

## **SAN BERNARDINO COUNTY PROBATION DEPARTMENT POLICY MANUAL**

Each policy establishes the overall operational rules and regulations that govern the Department. They state the precepts which management considers important for formal documentation.

Each procedure establishes methods for implementing policies.

The Chief Probation Officer will exercise approval authority for department policies and procedures.

All department employees (full time, part-time, contract) and all volunteers are responsible for reading and understanding each policy and procedure. They will perform their duties and tasks in compliance with these policies and procedures. Employees will be subject to discipline for violation of policy and/or procedures.

### **#23. Prison Rape Elimination Act of 2003 (PREA)**

San Bernardino County Probation (SBC Probation) has zero tolerance towards all forms of sexual abuse and sexual harassment of youth in the Juvenile Detention and Assessment Center (JDAC) and Treatment Facilities (TFs). SBC Probation strictly prohibits any form of sexual activity involving youth with other youth and youth with staff, visitors, contractors, volunteers and interns as defined by the Department of Justice PREA Juvenile Standards, California State Law, and the San Bernardino County Probation Department policies. 115.311(a)

#### **Definitions:**

Age appropriate: A way of communicating, explaining, interviewing, or providing services to a youth that is suitable for the youth's age and level of emotional and cognitive development.

Contractor: A person who provides services on a recurring basis pursuant to a contractual agreement with the agency.

Exigent Circumstances: Any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.

Gender Non-Conforming (GNC): A person whose appearance or manner does not conform to traditional society gender expectations.

Gender Identity: A person's internal sense of being male or female, regardless of the person's gender at birth.

Intersex: A person who's 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.

LGBTQI: Lesbian, Gay, Bisexual, Transgender, Queer, Intersex.

Medical Practitioner: A health professional who, by virtue of education, credentials and experience is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A "qualified medical practitioner" refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

Mental Health Practitioner: A mental health professional who, by virtue of education credentials and experience is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified mental health practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

Pat-Down Search: Using one’s hands to pat-down the outer garments of an individual to detect any concealed contraband or weapons.

Perpetrator: Any person accused or suspected of committing a crime.

PREA Coordinator: A upper-level, agency-wide staff member who has time and authority to develop, implement, and oversee SBC Probation’s efforts to comply with the PREA Standards in all of the JDACs and TFs.

PREA Standards: Compliance standards established by the United States Department of Justice to prevent, detect, respond, monitor, and eradicate sexual abuse and sexual harassment within confinement facilities.

PREA Compliance Manager: A designated staff member from each JDAC or TF who has sufficient time and authority to coordinate the facility’s efforts to comply with the PREA standards.

Rape: The carnal knowledge, oral sodomy, sexual abuse with an object, or sexual fondling of a person, non-forcibly or forcibly against that person’s will where the victim is incapable of giving consent because of his or her youthfulness or his/her temporary mental or physical incapacity achieved through the exploitation of the fear of threat of physical violence or bodily injury.

Secure Juvenile Facility: A juvenile facility in which movement and activities of individual youth may be restricted or subject to control through the use of physical barriers or intensive staff supervision. A facility that allow youth access to the community to achieve treatment or correctional objectives, such as educational or employment programs typically will not be considered to be a secure juvenile facility, unless there are sanctions for the youth failing to return.

Sexual Abuse (youth/youth): Sexual abuse of a youth by another youth includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- A. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight.
- B. Contact between the mouth and the penis, vulva, or anus.
- C. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument.
- D. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual Abuse (youth/staff, contractor, volunteer): Sexual abuse of a youth, by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the youth:

- A. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight.
- B. Contact between the mouth and the penis, vulva, or anus.
- C. Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.

- D. Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.
- E. Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.
- F. Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (a)-(e) of this section.
- G. Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of youth.
- H. Voyeurism by a staff member, contractor, or volunteer.

Sexual Harassment:

- A. Repeated and unwelcome sexual advances, requests for sexual favors, verbal comments, gestures or actions of a derogatory or offensive sexual nature by:
  - 1. One youth directed toward another youth.
  - 2. Staff directed toward a youth.
- B. Repeated verbal comments or gestures of a sexual nature to a youth by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing or obscene language or gestures.

Strip Search: A search that requires a person to remove or arrange some or all clothing to permit a visual inspection of the person's breasts, buttocks or genitalia.

Supervision Staff: Facility staff who are primarily responsible for the supervision and control of youth in housing units, recreational areas, and other program areas of the JDAC and TF. As defined in Title 15, section 1321, "personnel with primary responsibility for other duties such as administration, supervision of personnel, academic or trade instruction, clerical, kitchen or maintenance shall not be classified as youth supervision staff."

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.

Substantiated Allegation (Sustained): An allegation that was investigated and determined to have occurred.

Unfounded Allegation (Unfounded): An allegation that was investigated and determined not to have occurred.

Unsubstantiated Allegation (Not Sustained): An allegation that was investigated and the investigation produced insufficient evidence concerning the incident. The mandated reporter shall include with the report any non-privileged documentary evidence the mandated reporter possesses relating to the incident.

Volunteer: An individual who donates time and effort on a recurring basis to enhance the activities and the programs of the SBC Probation.

