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**A.** The Bernalillo County Youth Services Center (BCYSC) has a “zero tolerance” policy regarding abuse, sexual misconduct, and sexual harassment directed towards the youth for whom we are charged to provide care for.

**B.** Youth shall be protected from abuse, sexual misconduct, and sexual harassment.

**1.** Sexual harassment includes-

i. Unwelcomed sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one resident or detainee directed to another; and

ii. Verbal comments or gestures of a sexual nature to a resident or detainee by a staff member, contractor, volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.


**C.** Any employee, youth or other person who reports abuse or sexual misconduct will not be subject to retaliation. Staff will keep information confidential unless disclosure is necessary to fulfill reporting responsibilities or to make housing, programming, and security.

**D.** All employees, volunteers, or any person that has contact with youth who witness or are the subject of abuse or sexual misconduct shall immediately report such conduct to one or more of the following staff/persons:

1. Medical staff
2. Mental Health staff
3. Primary staff member on shift
4. On call Personnel/ Manager
5. Director

**E.** All youth who witness or are the subject of abuse or sexual misconduct shall immediately report such conduct in one or more of the following manners:

1. Grievance
2. Correspondence


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3. Verbally report to any person
4. Call the complaint/ grievance hotline 505-468-7708

**Approved:**

\_\_\_\_\_  
Craig Sparks, Director

\_\_\_\_\_  
Date

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**PROCEDURE 13.18.1**

**A. Reporting and Investigation:**

1. All staff members and volunteers have an affirmative duty to immediately report any knowledge, suspicion, or information regarding sexual misconduct involving a youth.

**B. First Responder Instructions--Allegations Involving Sexual Abuse, Sexual Assault or other Sexual Acts or Contact:**

1. Immediately separate the alleged aggressor and the alleged victim.
2. If a report of allegations occurs within (5) days advise the victim not to shower or otherwise clean themselves, or if the assault was oral, not to eat, drink, brush their teeth, chew gum or otherwise take any action that could damage or destroy evidence.
3. Secure the scene of the alleged assault if feasible and secure any video coverage of the alleged incident.
4. Any staff member or volunteer, who receives a report of sexual abuse whether verbally or in writing will immediately notify the shift supervisor and provide a written statement summarizing the allegation. The initial written notification can be made in the form of an email, handwritten statement, typed document, or YSC Critical Incident Report Form. In cases in which the initial statement is provided in a format other than the YSC Critical Incident Report Form, the PREA Coordinator shall ensure the information is transferred to the YSC Critical Incident Form within one business day.
5. The shift supervisor shall immediately notify the Director or designee. The Director or designee shall ensure that the alleged victim and aggressor are physically separated in accordance with the Special Management Protocol. Cases involving alleged sexual acts will be reported to law enforcement. A call will be made to law enforcement by the Director or designee.
6. In all cases of alleged sexual abuse, sexual assault or other sexual acts or contact, arrangements shall be promptly made to have the alleged victim transported and examined at a local hospital or S.A.N.E. office by a Sexual Assault Nurse Examiner (S.A.N.E.) or other qualified medical practitioner. At any time a youth has the right to refuse treatment, transport for treatment, or exam and must be notified of their rights. S.A.N.E. will be notified of the youth's refusal and may choose to discuss the incident with the youth over the phone. Youth

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may also refuse to discuss the incident as well. Behavioral health staff will be involved in preparing resident for the above.

**C. First Responder Instructions—All Alleged Sexual Misconduct:**

1. Memorandums outlining the reporting procedures that occur within confinement and pre-confinement have been implemented and shall be reviewed and revised by the Director or Designee. In order to assure compliance with reporting laws and compliance with ethical requirements for licensed behavior health staff.
2. Youth may report sexual misconduct or threats of sexual misconduct to any staff member or volunteer. Any staff member or volunteer, who receives a report of sexual misconduct, whether verbally or in writing, will immediately notify the primary staff member and complete an incident report. The primary staff member shall immediately notify the Director or designee. The Director or designee shall ensure that the alleged victim and aggressor are physically separated in accordance with the Special Management Protocol.
3. The Director or designee will direct the facility’s response to all allegations of sexual misconduct including immediate assignment of a Behavioral Health Services clinician, a Victim Support Person, Investigator, as well as a referral to the medical department.
4. In every case there will be no contact between the alleged aggressor and the alleged victim without the approval of the Director or designee.
5. Allegations of sexual misconduct shall be treated confidential to the extent permitted by law. Individuals who fail to keep allegations of sexual misconduct confidential are subject to discipline which may lead to and include termination.

