director of Programs shall determine appropriate housing and programming placements in consultation with the Director of Programs or the Director of Operations. For transgender or intersex youth admitted to secure detention outside of normal business hours, the Tour Commander, the Operations Managers, the Director of Operations, and the facility Executive Director shall determine appropriate housing and programming placements. In NSD, the youth's intake case manager and/or the facility director, in consultation with the Operations Liaison, shall determine appropriate housing and programming decisions.
- G. All youth shall shower individually.
- H. Case managers of youth who are experiencing trouble with their housing or programming assignments shall schedule those youth for special needs meetings to assess their current assignments and explore supports and alternatives. Case managers shall schedule special needs meetings to review housing and programming assignments for transgender and intersex youth at least every six (6) months even if they are not experiencing trouble with those assignments, or sooner if requested by the youth or should the safety of the youth become a concern.
- I. The Director of Programs in each secure detention facility and the Facility Directors of Non-Secure Detention shall implement appropriate controls on the internal and external dissemination within the facility of the information described in Section XIII in order to prevent sensitive information from being exploited to the youth's detriment by staff or other youth, and confirm that the agency upholds its responsibilities to safeguard

confidential information.

#### **XIV. YOUTH REPORTS OF ALLEGED SEXUAL MISCONDUCT**

- A. Detention staff shall provide youth with multiple internal ways to report sexual misconduct, retaliation, and staff neglect or violation of responsibilities that may have led to such incidents. Youth may report concerns, either anonymously or by name, by:
  - 1. Completing a written grievance form and putting it in a grievance box or giving it to a Residential Care Advocate or other detention staff member;
  - 2. Writing the grievance on any piece of paper and putting it in a grievance box or giving it to a Residential Care Advocate or other detention staff member;
  - 3. Talking to a Residential Care Advocate or other detention staff member and indicating that they have a complaint or grievance or otherwise want to report an incident; or
  - 4. Talking to any contractor, such as a medical, mental health, or psychiatry staff person, and indicating that they have a complaint or grievance or otherwise want to report an incident.
  
- B. Detention staff shall provide youth with a way to report sexual misconduct, retaliation, and staff neglect that may have led to such incidents to an entity that is not part of DYFJ or ACS. Youth may do so by contacting the Justice Center Vulnerable Persons Central Register (Justice Center VPCR) or asking a detention staff member for access to a telephone to call the Justice Center VPCR. Youth do not need to explain why they wish to call the Justice Center VPCR.

#### **XV. COORDINATED RESPONSE TO ALLEGED SEXUAL MISCONDUCT**

- A. Detention staff shall take immediate action to protect a youth when informed by any means that the youth is subject to a substantial risk of imminent sexual abuse or that a youth has been sexually abused. This includes:
  - 1. Separating the youth from the alleged perpetrator;
  - 2. Preserving and protecting any crime scene until appropriate steps can be taken to collect any evidence;
  - 3. Requesting that the alleged victim not take any actions that could destroy physical evidence if the alleged incident occurred in the last five (5) days, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating; and
  - 4. Requesting that the alleged perpetrator not take any actions that could destroy physical evidence if the alleged incident occurred in the last five (5) days, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating.

- B. If the first responder to an allegation of sexual abuse is not a detention staff member, the responder shall request that the alleged victim not take any actions that could destroy physical evidence, and then notify the Tour Commander or Operations Manager in secure detention or the Facility Director or the highest ranking staff member available at the time in NSD.
- C. Detention staff shall take immediate and appropriate action to house youth who are alleged to have suffered sexual abuse in a safe environment. Appropriate actions may include transferring the youth to a different housing area within the same facility or transferring the youth to another facility.
- D. Detention staff shall offer youth who have reported sexual abuse or are believed to have been sexually abused appropriate access to a sexual assault advocate and emergency and ongoing medical, mental health, counseling and crisis intervention services free of charge and regardless of whether the youth names the alleged abuser or cooperates with any investigation. Such services shall be made available both to youth who report victimization that occurred while in ACS custody and to youth who report victimization that occurred prior to the youth's entrance into ACS custody. Detention staff shall also offer youth who are actual or alleged perpetrators of sexual abuse a mental health evaluation and appropriate treatment, so long as such services do not conflict with ongoing investigations or jeopardize a youth's Fifth Amendment right against self-incrimination. Detention staff shall follow the protocol outlined in Attachment B to secure such services.
- E. ACS Employees, Detention Staff, Volunteer, and Intern Reporting Responsibilities
  - 1. Any ACS employee, detention staff member, volunteer, or intern who has any knowledge of, suspicion of, or information about any of the following shall make a report to the Justice Center VPCR and follow Administrative Order #01/12 Reporting of Incidents and Data Management for GOALS. If any of the following involve alleged conduct by ACS employees, the individual shall also immediately notify the ACS Employment Law Unit.
    - a. Sexual abuse of a youth in DYFJ custody by an ACS employee, volunteer, contractor, or intern;
    - b. Sexual harassment of a youth in DYFJ custody by an ACS employee, volunteer, contractor, or intern;
    - c. Retaliation against youth or staff who reported abuse by an ACS employee, volunteer, contractor, or intern; or
    - d. Neglect or violation of responsibilities by an ACS employee, volunteer, contractor, or intern that may have contributed to an incident of sexual abuse or retaliation.