Youth: Any person confined or detained in a juvenile facility. As defined in Title 15, "a person who is in the custody of the juvenile detention facility. This person may be under 18 years of age or over 18 years of age. This includes persons whose cases are under the jurisdiction of the Juvenile Court and the persons whose cases are under the jurisdiction of the Adult Court.

**Voyeurism:** An invasion of privacy of youth by staff for reasons unrelated to official duties, such as peering at a youth who is using the toilet in his or her room to perform bodily functions; requiring a youth to expose his or her buttocks, genitals, or breast; or taking images of all or part of a youth's naked body or a youth performing bodily functions.

**Zero Tolerance:** The policy of applying penalties to even minor infringements of a procedure in order to reinforce its overall importance.

## **Policy**

- I. PREA Coordinator/Manager 115.311:
  - A. SBC Probation PREA Coordinator will have complete and unrestricted access to all agency facilities, contracts, youth programs, offices, records, staff and youth. JDAC and TF staff, contract providers, and volunteers all must cooperate fully with the PREA Coordinator without fear of reprisal or reprimand.
  - B. SBC Probation PREA Compliance Managers will be assigned at each JDAC and TF. PREA Compliance Managers will have sufficient time and authority to coordinate the facility's efforts to comply with the PREA Standards.
  
- II. Contracting with Other Entities for the Confinement of Youth. 115.312:
  - A. New contract or contract renewals with public entities for the confinement of youth, as well as contracts for professional services for youth will include the entity's obligation to adopt and comply with PREA Standards.
  
- III. Supervision and Monitoring 115.313:
  - A. SBC Probation will develop, implement, and document an approved staffing report that provides for adequate levels of staffing and where applicable, video monitoring, to protect youth against sexual abuse and sexual harassment. Each time the staffing plan is not complied with, the JDAC/TF will document and justify all deviations of the staffing plan. The JDACs and TFs are required to review, make adjustment, and complete the SBC Probation Annual Staffing Report and submit the report by December 31 of each year with the required signatures to the PREA Coordinator. When calculating adequate staffing levels and determining the need for video monitoring, the JDACs and TFs will take into consideration:
    1. Generally accepted juvenile detention and correctional/secure youth practices.
    2. Any judicial findings of inadequacy.
    3. Any findings of inadequacy from Federal investigative agencies.
    4. Any findings of inadequacy from internal or external oversight bodies.
    5. All components of the JDAC's and TF's physical plant (including "blind spots" or areas where staff or youth may be isolated).
    6. The composition of the youth population.
    7. The number and placement of supervisory staff.
    8. Institution programs occurring on a particular shift.
    9. Any applicable State or local laws, regulations, or standards.
    10. The prevalence of substantiated and unsubstantiated incidents of sexual abuse.
  - B. Any other relevant factors.
  - C. SBC Probation JDACs and TFs will comply with the staffing plan except during limited and discrete exigent circumstances and will fully document deviations from the plan during such circumstances.
  - D. Each JDAC and TF will maintain a staff ratio of a minimum of 1:8 during youth waking hours and 1:16 during youth sleeping hours. Only supervision staff will be included in these ratios.

- E. Whenever necessary, but no less frequently than once each year, the JDACs and TFs will consult with the PREA Coordinator and assess, determine, and document, whether adjustments are needed to:
  - 1. The established staffing plan.
  - 2. Prevailing staffing patterns.
  - 3. The JDAC and TF's deployment of video monitoring systems and other monitoring technologies.
  - 4. The resources the JDACs and TFs have available to commit to ensure adherence to the staffing plan.
- F. SBC Probation will have Probation Corrections Supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment for each shift. Staff is prohibited from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

IV. Limits to Cross-Gender Viewing and Searches 115.315:

- A. SBC Probation staff will not conduct cross-gender strip searches or cross-gender visual body cavity searches except in exigent circumstances or when performed by medical practitioners.
- B. The JDAC and TFs will document and justify all cross-gender strip searches, cross-gender visual body cavity searches, and cross-gender pat-down searches.
- C. All JDAC and TFs staff of the opposite gender are required to announce their presence when entering a housing unit.
- D. Youth will be allowed to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances unless such viewing is incidental to routine cell checks.
- E. The JDAC and TF staff will not search or physically examine a transgender or intersex youth for the sole purpose of determining the youth's genital status. If the 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.
- F. SBC Probation will train supervision staff on how to conduct cross-gender pat-down searches, and searches of transgender and intersex youth, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

V. Youth with Disabilities and Youth who are Limited English Proficient 115.316:

- A. SBC Probation will provide all youth with disabilities equal opportunity to participate in and benefit from all aspects of SBC Probation's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. When necessary, employee interpreters or a professional interpretation agency will be utilized for all youth who may be blind, deaf, or hard of hearing. Written information will also be provided in the same manner. Regulations for these standards will comply with the Americans With Disabilities Act, Title II, 28 CFR 35.164.
- B. SBC Probation will provide all youth with limited English proficient equal opportunity to participate in and benefit from all aspects of SBC Probation's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. When necessary, employee interpreters or a professional interpretation agency will be utilized for all youth who are limited English proficient. Written information will also be provided in the same manner.

- C. Youth interpreters, readers or other types of youth assistance will not be utilized 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 or the investigation of the youth's allegations.