**D. Additional Staff and Agency Reporting Duties:**

1. Staff must comply with mandatory child abuse reporting laws. All incidents of sexual abuse and situations in which staff knew of sexual abuse and failed to take reasonable steps to prevent must be reported to the New Mexico Children Youth and Families Department (CYFD). Confidentiality must also be preserved. Apart from reporting to the Director or Designee and CYFD, staff are prohibited from revealing any information related to a sexual abuse report to anyone other than to the extent necessary to make treatment, investigation, and other security and management decisions.
2. Medical and mental health practitioners are also required to report sexual abuse to the Director or Designee and CYFD.


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3. Medical and mental health practitioners will report information about sexual abuse that occurred outside of the facility to facility staff for the purposes of making classification, housing, and programming decisions, limiting the scope of that report to those who need to know to make those decisions. Medical and mental health practitioners will also report this information to CYFD and or Law Enforcement. Such practitioners will be required to inform residents at the initiation of services of their duty to report and the limitations of confidentiality.
4. Upon receiving any allegation(s) of sexual abuse that occurs within the facility, the Director or Designee will promptly report the allegation(s) to CYFD 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.
5. If the alleged victim is under the guardianship of CYFD, Tribal agency, or another state child welfare agency the report will be made to the alleged victim's caseworker ONLY.
6. If a juvenile court retains jurisdiction over the alleged victim, the Director or Designee will also report the allegation to the juvenile's attorney or other legal representative of record within 14 days of receiving the allegation.

**E. Access to Emergency Medical and Mental Health Services:**

1. Alleged victims of sexual abuse will receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are to be determined by medical and mental health practitioners.
2. If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, the Director or Designee will take preliminary steps to protect the victim from harm and will immediately notify the appropriate medical and mental health practitioners.
3. Alleged victims of sexual abuse will be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis where medically appropriate.
4. Treatment services are to be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

**F. On-going Medical and Mental Health Care for Sexual Abuse Victims and Abusers:**

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1. The facility will offer medical and mental health evaluations and, as appropriate, treatment to all juveniles who have been victimized by sexual abuse. If necessary, the evaluation and treatment of such victims will include follow-up services, treatment plans, and referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.
2. Alleged victims of vaginal penetration while incarcerated will be offered pregnancy tests. Such victims will receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.
3. Alleged victims of sexual abuse will be offered tests for sexually transmitted infections as medically appropriate.
4. Treatment services will be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. **[Note this would require treatment for anyone even if they were assaulted outside of the facility.]**
5. The facility shall attempt to conduct a mental status examination of all known resident-on-resident abusers within 60 days of learning such abuse history, and offer mental health services when deemed appropriate by mental health practitioners.

**G. Reporting to Other Confinement Facilities:**


1. Upon receiving an allegation that a juvenile was sexually abused while confined at another facility, the Director or Designee will notify the Administrator of the facility where the alleged abuse occurred and will also notify CYFD.
2. Such notification will be provided as soon as possible, but no later than 72 hours after receiving the allegation.
3. The Director or Designee will document that he or she has provided such notification.