2. In cases involving sexual activity or sexual harassment among youth in DYFJ custody, ACS staff, detention staff, volunteers and interns shall report the incident pursuant to DYFJ Administrative Order #01/12 Reporting of Incidents and Data Management for GOALS, and also to the Justice Center VPCR.
3. ACS staff, detention staff, volunteers and interns shall report the incident to the Justice Center VPCR when required to do so by OCFS, the DYFJ reporting policy, and/or applicable New York State statutes and regulations.
4. Detention staff shall contact the New York City Police Department (NYPD) as follows:
  - a. Any time an incident of sexual abuse is discovered in progress or a report is made soon after an incident, the detention staff member observing the incident or receiving the report shall immediately call the Executive Director of the facility or that person's designee. The facility Executive Director or designee shall immediately contact the Special Victims Division of the NYPD through that unit's hotline at 646-610-7272. However, if detention staff encounter a situation where there is an immediate need to protect life and/or prevent a crime from occurring, detention staff shall call 911 to report the incident prior to calling the facility Executive Director or designee.
  - b. Any time a report is received of prior sexual abuse, the Executive Director of the facility or that person's designee shall contact the Special Victims Division of the NYPD through that unit's hotline at 646-610-7272.
5. In secure detention facilities, the following staff members shall be trained in techniques for interviewing youth so that they can determine whether sexual activity with another youth is alleged to have been consensual. These interviews will be solely for the purpose of deciding whether or not a referral must be made to law enforcement.
  - a. Executive Director;
  - b. Director of Programs;
  - c. Director of Operations;
  - d. Director of Administration;
  - e. Operations Managers;
  - f. Case Manager Supervisors;
  - g. Tour Commanders; and
  - h. All contracted medical, mental health, and psychiatry staff.
6. In NSD facilities, the following staff members shall be trained in techniques for interviewing youth about potential sexual victimization so that they can determine whether sexual activity among youth is alleged to have been consensual. These

interviews will be solely for the purpose of deciding whether or not a referral must be made to law enforcement.

- a. Facility Directors;
  - b. Case Managers;
  - c. Supervisors; and
  - d. Operations Liaisons.
7. Upon receiving an allegation that a youth in DYFJ custody was sexually abused or harassed within ACS custody or while confined at another facility, the Executive Director of the facility currently housing the youth shall, immediately upon discovery:
- a. Report the alleged misconduct to the Justice Center VPCR pursuant to OCFS guidance, DYFJ Administrative Order #01/12 Reporting of Incidents and Data Management for GOALS, and any applicable New York State statutes and regulations;
  - b. Report the alleged misconduct to the Executive Director of the facility where the alleged abuse occurred and, if the abuse occurred outside of New York State, to the appropriate investigating agency for that facility; and
  - c. Document the fact that these notifications were made in an incident report.
- F. Upon receipt of information about or an allegation of sexual abuse by an ACS staff member, detention staff member, contractor, volunteer, or intern, the Associate Commissioner for Detention or his or her designee shall prohibit the individual alleged to have engaged in the conduct from having contact with any youth in DYFJ custody pending any investigation by the Justice Center or the Department of Investigation.
- G. During the pendency of any investigation by the Justice Center or Department of Investigation of alleged sexual harassment by an ACS staff member, the Associate Commissioner for Detention or his or her designee shall determine whether the ACS staff member should be suspended or reassigned until completion of the investigation, depending on the nature of the allegation.