VI. Hiring and Promotion Decisions 115.317:

- A. SBC Probation will not hire or promote anyone or enlist the services of any contractor or volunteer who may have contact with youth who:
  - 1. Has a prior known history of engaging in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution.
  - 2. Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent, was unable to consent or refused.
  - 3. Is known by SBC Probation to have been civilly or administratively adjudicated to have engaged in the activity described above.
- B. SBC Probation will consider all known incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of a contractor, that may have contact with youth.
- C. SBC Probation will adhere to the following protocols prior to hiring new employees who have contact with youth:
  - 1. Perform criminal background checks.
  - 2. Consult the Child Abuse Central Index.
  - 3. Contact known prior employers for information on known substantiated allegations of sexual abuse or any known resignation during a pending investigation of an allegation of sexual abuse to include, but not limited to, the following data bases:
    - a. FBI
    - b. DOJ
    - c. DMV
    - d. CNI
    - e. Probation records
    - f. Local Sheriff records
- D. SBC Probation will perform a criminal background records check, and consult the Child Abuse Index, before enlisting the services of any contractor who may have contact with youth.
- E. SBC Probation will monitor alerts from the Department of Justice and the Department of Motor Vehicles relating to when any employee, volunteer or contract is alleged to have committed a criminal act.
- F. SBC Probation will ask all new employee applicants who have direct contact with youth about previous misconduct described in Section VI, A, 1-3, during the hiring background investigation.
- G. Employees will be required to disclose any arrests or convictions regarding such misconduct as listed in VI, A, 1-3.
- H. Material omissions regarding all misconduct, or the provision of materially false information as listed above, may be grounds for possible discipline up to and including termination in concert with all applicable County and Department personnel rules.
- I. Based on California Law, SBC Probation will provide prior employment information to an outside agency only if the prior employee provides written consent to release information.

- VII. Upgrades to Facilities and Technology 115.318:
  - A. When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, SBC Probation will consider the effect of the design, acquisition, expansion, or modification upon the JDAC's and TF's ability to protect youth from sexual abuse.
  - B. When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, SBC Probation will consider how the technology may enhance the JDAC's and TF's ability to protect youth from sexual abuse.
  
- VIII. Evidence Protocol and Forensic Medical Examinations 115.321:
  - A. SBC Probation does not conduct criminal investigations regarding allegations of sexual abuse. JDAC and TF staff will contact local law enforcement and preserve and protect the scene, the victim, and the alleged perpetrator, until law enforcement arrives.
  - B. SBC Probation will request the investigating agency in all criminal matters to have a protocol which is developmentally appropriate for youth and adapted from or based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women Publications, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011. All efforts will be documented.
  - C. SBC Probation will request that local law enforcement delivers and remains with the victim of sexual abuse to a medical facility that has Sexual Assault Forensic Examiners (SAFE) or Sexual Assault Nurse Examiners (SANE). The victim will not be financially responsible for services. All efforts will be documented.
  - D. SBC Probation will request that local law enforcement attempt to provide a victim advocate from the San Bernardino Sexual Assault Services to the victim of sexual abuse. If an advocate from the San Bernardino Sexual Assault Services is not available, the JDAC or TF will provide a qualified staff advocate to accompany the victim. All efforts will be documented.
  - E. SBC Probation will, at the victim's request, provide a qualified (someone who has received education concerning sexual abuse and forensic examination) victim advocate, SBC Probation staff or community-based organization staff member to accompany and support the victim through the forensic medical examination process and investigatory interviews and will provide emotional support, crisis intervention, information and referrals. All efforts will be documented.
  
- IX. Policies to Ensure Referrals of Allegations for Investigations 115.322
  - A. For matters regarding sexual abuse:
    - 1. SBC Probation will ensure that criminal investigations are completed for all allegations of sexual abuse by local law enforcement.
    - 2. Should an incident of sexual abuse occur, local law enforcement will be contacted to conduct an investigation unless the allegation does not involve potential criminal behavior. JDAC and TF first responder staff will preserve the scene, victim and suspect until local law enforcement arrive.
  - B. For matters regarding sexual harassment:
    - 1. SBC Probation Professional Standard's Unit will investigate the incident. If the incident involves a crime, local law enforcement will be contacted.
    - 2. SBC Probation will ensure that investigations are completed for all allegations of sexual harassment.

- X. Employee Training 115.331:
  - A. All employees who have contact with youth housed at a JDAC or a TF will receive training prior to working with youth in a JDAC or a TF and bi-annually. Training will be tailored to address the attributes of the youth in all of the JDACs and the TFs to include:
    - 1. Sexual abuse and sexual harassment policy.
    - 2. How to fulfill their responsibilities regarding sexual abuse and sexual harassment prevention, detection, reporting, and response.
    - 3. Youth's right to be free from sexual abuse and sexual harassment.
    - 4. The right of youth and employees to be free from retaliation for reporting sexual abuse and sexual harassment.
    - 5. The dynamics of sexual abuse and sexual harassment in juvenile facilities.
    - 6. The common reactions of juvenile victims of sexual abuse and sexual harassment.
    - 7. How to detect and respond to signs of threatened and actual sexual abuse and how to distinguish between consensual sexual contact and sexual abuse between youth.
    - 8. How to avoid inappropriate relationships with youth.
    - 9. How to communicate effectively and professionally with youth, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming youth.
    - 10. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
    - 11. Relevant laws regarding the applicable age of consent.
  - B. All employees will receive training tailored to the needs of all youth to include those who are female, male, LGBTQI and GNC youth.
  - C. The SBC Probation Training Unit will document through employee signature or electronic verification that the employee understands the training they have received.
  