**H. Investigations:**

1. All reports of sexual misconduct must be considered credible and promptly investigated criminally and/or administratively without regard to whether:
  - a. The juveniles who are named in the allegation are in custody or not.
  - b. Staff members named in the allegation are currently employed or not

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- c. The report of the allegation was made in a timely manner or not.
  - d. The juvenile reporting the allegation is known to have made past false allegations.
  - e. The source of the allegation recants the allegation.
  - f. The employee receiving the complaint believes or does not believe the allegations.
  - g. The mental health impairment or level of cognitive functioning of a juvenile.
2. The investigator is responsible for conducting and fully documenting the investigation in accordance with facility policy 13.18.1. The investigator shall:
- a. Gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.
  - b. Assess the credibility of an alleged victim, suspect, or witness on an individual basis and not on the basis of a person's status as a juvenile or staff.
  - c. Impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.
  - d. Not condition a juvenile who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of an allegation.
  - e. Include an effort to determine whether staff actions or failures to act contributed to the abuse.
  - f. Document investigations in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
  - g. Refer substantiated allegations of conduct that appear to be criminal for prosecution.
  - h. Conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle to criminal prosecution when the quality of evidence appears to support criminal prosecution.
  - i. Retain all written reports of investigations into alleged sexual abuse for as long as the alleged abuser is incarcerated or employed by the agency,

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plus five years, unless the abuse was committed by a juvenile resident and applicable law requires a shorter period of retention.

j. Cooperate with outside investigations.


**3. Victim Support Person (S.A.N.E.; Mental Health staff and or a staff member or person of the Resident’s choice):**

- a. When the victim alleges that sexual abuse occurred, a designated victim support person will be notified as soon as possible, but no later than the next business day. This person will consult with the investigator on the case and offer assistance to the alleged victim as is appropriate based on the individual’s training. The victim support person may sit in on administrative interviews of the victim but may not, in any manner, obstruct or interfere with the course of the investigation.
- b. Before reporting information about prior sexual victimization(s) that did **not** occur in a juvenile detention/corrections facility, staff shall obtain and complete the **Consent to Report Form** for youth who are 18 years of age or older at the time of the disclosure.

**4. Reporting to Juveniles:**

- a. Juveniles who are currently in the custody of the facility are entitled to know the outcome of investigation into their allegation as follows:
  - i. Following an investigation into a juvenile’s allegation of sexual abuse in the facility, the Director or Designee will inform the juvenile whether the allegation was determined to be substantiated, unsubstantiated, or unfounded.
  - ii. If the allegation involved a staff member, the Director or Designee will inform the juvenile whenever:
    1. The staff member is no longer posted within the juvenile’s unit;
    2. The staff member is no longer employed at the facility;




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3. The staff member has been indicted on a charge related to sexual abuse within the facility; or,
4. The staff member has been convicted on a charge related to sexual abuse within the facility.
5. If the allegation involved another juvenile, the Director or Designee will inform the alleged victim when the alleged abuser has been indicted on a charge related to sexual abuse within the facility or the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
6. All such notifications or attempted notifications will be documented.

**I. Debriefing and Incident review:**

1. **Debriefing:** The Director or Designee will conduct a debriefing of all incidents of sexual misconduct in order to assess the environmental factors, relevant issues or problem areas that could have contributed to the incident and will implement identified improvements to increase juvenile safety.
2. **Incident Review:**
  - a. For incidents involving allegations of sexual abuse, the Director or Designee will conduct an incident review, within 30 days of the conclusion of the investigation unless the allegations were determined to be unfounded.
  - b. The incident review team will include upper-level management officials, with input from line supervisors, investigators, medical and mental health practitioners.
  - c. The review team will consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual misconduct, and whether the incident or allegation was motivated by religion; race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; gang affiliation; mental health; cognitive; physical impairment; or was motivated or otherwise caused by other group dynamics at the facility;
  - d. The review will also:

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- i. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
- ii. Assess the adequacy of staffing levels in that area during different shifts;
- iii. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and,
- e. The review team will prepare a report of its findings that includes determinations made and any recommendations for improvement and submit such report to the Director or Designee who is authorized to implement the recommendations for improvement, or will document reasons for not doing so.

**J. Prosecutions:**


The Director or Designee will work with the local District Attorney’s Office to facilitate prosecution of acts in violation of criminal law.

**K. Discipline of Employees:**

Violation of this policy is cause for discipline up to and including termination. The Director or Designee will take any action necessary to enforce this policy. Any staff member or non-juvenile who violates this policy may be prohibited from contact with juveniles. All terminations for violations of agency sexual misconduct policies, or resignations by staff that would have been terminated if not for their resignation, will be reported to law enforcement and any licensing bodies responsible for licenses that are required for the employee’s position. Acts of sexual abuse will not be tolerated. Employees will be disciplined which may include termination of employment.