#### **XVI. NOTIFICATION OF YOUTH'S PARENT, GUARDIAN, ATTORNEY, AND/OR CASEWORKER**

- A. Within 24 hours of receipt of information of an allegation of sexual abuse against a youth in DYFJ custody, the detention staff member designated in Section XVI(B) shall attempt to notify the parties listed below by telephone that a child abuse allegation was made to the Justice Center VPCR. Said detention staff member shall make this notification regardless of whether the Justice Center VPCR accepts the allegation and shall document in the youth's case file the date and time of each call to the following

parties:

1. The youth's parent or guardian, unless the case manager has documentation indicating that the parent(s) or legal guardian should not be notified;
  2. The youth's attorney of record; and
  3. The youth's child welfare caseworker, if the youth is under the jurisdiction of the child welfare system.
- B. The detention staff members listed below shall make the notifications in Section XVI(A) above under the following circumstances:
1. If the allegation involves sexual abuse in a secure detention facility, the Executive Director of the secure detention facility where the alleged abuse occurred or his or her designee shall make the required notifications.
  2. If the allegation involves sexual abuse in a Non-Secure Detention facility, the Executive Director of Non-Secure Detention or his or her management-level designee shall make the required notifications.
  3. If the allegation involves sexual abuse during transportation to or from detention or during court, the Executive Director of CAM shall make the required notifications.
- C. If the detention staff member is not successful in speaking with the parties listed above during the initial telephone call, that staff member shall make two (2) additional attempts to contact the party by telephone within one (1) week of the allegation, documenting the date and time of each attempt in the youth's case file. After three (3) unsuccessful attempts to contact the party by telephone, the staff member shall mail a letter, return receipt requested, to the party's last known address. The staff member shall include a copy of the letter in the youth's case file, as well as the return receipt if and when it is received.
- D. Aside from fulfilling reporting responsibilities and cooperating with investigations and supervisory reviews, detention staff shall keep confidential any information they learn regarding an allegation of sexual misconduct, consistent with DJJ Directive #05/07 Confidential Nature of Resident's Information Including Immigration Status and DJJ Order #08/07 Resident Case Confidentiality.

## **XVII. PROTECTION FROM RETALIATION**

- A. Detention staff shall protect all youth and staff who report sexual abuse or sexual harassment or who cooperate with sexual abuse or harassment investigations from retaliation by youth or staff. Protection measures shall include:



1. Housing changes or transfers for youth victims;
  2. Removal of alleged staff or youth abusers from contact with victims; and/or
  3. Provision of emotional support services.
- B. In secure detention, the facility's Executive Director or Director of Operations shall be responsible for coordinating efforts to protect youth and staff from retaliation. In NSD, the Facility Director or Operations Liaison shall be responsible for coordinating efforts to protect youth and staff from retaliation.
- C. For at least 90 days following a report of sexual abuse, the individuals listed in Section XVII(B) above shall monitor the conduct and treatment of youth and staff who reported sexual abuse and youth who were reported to have suffered sexual abuse to see if there are changes that suggest possible retaliation by youth and staff, continuing such monitoring beyond 90 days if the initial monitoring indicates an ongoing need. Monitoring shall include:
1. Periodic in-person status checks with youth and/or staff;
  2. Review of disciplinary incidents involving youth;
  3. Review of housing or program changes; and
  4. Review of negative performance reviews or reassignments of detention staff.
- D. Any indication or appearance of retaliation against a youth or detention staff who has reported sexual abuse shall result in the monitoring period being continued for an additional 90 days.

**XVIII. BEHAVIOR MANAGEMENT CONSEQUENCES FOR YOUTH WHO ENGAGE IN SEXUAL ABUSE AND SEXUAL HARASSMENT, AND UNSUBSTANTIATED OR UNFOUNDED ALLEGATIONS OF SEXUAL MISCONDUCT MADE BY YOUTH**

- A. In addition to following the reporting requirements in Part XIV and the response requirements in Part XV, detention staff shall take the following actions in cases involving youth who engage in sexual abuse or sexual harassment.
1. Detention staff shall refer youth alleged to have engaged in sexual abuse of another youth to NYPD's Special Victims Division pursuant to this policy, and the youth shall receive consequences pursuant to the court process.
  2. For youth in secure detention who are alleged to have engaged in sexual misconduct other than sexual abuse, the Tour Commander shall determine whether any action is appropriate as part of the ASPIRE behavior management system, DJJ Operations Order #04/05: The Agency's Revised Behavior Management Program. The Tour Commander shall consider whether a youth's mental disabilities or mental illness

contributed to his or her behavior when determining whether any action is appropriate.