- XI. Volunteer and Contractor Training 115.332:
  - A. All volunteers and contractors who have contact with youth will be trained on how to fulfill their responsibilities regarding sexual abuse and sexual harassment prevention, detection and response based on the contact they have with the youth and to the type of service they provide.
  - B. All contractors and volunteers will be trained on SBC Probation's Zero-Tolerance Policy regarding sexual abuse and sexual harassment and how to report such incidents.
  - C. SBC Probation will maintain documentation confirming that volunteers and contractors understand the training they have received.
  
- XII. Youth Education 115.333:
  - A. Upon intake, all youth will receive comprehensive age-appropriate education information explaining, SBC Probation's Zero-Tolerance Policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment. The educational format will be accessible to youth who are:
    - 1. Limited English proficient
    - 2. Deaf, hard of hearing
    - 3. Visually impaired or otherwise disabled
    - 4. Limited reading skills
  - B. Additional comprehensive age-appropriate education will be provided within ten (10) days of intake regarding their rights to be free from sexual abuse and sexual



harassment and free from retaliation for reporting such incidents and regarding SBC Probation's procedures for responding to such incidents.

- C. All youth who transfer to a different SBC Probation Facility will receive the information again which will be documented.
- D. SBC Probation will maintain documentation of all youth participation and educational training.
- E. Information regarding SBC Probation zero-tolerance toward sexual abuse and sexual harassment will be continuous and readily available to youth, youth's family, and visitors through posters, youth handbooks and other written formats.

XIII. Specialized Training: Investigations 115.334

- A. SBC Probation will contact local law enforcement to conduct all criminal investigations. SBC Probation will conduct all administrative investigations.
- B. SBC Probation staff will train their investigators in sexual abuse and sexual harassment in juvenile facilities and request that local law enforcement have the same training. Such training should include:
  - 1. Interviewing juvenile sexual abuse victims.
  - 2. Proper use of Miranda and Garrity warnings.
  - 3. Sexual abuse evidence collection in confinement settings.
  - 4. The criteria and evidence required to substantiate a case for administrative action or prosecution referral. All efforts will be documented.

XIV. Obtaining Information from Youth 115.341

- A. Within seventy-two (72) hours of intake at any JDAC, or transfer to a TF, the youth will be screened and assessed using an objective screening instrument for information about the youth's personal history and behavior regarding the risk of sexual abuse by or upon other youth in the facility. The screening instrument will include information regarding the following:
  - 1. Prior sexual victimization or abusiveness.
  - 2. Any gender non-conforming appearance or manner or 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 level of emotional and cognitive development.
  - 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.
  - 11. Any other specific information about individual youth that may indicate heightened needs.
- B. The youth's information will be ascertained through conversations with the youth during the intake process, mental health and medical screening, classification assessments and by reviewing Court records, case files, facility behavioral records, and other relevant documentation from the youth's files.
- C. The facility will control the dissemination of the youth's information by ensuring that sensitive information is not exploited to the youth's detriment by staff or other youth.

- XV. Placement of Youth in Housing, Bed, Program, Education, and Work Assignments 115.342:
- A. Each youth will be housed based on their custody and housing assessment. Custody and housing assignments will not be based solely on the youth's sexual orientation or gender identity. Housing, bed, program, education, and work assignments are based on information obtained from assessments and screenings. The facility will make individualized determinations about how to ensure the safety of each youth.
  - B. Youth will not be isolated from other youth. A youth will only be isolated as a last resort when less restrictive measures are inadequate to keep them and other youth safe, and then only until an alternative means of keeping all youth safe can be arranged. During this time, youth will not be restricted from daily large-muscle exercise or any legally required educational programming or special education services.
  - C. Should the youth be isolated to keep them and other youth safe, the facility will clearly document:
    - 1. The basis for the facility's concern for the youth's safety.
    - 2. The reason why no alternative means of separation could be arranged.
  - D. Youth who are in isolation will receive daily visits from a medical or mental health care clinician and will not be restricted from work opportunities or programs.
  - E. LGBTI and GNC youth will not be placed in particular housing, bed, or other assignments solely on the basis of such identification or status, nor will the JDAC or TF consider LGBTI and GNC identification or status as an indicator of the likelihood of being sexually abusive towards others.
  - F. Housing and programming assignments for each transgender or intersex youth will be reassessed at least every six (6) months to review any threats to safety experienced by the youth. A transgender or intersex youth's own views, with respect to his or her safety, will be given serious consideration.
  - G. Transgender and intersex youth will be given the opportunity to shower separately from other youth.
  - H. No more than every thirty (30) days, the facility will afford each youth who has been placed in isolation a review to determine whether there is a continuing need for separation from the general population.
- XVI. Youth Reporting 115.351:
- A. SBC Probation will provide multiple internal ways for youth to privately report sexual abuse and sexual harassment, retaliation by other youth or staff for reporting sexual abuse and sexual harassment and staff neglect or violation of responsibilities that may have contributed to such incidents.
  - B. SBC Probation will provide at least one (1) way for youth to report abuse or harassment to a public or private entity or office that is not part of SBC Probation and that is able to receive and immediately forward youth reports of sexual abuse and sexual harassment to SBC Probation Compliance Officer which allows the youth to remain anonymous upon request.
  - C. SBC Probation Officials will accept reports made verbally, in writing, anonymously and from third parties and will promptly document any verbal reports.
  - D. The JDAC and TF will provide youth with tools necessary to make a written report.
  - E. SBC Probation will provide a method for staff to privately report sexual abuse and sexual harassment of youth.