**L. Corrective Action for Contractors and Volunteers:**


Any contractor or volunteer who engages in sexual abuse will be prohibited from contact with juveniles and shall be reported to law enforcement agencies, unless the activity was proven as clearly not criminal by law enforcement, and to relevant licensing bodies. The facility shall take appropriate remedial measures

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and shall consider whether to prohibit further contact with juveniles, in the case of any other violation of agency sexual misconduct policies by a contractor or volunteer.

**M. Hiring and Promotion:**

1. The facility does not hire or promote anyone who may have contact with juveniles, and will not enlist the services of any contractor who may have contact with juveniles, who:
  - a. Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution as defined in 42 USC 1997;
  - b. Has been convicted of engaging in 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 or was unable to consent or refuse; or
  - c. Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (1) (ii) of this section.
  - d. The facility considers any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may come into contact with juveniles.
  - e. Before hiring new employees who may have contact with residents, the facility will:
    - i. Perform a criminal background records check;
    - ii. Consult the CYFD child abuse registry; and
    - iii. Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.
  - f. The facility will also perform a criminal background records check, and consult the CYFD child abuse registry, before enlisting the services of any contractor who may have contact with juveniles.
  - g. The facility will either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with residents or have in place a system for otherwise capturing such information for current employees.

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- h. The facility will also ask all applicants and employees who may have contact with residents directly about previous misconduct described in paragraph (1) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The facility will also impose upon employees a continuing affirmative duty to disclose any such misconduct.
- i. Material omissions regarding such misconduct, or the provision of materially false information, may be grounds for termination.
- j. The facility will provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

**N. Tracking:**


The Director of Designee will maintain a tracking system that records all allegations of sexual misconduct and their disposition. The Director or Designee will maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files and sexual abuse incident reviews. The incident-based data collected will be aggregated at least annually and will include, at a minimum, the data necessary to answer all questions from the most recent survey of the Survey of Sexual Violence conducted by the Department of Justice.

**O. Classification Notification:**

BCYSC staff will be notified when a juvenile has been identified as a potential and/or confirmed victim or aggressor and ensure this information is entered into the appropriate juvenile file.

**P. Exhaustion of Administrative Remedies:**

Although regular statute of limitations defenses apply to claims, the facility does not impose a time limit on when a juvenile may submit a grievance regarding an allegation of sexual abuse. Juveniles are not required to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged

	<b>Bernalillo County Youth Services Center</b>	<b>Title: Prison Rape Elimination Act (PREA)</b>	<b>Policy &amp; Proc.#: 3.18</b>
	<b>ACA:</b> 3-JDF-4C-23 3-JDF-3D-08, 3-JDF-3E-01 3-JDF-3C-09, 3-JDF-1D-09 3-JDF-1D-09-1, 3-JDF-1D-10 3-JDF-2C-02-1, 3-JDF-3B-14 3-JDF-3D-06-1, 3-JDF-1D-06-2 3-JDF-1D-06-3, 3-JDF-1D-06-4 3-JDF-1D-06-5, 3-JDF-1D-06-6 3-JDF-1D-06-7, 3-JDF-1D-06-8 3-JDF-1D-06-9, 3-JDF-1D-06-10	<b>CYFD/NMAC:</b> 8.14.14.14	<b>Effective Date:</b> <b>August 13, 2013</b>
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incident of sexual misconduct. A juvenile who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and such grievance will not be referred to a staff member who is the subject of the complaint.

**Q. Third-Party Reporting:**

Third parties, including fellow residents, staff members, family members, attorneys, and outside advocates shall be permitted to assist residents in filing grievances related to allegations of sexual abuse and will also be permitted to file such requests on behalf of juveniles. Staff will accept reports made from third parties and shall promptly document any verbal reports.

**Approved:**

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Craig Sparks, Director

\_\_\_\_\_

Date