3. For youth in NSD who are alleged to have engaged in sexual misconduct other than sexual abuse:

- a. The Non-Secure Detention Liaison shall investigate the incident and submit an incident report to the Executive Director of Non-Secure Detention pursuant to DYFJ Administrative Order #01/12 Reporting of Incidents and Data Management for GOALS, including consideration of whether a youth's mental disabilities or mental illness contributed to his or her behavior;
  - b. The Executive Director of Non-Secure Detention shall review the evidence and determine whether a youth should be transferred to another NSD facility or to a secure detention facility; and
  - c. The Executive Director shall notify the youth of his or her right to challenge the transfer to another facility through the grievance process and/or his or her attorney.
- B. Detention staff shall offer youth who have committed or are alleged to have committed sexual abuse or sexual harassment the opportunity for therapy, counseling, and other appropriate interventions. Detention staff shall not offer youth interventions that conflict with ongoing investigations or that jeopardize the youth's Fifth Amendment right against self-incrimination.
- C. Detention staff shall not impose behavior management consequences upon youth for sexual contact with staff unless the agency makes a finding that the staff member did not consent to such contact.
- D. Detention staff shall not impose behavior management consequences upon youth for making a report of sexual misconduct, even if an investigation does not establish sufficient evidence to substantiate the allegation. If a youth files a false report in bad faith, detention staff shall take appropriate steps to address the underlying reasons for the filing of the false report.

**XIX. REPORTING TO YOUTH**

- A. When the investigating entity completes its investigation into an allegation of sexual abuse, the individuals listed below shall notify the youth as to whether the investigating entity has referred an allegation for prosecution or declined to proceed with the investigation.

1. For youth in secure detention, the facility Executive Director or his or her management-level designee shall notify the youth.
  2. For youth in NSD, the Executive Director for Non-Secure Detention shall notify the youth.
  3. For youth who are no longer in detention, the parties listed in Sections (1) or (2) shall determine if the youth is placed with DYFJ or in DYFJ aftercare. If so, the individual listed in sections (1) or (2) shall determine the best way of notifying the youth.
- B. When the investigating entity completes its investigation into an allegation of staff sexual harassment, the individuals listed below shall notify the youth as to whether the investigating entity determined that the allegation was substantiated, unsubstantiated, or unfounded.
1. For youth in secure detention or ACS-operated NSD facilities, where ELU is the investigating entity, the ELU shall notify the Executive Director, who will then notify the youth. Where ELU is not the investigating entity, the PREA Coordinator shall notify the Executive Director, who will then notify the youth.
  2. For youth in contracted NSD facilities, the Executive Director for Non-Secure Detention shall notify the youth.
  3. For youth who are no longer in detention, the parties listed in Sections (1) or (2) shall determine if the youth is placed with DYFJ or in DYFJ aftercare. If so, the individual listed in sections (1) or (2) shall determine the best way of notifying the youth.
- C. Unless the investigating entity determines that the allegation of staff sexual abuse or sexual harassment is unfounded, management-level detention staff shall make the following notifications using the procedures outlined above in Sections XIX(A):
1. Notify the youth when the staff member is no longer posted within the youth's unit or when the staff member is no longer employed at the facility within 24 hours of learning of the information.
  2. Notify the youth when the staff member has been indicted or convicted on a charge related to sexual abuse within the facility within 96 hours of learning of the information.
- D. Management-level detention staff shall notify youth of the following within 96 hours of learning of the information using the procedures outlined in Section XIX(A):

1. The alleged youth abuser has been indicted on a charge related to sexual abuse within the facility; or
  2. The alleged youth abuser has been convicted on a charge related to sexual abuse within the facility.
- E. Detention staff shall document the notifications made according to this Section.

**XX. EMPLOYEE DISCIPLINE**

- A. ACS employees shall be subject to disciplinary sanctions up to and including termination for violating ACS sexual abuse or sexual harassment policies.
- B. Termination shall be the presumptive disciplinary sanction for ACS employees who have engaged in sexual abuse.
- C. Disciplinary sanctions for violations of ACS policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the employee's disciplinary history, and the sanctions imposed for comparable offenses by other employees with similar histories.
- D. The Employment Law Unit shall notify any licensing body responsible for licenses that were required for the employee's position of all terminations for violations of ACS sexual abuse or sexual harassment policies, or resignations by employees who would have been terminated if not for their resignation.