XVII. Exhaustion of Administrative Remedies 115.352

- A. SBC Probation will have an administrative procedure for dealing with youth grievances regarding sexual abuse. The procedure will adhere to the following requirements:
  - 1. Time limits will not be imposed on when a youth may submit a grievance regarding an allegation of sexual abuse.
  - 2. Time limits may be imposed on any other portion of a grievance that does not allege an incident of sexual abuse.
  - 3. A youth may not be required to use any informal grievance process or to otherwise attempt to resolve with staff an alleged incident of sexual abuse.
  - 4. SBC Probation will not be restricted in their ability to defend against a lawsuit filed by a youth on the grounds that the applicable statute of limitations has expired.
- B. SBC Probation will ensure:
  - 1. A youth who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint and such a grievance are not referred to a staff member who is the subject of the complaint.
- C. SBC Probation will immediately contact local law enforcement upon receiving any grievance alleging sexual abuse.
- D. Youth who allege sexual abuse may submit a grievance without submitting it to a staff member by placing it in the secure box for grievances. If the grievance alleges a staff member, the grievance will not be referred to the staff who is the subject of the complaint.
- E. All reporting parties:
  - 1. Third parties, including fellow youth, staff members, family members, attorneys and outside advocates will be permitted to assist youth in filing requests for administrative remedies relating to allegation of sexual abuse and will also be permitted to file such requests on behalf of the youth.
  - 2. If a third party, parent or legal guardian, files such a request on behalf of a youth, the facility may require as a condition of processing the request that the alleged victim agrees to have the request filed on their behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.
  - 3. If the youth declines to have the request processed on their behalf, SBC Probation will document the youth's decision.
  - 4. A parent or legal guardian of a youth will be allowed to file grievances regarding allegations of sexual abuse, including appeals, on behalf of the youth. These grievances will not be conditioned upon the youth agreeing to have the request filed on their behalf.
- F. SBC Probation will establish a procedure for the filing of an emergency grievance alleging that a youth is subject to a substantial risk of imminent sexual abuse.
- G. After receiving an emergency grievance alleging a youth is subject to a substantial risk of imminent sexual abuse, the agency will immediately forward the grievance (or a portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken and will provide an initial response within forty-eight (48) hours and will issue a final agency decision within five (5) calendar days. The initial response and initial decision will document SBC Probation's determination whether the youth is substantial risk of imminent sexual abuse and the action taken in the response to the emergency grievance.
- H. SBC Probation will not discipline a youth for filing a grievance related to alleged sexual abuse unless the youth filed the grievance in bad faith.

- XVIII. Youth Access to Outside Support Services and Legal Representation 115.353:
- A. The JDACs and TFs will provide youth with access to outside victim advocates for emotional support services related to sexual abuse, by providing, posting, or otherwise making accessible mailing addresses and telephones, including toll free hotline numbers where available of local, State, or National Victim Advocacy Rape Crisis organizations.
  - B. Telephones with recorded lines will have posting advising youth that incoming and outgoing phone calls may be recorded.
  - C. SBC Probation will maintain a memorandum of understanding or other agreements with community service providers that are able to provide youth with confidential emotional support service related to sexual abuse.
  - D. The JDACs and TFs will provide youth with reasonable and confidential access to their attorneys or other legal representation and reasonable access to parents or legal guardians.
- XIX. Third-Party Reporting 115.354:
- A. SBC Probation will establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of a youth.
- XX. Staff and Agency Reporting Duties 115.361:
- A. All staff are required to report immediately and according to policy any knowledge, suspicion, or information they receive regarding an incident of sexual abuse or sexual harassment that occurred in a JDAC or a TF:
    - 1. Whether or not it is part of the Probation Department.
    - 2. Retaliation against youth or staff who reported such an incident.
    - 3. Any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
  - B. All staff, including medical and mental health practitioners will comply with the Suspected Child Abuse Reporting (SCAR) laws and report the incident to their immediate Supervisor. A SCAR report will be completed and submitted to the appropriate agency and internal offices.
  - C. Medical and mental health practitioners are required to inform the youth at the initiation of services of their duty to report and the limitations of confidentiality.
  - D. Staff are prohibited from revealing any information related to a sexual abuse report to anyone other than to the extent necessary to provide treatment, investigations and other security and management decisions.
  - E. Upon receiving an allegation of sexual abuse, the facility Director or Designee will promptly report the allegation to the appropriate agency office and to the alleged victim's parents or legal guardians unless the facility has official documentation showing the parents or legal guardians should not be notified.
  - F. If the alleged victim is under the guardianship of the child welfare system, the report will be made to the alleged victim's caseworker instead of the parents or legal guardians.
  - G. If the Juvenile Court retains jurisdiction over the alleged victim, the facility Director or Designee will also report the allegation to the youth's attorney or other legal representative of record within fourteen (14) days of receiving the allegation.
  - H. Each JDAC and TF will report all allegations of sexual abuse to local law enforcement and sexual harassment to the SBC Probation Professional Standard's Unit, including third-party and anonymous reports.

- XXI. Agency Protection Duties 115.362:
- A. Upon notification that a youth is subject to a substantial risk of imminent sexual abuse, immediate action will be taken to protect the youth by removing them from the potential risk.
- XXII. Reporting to Other Confinement Facilities 115.363:
- A. Upon receiving an allegation that a youth was sexually abused while confined/placed at another detention center or placement facility, the facility Director or Designee will notify the Director or Designee of the facility or appropriate office of the agency where the alleged abuse occurred and will also notify local law enforcement.
  - B. Notification in a memo format will be completed no later than seventy-two (72) hours after receiving the allegation. Documentation will be maintained by the PREA Coordinator.
  - C. The facility Director that receives such notification will ensure that the allegation is investigated in accordance with the PREA Standards.
- XXIII. Staff First Responder Duties 115.364:
- A. Any JDAC or TF staff member that learns of an allegation that a youth was sexually abused will:
    - 1. Separate the victim and alleged perpetrator.
    - 2. Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence.
    - 3. If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.
    - 4. If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged perpetrator does not take any actions that could destroy physical evidence, including, as appropriated washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.
  - B. If the first responder is not a PCO, they will request that the victim not take any actions that could destroy physical evidence and then notify a Probation Corrections Officer (PCO).
- XXIV. Coordinated Response 115.365:
- A. All staff will take immediate action to implement the coordinated response to reports of sexual abuse, sexual assault, sexual misconduct and sexual harassment.
  - B. Whenever sexual abuse is alleged, local law enforcement will be contacted to complete and investigation. Documentation of law enforcement contact will include date, time, and place of the incident. The victim, perpetrator and witnesses' names will also be documented.
  - C. Whenever sexual harassment or sexual misconduct is alleged, SBC Probation Professional Standards Unit will complete an investigation. The investigation will include date, time, and place of the incident. The victim, perpetrator and witnesses' names will also be documented.
  - D. The JDAC and TF will ensure that administrative and criminal investigations are completed on all reports of sexual abuse and sexual harassment including third-party and anonymous reports. All youth will have access to free off-site forensic medical examinations when evidentiary or medically appropriate.

- XXV. Preservation of Ability to Protect Youth from Contact with Abusers 115.366:
- A. Neither SBC Probation or any other governmental entity responsible for collective bargaining on the agency's behalf will enter into or renew any collective bargaining agreement or other agreement that limits the SBC Probation's ability to remove alleged staff sexual abusers from contact with the youth pending the outcome of an investigation or of a determination of whether, and to what extent, discipline is warranted.
- XXVI. Agency Protection Against Retaliation 115.367:
- A. Directors, Facility PREA Compliance Managers and Supervisors will take immediate steps to ensure that youth alleging sexual abuse and sexual harassment, or staff reporting, are not victims of any form of retaliation. Upon receiving a report of alleged sexual abuse or sexual harassment from a youth, the Director, PREA Compliance Managers and Supervisors will employ multiple protection measures, such as housing changes or transfers for youth victims or perpetrators, removal of alleged staff or youth perpetrators from contact with victims, emotional support services for youth or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with an investigation.
  - B. For at least ninety (90) days following a report of sexual abuse, the Directors, Facility PREA Compliance Managers and Supervisors will monitor the conduct and treatment of youth or staff who reported sexual abuse and of the youth who were reported to have experienced sexual abuse to determine if there are changes that may suggest possible retaliation by youth or staff, and shall act promptly to remedy any such retaliation. Monitoring will continue beyond ninety (90) days if the initial monitoring indicates a continuing need. The following will be monitored:
    - 1. Youth disciplinary reports
    - 2. Unit housing
    - 3. Program changes
    - 4. Negative performance reviews or reassignments of staff.
  - C. Periodic status checks will be completed for all youth who report sexual abuse or sexual harassment until the youth no longer appears to have concerns or until they are released from custody.
  - D. Any other youth or staff who cooperates with an investigation expresses a fear of retaliation, SBC Probation will take appropriate measures to protect that individual against retaliation.
- XXVII. Post-Allegation Protective Custody 115.368:
- A. Single cell or isolation to protect a youth who is alleged to have experienced sexual abuse will follow the Housing Classification Assessment Procedure to protect the youth in the least restrictive manner. This will occur only as a last measure only until an alternative means of keeping all youth safe can be arranged. Youth will not be removed from regular programming or daily visits from medical or mental health care providers.
- XXVIII. Criminal and Administrative Agency Investigations 115.371:
- A. SBC Probation does not conduct sexual abuse investigations. Local law enforcement will be contacted for all allegations of sexual abuse.
  - B. SBC Probation will investigate allegations of sexual harassment. Should the investigation indicate a crime has been committed, the matter will be referred to local law enforcement for investigation.
  - C. When investigating allegations of sexual harassment, SBC Probation will do so promptly, thoroughly, and objectively, including third-party and anonymous reports.