**XXI. DISCIPLINE OF CONTRACTORS, VOLUNTEERS, AND INTERNS**

- A. Medical Staff, Mental Health Staff, Psychiatry Staff, Volunteers, and Interns
  1. The Executive Director of Program Services for Detention shall prohibit any medical staff member, mental health staff member, psychiatry staff member, volunteer, or intern who engages in sexual abuse from contact with youth; report the individual to law enforcement agencies; and report the individual to any licensing body responsible for licenses that were required as part of the staff member's job description.
  2. The Executive Director of Program Services for Detention shall take appropriate remedial measures, and shall consider whether to prohibit further contact with youth, in the case of sexual misconduct other than sexual abuse perpetrated by medical staff members, mental health staff members, psychiatry staff members,

volunteers, or interns.

B. Non-Secure Detention Staff

1. The Executive Director of Non-Secure Detention shall prohibit any NSD staff member who engages in sexual abuse from contact with youth; report the individual to law enforcement agencies; and report the individual to any licensing body responsible for licenses that were required as part of the staff member's job description.
2. The Executive Director of Non-Secure Detention shall take appropriate remedial measures, and shall consider whether to prohibit further contact with youth, in the case of sexual misconduct other than sexual abuse perpetrated by NSD staff.

C. Termination shall be the presumptive disciplinary sanction for contractors and NSD staff members who have engaged in sexual abuse. Contractors and NSD staff members who have engaged in sexual abuse shall also be placed on the Justice Center Staff Exclusion List.

**XXII. SEXUAL ABUSE INCIDENT REVIEWS**

- A. As soon as possible, but no later than 30 days after the completion of each investigation into sexual abuse, a Detention Incident Review Committee shall convene to review the incident. The Detention Incident Review Committee shall:
1. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
  2. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; gender expression; disability; gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
  3. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
  4. Assess the adequacy of staffing levels in that area during different tours;
  5. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff;
  6. Prepare a preliminary report of its findings, including but not necessarily limited to determinations made pursuant to the aforementioned factors, and

recommendations for improvement within 30 days of the incident; and

7. Submit the final report of findings and recommendations to the Associate Commissioner for Detention and the Employment Law Unit within 60 days of the incident.
  8. If a Detention Incident Review Committee was already convened to examine previous investigations of the same incident, the Detention Incident Review Committee shall review its findings to determine whether subsequent investigations have revealed new information or reached different conclusions that would warrant revisiting the Detention Incident Review Committee's previous findings. The Detention Incident Review Committee is not required to begin a new full review.
- B. The Detention Incident Review Committee shall follow the procedures outlined in ACS Policy and Procedure #2014/10 Safe Intervention Policy for Secure and Non-Secure Detention when conducting the review outlined in (A). The Detention Incident Review Committee's activities shall be distinct from any activities of the Justice Center review committees.
- C. The Executive Director of the facility where the alleged abuse occurred shall review the report and document the steps taken to implement the recommendations, or shall document the reasons for not doing so. If the alleged abuse occurred during transportation to or from detention or during court, the Executive Director of CAM shall review the report and document the steps taken to implement the recommendations, or shall document the reasons for not doing so.
- D. The Associate Commissioner for Detention or his or her designee shall review the report prepared by the Detention Incident Review Committee and the response of the Executive Director of the facility where the alleged abuse occurred or the Executive Director of CAM if the alleged abuse took place during transportation to or from detention or during court. The Associate Commissioner for Detention or his or her designee shall work with other agency officials to implement the recommendations that require coordination with other parts of the agency.
- E. To help Detention Incident Review Committees begin their review within 30 days of the completion of an investigation:
1. The Employment Law Unit shall maintain a docket of open investigations of alleged sexual abuse by ACS employees referred to ELU, including staff of ACS-operated NSD facilities, and shall determine the status of those investigations on a monthly basis, to the extent that this information is available. The Employment Law Unit shall notify the facility Executive Director or the Executive Director of CAM upon completion of each pending investigation. The Employment Law Unit shall maintain

the records of these investigations.

2. The PREA Coordinator or his or her designee shall maintain a docket of open investigations of alleged sexual abuse by all ACS employees not investigated by ELU, contractors, youth, volunteers and interns, and any other incident reported under this policy, and shall determine the status of those investigations on a monthly basis. The Executive Director of Non-Secure Detention or his or her designee shall notify the facility Executive Director where the alleged abuse occurred or the Executive Director of CAM upon completion of each pending investigation. The Executive Director of Non-Secure Detention shall maintain the records of these investigations.

### **XXIII. DATA COLLECTION AND REPORTING**

- A. The Incident Review Coordinator shall collect accurate, uniform data for every allegation of sexual misconduct in detention facilities operated by ACS and under contract to ACS, using a standardized instrument and set of definitions. The data collection shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice, collecting and maintaining data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
- B. The Incident Review Coordinator shall securely retain data collected pursuant to XXIII(A) and maintain that data for at least 10 years from the date of its initial collection unless federal, state, or local law requires otherwise.

### **XXIV. DATA REVIEW FOR CORRECTIVE ACTION**

- A. The Incident Review Coordinator shall gather and aggregate data collected in Section XXIII(A) in order to help DYFJ and provider agencies assess and improve the effectiveness of its approach to sexual misconduct prevention, detection, and response.
- B. The Incident Review Coordinator shall report the aggregate data described in Section XXIII(A) at monthly GOALS meetings and to NSD facility directors on a monthly basis to help DYFJ and provider agencies identify problem areas and take corrective action on an ongoing basis.
- C. The Detention Incident Review Coordinator shall prepare an annual report of DYFJ's findings and corrective actions for each secure and non-secure detention facility. The report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of DYFJ's progress in addressing sexual misconduct. The Review Coordinator shall consult with the following individuals when preparing the annual report:
  1. The Associate Commissioner for Detention or his or her designee;

2. The DYFJ PREA Coordinator;
  3. For secure detention, the facility Executive Directors, Director of Operations, and Director of Programs;
  4. For NSD, the Executive Director of Non-Secure Detention; and
  5. Any other officials who would be helpful in preparing the report.
- D. The Incident Review Coordinator, in consultation with the ACS Office of Communications and Intergovernmental Affairs, shall secure approval of the annual report by the ACS Commissioner and publish the report on the ACS website.

## **XXV. AUDITS**

The Incident Review Coordinator, in consultation with the PREA Coordinator, shall coordinate DYFJ's response to any audit findings that DYFJ does not meet a standard, in consultation with the Associate Commissioner for Detention and the facility Executive Directors.



**ATTACHMENT A: SEARCH REQUEST FORM FOR TRANSGENDER AND INTERSEX YOUTH**

You can request to be searched by either a male or female staff member while you are here. We will do our best to honor your choice unless there is a security emergency.

Please check the box next to the statement that best matches how you feel.

- I am most comfortable being searched by a **male** staff member.
- I am most comfortable being searched by a **female** staff member.
- I do not care whether a **male or female** staff member searches me.

**Youth's Signature:** \_\_\_\_\_

**Youth's Printed Name:** \_\_\_\_\_

**Today's Date:** \_\_\_\_\_

**ATTACHMENT B: PROTOCOL FOR EMERGENCY AND ONGOING MEDICAL, MENTAL HEALTH, AND CRISIS INTERVENTION SERVICES FOLLOWING AN ACTUAL OR ALLEGED INCIDENT OF SEXUAL ABUSE**

DYFJ staff and contractors shall follow the procedures below depending on the nature of the alleged sexual abuse.