- D. SBC Probation will preserve the scene of a sexual abuse incident and protect all electronic monitoring data until local law enforcement arrive or request the information.
- E. SBC Probation will not conduct compelled interviews with youth or staff that may be under investigation for sexual abuse or sexual harassment.
- F. SBC Probation will retain all documentation regarding sexual abuse and sexual harassment allegations and investigations for as long as the alleged abuser is incarcerated or employed by the SBC Probation Department, plus five (5) years, unless the abuse was committed by a youth and applicable law requires a shorter period of retention.
- G. SBC Probation will not terminate or request that local law enforcement terminate an investigation solely because the source of the allegation recants the allegation or the alleged abuser or victim is no longer employed, or under the control of the SBC Probation.
- H. SBC Probation will not conduct compelled interviews until the District Attorney's Office has been contacted and ensures that such interviews will not be an obstacle for subsequent criminal prosecution.
- I. The credibility of an alleged victim, suspect, or witness will be assessed on an individual basis and will not be determined by the person's status as youth or a staff. SBC Probation will not require a youth who alleges sexual abuse or harassment to submit to a polygraph examination as a condition for proceeding with an investigation.
- J. SBC Probation Professional Standard's Unit will include an effort to determine whether staff actions or failures to act contributed to the abuse. This information will be documented in the written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments and investigative facts and findings.

XXIX. Evidentiary Standards for Administrative Investigations 115.372:

- A. SBC Probation will not impose a standard higher than a preponderance of the evidence in determining whether allegations of sexual harassment are substantiated.

XXX. Reporting to Youth 115.373:

- A. If an investigation reveals that a youth has made a false accusation that they, not in good faith, could not have believed to be true, the SBC Probation may take disciplinary action against the youth through all means available within the Department's disciplinary process. However, SBC Probation prohibits disciplinary action for a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred, even if an investigation does not establish evidence sufficient to substantiate the allegation.
- B. SBC Probation will request information from the investigating agency and will inform the youth as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded if the investigating agency has not provided the victim with this information. Staff will document that the youth was informed of the investigation outcome.
- C. Following a youth's allegation that a staff member has committed sexual abuse against the youth, SBC Probation will subsequently inform the youth (unless the allegation was unfounded):
  - 1. The staff member is no longer posted within the youth's unit.
  - 2. The staff member is no longer employed at the facility.
  - 3. SBC Probation learns that the staff member has been indicted, convicted or adjudicated on a charge related to sexual abuse within the facility.

4. Should the youth be released from custody, SBC Probation will no longer be obligated to report.
  5. All notifications and attempted notifications will be documented.
- D. Following a youth's allegation that they have been sexually abused by another youth, SBC Probation will subsequently inform the alleged victim whenever:
1. SBC Probation learns that the alleged abuser has been indicted, convicted or adjudicated on a charge related to sexual abuse within a JDAC or TF.
  2. All notifications and attempted notifications will be documented.
  3. Should the youth be released from custody, SBC Probation will no longer be obligated to report.
- XXXI. Disciplinary Sanctions for Staff 115.376:
- A. Disciplinary sanctions for violations of facility policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) will be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.
  - B. At the conclusion of the investigation, the facility Superintendent will take appropriate measures to ensure the safety of the youth. The subject of investigation will be informed of the outcome of the investigation and the measures to be taken.
  - C. Termination will be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.
  - D. All terminations for violations of SBC Probation's sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, will be reported to law enforcement and to any relevant licensing bodies, unless the activity was clearly not criminal.
- XXXII. Corrective Action for Contractors and Volunteers 115.377:
- A. Any contractor or volunteer who engages in sexual abuse will be prohibited from contact with youth and will be reported to local law enforcement, unless the activity was clearly not criminal, and to relevant licensing bodies.
  - B. The JDACs and TFs will take appropriate remedial measures and will consider whether to prohibit further contact with youth in the case of any other violation of SBC Probation sexual abuse or sexual harassment policies by a contractor or volunteer.
- XXXIII. Disciplinary Sanctions for Youth 115.378:
- A. A youth may be subject to disciplinary sanctions only pursuant to a formal disciplinary process following an administrative finding that the youth engaged in youth on youth sexual abuse or following a criminal finding of guilt for youth on youth sexual abuse.
  - B. Any disciplinary sanctions will commensurate with the nature and circumstances of the abuse committed, the youth's disciplinary history and the sanctions imposed for comparable offenses by other youth with similar histories. In the event a disciplinary sanction results in the isolation of a youth, SBC Probation will not deny the youth daily large-muscle exercise or access to any legally required educational programming or special education services. Youth in isolation will receive daily visits from a medical or mental health care clinician. Youth will also have access to other programs and work opportunities to the extent possible.
  - C. The disciplinary process shall consider whether a youth's mental disabilities or mental illness contributed to their behavior when determining what type of sanction, if any, should be imposed.



- D. Forensic Adolescent Services Team (FAST) will be offered to both the victim and the alleged perpetrator.
- E. The JDAC and TF may require participation in intervention for the perpetrator as a condition of access to any reward based behavior management system or their behavior based incentives, but not as a condition to access to general programming or education.
- F. SBC Probation may discipline a youth for sexual contact with staff if the staff member did not consent to such contact.
- G. SBC Probation prohibits disciplinary action for a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred, even if an investigation does not establish evidence sufficient to substantiate the allegation.
- H. SBC Probation prohibits all sexual activity between youth.