- I. For youth who are **actual or alleged victims of sexual abuse while housed in a DYFJ detention facility and youth who are actual or alleged victims of sexual abuse that occurred within 96 hours prior to the youth's admission to a DYFJ detention facility:**
  - A. After following the procedures outlined in Section XX of the Prevention, Detection, and Response to Sexual Misconduct in the Division of Youth and Family Justice Detention Services, detention staff shall provide the youth with an opportunity to meet with a sexual assault advocate. If the youth wants to meet with an advocate, the advocate will be allowed to meet with the youth in as confidential a setting as possible.
  - B. Detention staff shall immediately make arrangements to transport the youth to the hospital to be offered a forensic medical examination and emergency medical services if the youth agrees to such an examination. In NSDs, detention staff shall immediately call medical staff at Horizon or Crossroads prior to taking youth to the secure facilities for transportation to the hospital. If the youth requires immediate medical care, NSD detention staff shall take the youth directly to the hospital while consulting by telephone with medical staff at Horizon or Crossroads. Medical and mental health staff at Horizon or Crossroads shall not examine youth prior to their transport. Detention staff shall also immediately telephone the Sexual Assault Response Team hotline at the appropriate hospital prior to transporting the youth to inform the hospital staff of the youth's expected arrival.
  - C. Youth shall be transported in the least restrictive means possible to Kings County Hospital Center or Lincoln Medical and Mental Health Center, depending on where the youth is currently housed. If there are multiple youth to transport at the same time, staff shall transport each youth in separate vans and ensure that they are kept apart at the hospital.
  - D. At the time of the youth's transport to the hospital, detention staff shall provide the youth with the opportunity to have her or his sexual assault advocate go to the hospital as well or to meet only with a social worker or volunteer community sexual assault advocate, when one is available, at the hospital. At the hospital, detention staff will make every effort to provide the youth with an opportunity to speak with her or his advocate or social worker in a manner that is as confidential as possible.
  - E. Detention staff will also give youth the opportunity to place a phone call to his or her parent/guardian and attorney of record.
  - F. Upon the youth's return from the hospital, DYFJ's medical and mental health providers shall offer youth all follow-up medical and mental health care determined necessary by them or by hospital staff. This may include information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, pregnancy tests, information about and timely access to all lawful pregnancy-related medical services, treatment plans, other follow-up medical and mental health services, referrals to rape crisis centers or other

organizations that can provide emotional support services, and referrals for continued care following the youth's release or transfer to another facility.

- G. DYFJ medical, mental health and psychiatry providers shall also offer youth any services that they deem necessary during follow-up consultations with youth.
- H. Prior to the youth's release from detention, case managers shall provide youth with referrals to a rape crisis center or similar organization that is located in the area where the youth will live upon discharge from the facility.

II. For youth who are **actual or alleged victims of sexual abuse that occurred more than 96 hours prior to the youth's admission to a DYFJ detention facility:**

- A. After following the procedures outlined in Section XX of the Prevention, Detection, and Response to Sexual Misconduct in the Division of Youth and Family Justice Detention Services, detention staff shall provide the youth with an opportunity to meet with a sexual assault advocate. If the youth wants to meet with an advocate, the advocate will be allowed to meet with the youth in as confidential a setting as possible.
- B. Detention staff shall immediately telephone the Sexual Assault Response Team hotline at Kings County Hospital Center or Lincoln Medical and Mental Health Center, depending on where the youth is currently housed, to determine whether the youth should be transported to the hospital to receive services. If the Sexual Assault Response Team indicates that the youth can benefit from services at the hospital, staff shall transport the youth to the hospital, following the procedures outlined in (I), above.
- C. DYFJ staff shall also offer the youth a referral to DYFJ's medical, mental health, and psychiatry staff within 24 hours of receipt of the information.
- D. If the youth accepts the referral, DYFJ's contracted medical, mental health, and psychiatry providers shall meet with youth within 7 days of receipt of this information to offer youth timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which shall be determined by medical, mental health, and psychiatry practitioners according to their professional judgment. This may include information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, pregnancy tests, information about and timely access to all lawful pregnancy-related medical services, treatment plans, other follow-up medical and mental health services, referrals to rape crisis centers or other organizations that can provide emotional support services, and referrals for continued care following the youth's release or transfer to another facility.
- E. If no qualified facility-based medical, mental health or psychiatry professional is available at the time that such services are needed, DYFJ staff shall transport youth to the appropriate contract medical facility in the least restrictive means possible.
- F. Prior to the youth's release from detention, case managers shall provide youth with referrals to a rape crisis center or similar organization that is located in the area where the youth will live upon discharge from the facility.

III. For youth who are **actual or alleged perpetrators of sexual abuse**:

- A. DYFJ staff shall offer the youth a referral to DYFJ's mental health and psychiatry staff within 24 hours of receipt of the information.

If the youth accepts the referral, DYFJ's mental health and psychiatry providers shall meet with youth within 7 days of receipt of this information to offer youth a mental health evaluation and, as appropriate, mental health treatment. Mental health and psychiatry providers shall not offer youth interventions that conflict with ongoing investigations or that jeopardize a youth's Fifth Amendment right against self-incrimination.