XXXIV. Medical and Mental Health Screenings; History of Sexual Abuse 115.381:

- A. If a youth disclosed any prior sexual victimization or sexual abusiveness or the youth has a prior history of being a perpetrator during intake, the youth will be offered a follow-up meeting with a medical or mental health practitioner within fourteen (14) days of the intake screening.
- B. Any information related to sexual victimization or abusiveness that occurred in an institutional setting will be strictly limited to medical and mental health providers and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education and program assignments or as otherwise required by Federal, State, or local law.
- C. Medical and mental health practitioners will obtain informed consent from youth before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the youth is under the age of eighteen (18).

XXXV. Access to Emergency Medical and Mental Health Services 115.382:

- A. Any youth who is a victim of sexual abuse will receive emergency medical care immediately upon notification that there has been a sexual abuse incident. If there are no medical or mental health practitioners on duty, the Watch Commander will be contact and notify a medical and mental health practitioner and a decision will be made whether to take the victim to the emergency room. The victim will be provided timely access to contraception and sexually transmitted infections prophylaxis. Medical care will be provided at no cost to the youth or their family regardless of whether the victim names the abuser or cooperates with any investigation.

XXXVI. Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers 115.383

- A. Medical and mental health evaluations and treatment will be offered to all youth, as appropriate, who have been the victim of sexual abuse in a confinement facility. These services will include treatment plans and/or referrals for continued care upon release or transfer to another facility or placement.
- B. Evaluation and treatment for victims will include, as appropriate, follow-up services, treatment plans.
- C. Medical and mental health services will be consistent with the level of care in the community.
- D. Pregnancy tests will be offered to victims of sexually abusive vaginal penetration.
- E. If pregnancy results from sexual abuse, victims will receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

- F. Victims of sexual abuse while detained at a JDAC or TF will be offered tests for sexually transmitted infections as medically appropriate.
- G. Treatment services will be provided to the victim without financial cost regardless of whether the victim names the abuser or cooperates with the investigation.
- H. A Mental Health Evaluation and treatment will be attempted on all known youth-on-youth abusers within sixty (60) days of learning of the abuse history.

XXXVII. Sexual Abuse Incident Reviews 115.386:

- A. A sexual abuse incident review will be conducted within thirty (30) days at the conclusion of every sexual abuse investigation regardless if the incident has been substantiated, unless the allegation was unfounded.
- B. The review team will:
  - 1. Include upper level management officials with input from line Supervisors, investigators, and medical or mental health practitioners.
  - 2. Consider whether the allegation or investigation indicates a need to change policy or procedure to better prevent, detect, or respond to sexual abuse.
  - 3. Consider whether the incident or allegation was motivated by race, ethnicity, gender identity, lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status, gang affiliation, or was motivated or caused by other group dynamics at the facility.
  - 4. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse.
  - 5. Assess the adequacy of the staffing levels in that area during different shifts.
  - 6. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff.
  - 7. Prepare a report of its findings, including, but not necessarily limited to determinations made pursuant to this section and any recommendations for improvement and submit such report to the facility Superintendent and the PREA Compliance Officer.
- C. The facility will implement the recommendations for improvement or will document its reasons for not doing so.

XXXVIII. Data Collection 115.387:

- A. SBC Probation will collect accurate, uniform data for every allegation of sexual abuse at the JDACs and TFs using a standardized instrument and set of definitions.
- B. The incident-based data will 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.
- C. Incident-based sexual abuse data will be completed no less than once a year.
- D. SBC Probation will maintain, review and collect data as needed from all available incident-based documents including reports, investigation files, and sexual abuse incident reviews.
- E. SBC Probation will obtain incident-based and aggregated data from every private facility the Department contracts with for the confinement of its youth.
- F. Upon request, SBC Probation will provide all such data from the previous calendar year to the Department of Justice no later than June 30.


XXXIX. Data Review for Corrective Action 115.388:


- A. SBC Probation will review data collected and aggregated pursuant to section XXXVIII of this policy in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:

1. Identifying problem areas.
  2. Taking corrective action on an ongoing basis.
  3. Preparing an annual report of its findings and corrective actions for each facility as well as the agency as a whole.
- B. Such report will include a comparison of the current year's data and corrective actions with those from prior years and will provide an assessment of SBC Probation's progress in addressing sexual abuse.
- C. SBC Probation's report will be provided by the Deputy Chief Probation Officer and approved by the Chief of Probation and made readily available to the public through its website.
- D. SBC Probation will redact specific material from the reports when publication would present a clear and specific threat to the safety and security of the facility, but must indicate the nature of the material redacted.

XL. Data Storage, Publication and Destruction 115.389:

- A. SBC Probation will ensure that data collected pursuant to section XXXIX are securely retained.
- B. SBC Probation will make all aggregated sexual abuse data from the JDACs and TFs and with private contracted agencies readily available to the public at least annually through its website.
- C. Before making aggregated sexual abuse data publicly available all personal identifiers will be removed.
- D. Sexual abuse data collected will be maintained pursuant to section XXXVIII of this policy.

  
Michelle Scray Brown, Chief Probation Officer

  
Date