

YOUTH CORRECTIONAL FACILITY

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| CHAPTER: Operations | SUBJECT: PRISON RAPE ELIMINATION ACT POLICY | POLICY NO: 1.12a 01-2019 |
| RELATED POLICIES: Prison Rape Elimination Act of 2003; 4 GCA Ch 4; 19 GCA Chapter 13 Child Protective Act | RELATED FORMS: | OTHER REFERENCES: 28 CFR Part 115 DOJ; 4 GCA Ch. 4; 17 GCA Chapter 51 POST;DYA Zero Tolerance Directive; Language Access Plan |

I. PURPOSE AND SCOPE

The purpose of this policy is to describe the Department of Youth Affairs (DYA) mandate of zero tolerance toward all forms of sexual abuse and sexual harassment; and to outline DYA's approach to preventing, detecting, and responding to sexual abuse and harassment. This policy is mandatory and applicable to all DYA employees, contractors, service providers, interns, and volunteers who have contact with residents under the custody and control of DYA. [§115.311]

II. ZERO TOLERANCE STATEMENT

This policy outlines the Department of Youth Affairs (DYA) process of ensuring compliance with the Prison Rape Elimination Act (PREA) of 2003, through application of a zero-tolerance policy toward all forms of sexual abuse and sexual harassment in the Youth Correctional Facility and Cottage Homes. PREA mandates the elimination, reduction, and prevention of sexual assault and rape in prisons, jails, and community confinement facilities used for the custody or care of juveniles charged with delinquency or status offenses.

A "zero-tolerance" policy means that sexual abuse and sexual harassment in any form is strictly prohibited and all allegations of such conduct will be investigated. Any retaliation against individuals for reporting an incident is also prohibited and will be investigated. [§115.311a]

III. DEFINITIONS

A. General Definitions [§115.5]

For the purposes of this part, the term –

1. "Agency" or "Department" refers to the Department of Youth Affairs with direct responsibility for the operations of the Youth Correctional Facility and

Cottage Homes, which provides care and custody to youth charged with delinquent or status offense(s).

2. **“Resident”** or **“juvenile”** or **“youth”** means any juvenile detained or remanded to the Youth Correctional Facility (YCF) or in Cottage Homes (CH);
3. **“Staff”** or **“Personnel”** means a Department of Youth Affairs’ employee;
4. **“Contractor”** or **“Service Provider”** means a person who provides services on a recurring basis pursuant to a contractual agreement with DYA; and
5. **“Volunteer”** or **“Intern”** means an individual who donates time and effort on a recurring basis to enhance the activities and programs of DYA.
6. **“Consent”** refers to cooperation in act or attitude pursuant to an exercise of free will and with full understanding of the nature of the act. Residents cannot consent to sexual contact with staff members, volunteers or contractors.
7. **“Pat-down search”** means a running of the hands over the clothed body of a resident by an employee to determine whether the individual possesses contraband.
8. **“PREA Incident”** means any incident of sexual abuse or sexual harassment, including retaliation against individuals for reporting an incident of sexual abuse or sexual harassment.
9. **“Strip search”** means a search that requires a resident to remove or arrange some or all clothing so as to permit a visual inspection of the person’s breasts, buttocks, or genitalia.
10. **“Secure staff”** means Youth Service Workers directly assigned to the Youth Correctional Facility or Cottages Homes who have direct responsibility over residents.
11. **“Cisgender”** describes people whose gender matches their sex assigned at birth.
12. **“Bisexual”** describes a person who is attracted to both males and females.
13. **“Gay”** describes a person who is attracted to people of the same gender.
14. **“Lesbian”** describes a woman who is attracted to women.
15. **“Intersex”** is a general term used for variations in sex characteristics in which a person is born with a reproductive or sexual anatomy that doesn’t seem to fit the typical definitions of female or male.

16. **“Queer”** is an umbrella term that describes a person who does not identify as straight or cisgender.
17. **“Questioning”** describes people who are unsure of, or in the process of discovering their sexual orientation or gender identity.
18. **“Transgender”** means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person’s assigned sex at birth.
19. A **substantiated allegation** means an allegation that was investigated and determined to have occurred.
20. An **unfounded allegation** means an allegation that was investigated and determined not to have occurred.
21. An **unsubstantiated allegation** means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

B. Definitions Related to Sexual Abuse [§115.6]

1. **“Sexual abuse”** includes
 - (a) Sexual abuse of a resident by another resident; and
 - (b) Sexual abuse of a resident by a staff member, contractor, or volunteer.
2. **Sexual abuse of a resident by another resident** includes any of the following acts, if the victim does not consent, is coerced into such an 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; and
 - (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.
3. **Sexual abuse of a resident by a staff member, contractor, or volunteer** includes any of the following acts, with or without consent of the resident:
 - (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) through (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 a resident; and
- (h) Voyeurism by a staff member, contractor, or volunteer. Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of a resident by staff for reasons unrelated to official duties, such as peering at a resident who is using a toilet in his or her cell to perform bodily functions; requiring a resident to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a resident's naked body or of a resident performing bodily functions.

C. Sexual Harassment [§115.6]

- 1. "Sexual harassment" includes—
 - (a) Sexual harassment of a resident by another resident; and
 - (b) Sexual harassment of a resident by a staff member, contractor, or volunteer.
- 2. Sexual harassment of a resident by another resident includes: Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by a resident directed toward another.
- 3. Sexual harassment of a resident by a staff member, contractor, or volunteer includes: Repeated verbal comments or gestures of a sexual nature to a resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

IV. PREA COORDINATOR [§115.311]

- A. The Director of the Department of Youth Affairs has designated a Program Coordinator as DYA's PREA Coordinator; in the event this position is vacant, the Deputy Director will fulfill the duties and responsibilities of the PREA Coordinator. The PREA Coordinator has sufficient time and authority to develop, implement, and oversee this department's efforts to comply with the PREA standards. The PREA Coordinator has access to the

Department's leadership on a regular basis through routine management meetings and has the authority to work with other staff and managers to effect change as needed. [§115.311(b)]

- B. **DYA is not required to designate a PREA Compliance Manager since DYA is the only Juvenile Correctional Facility operated by the Government of Guam however a PREA Compliance Manager has been identified to assist the PREA Coordinator with facility and personnel compliance. The Department PREA Coordinator and PREA Compliance Manager will coordinate monitoring and compliance activities. [§115.311]**

V. CONTRACTING WITH OTHER ENTITIES FOR THE CONFINEMENT OF OFFENDERS [§115.312]

- A. **Any new contract for the confinement of youth offenders will be required to adopt and comply with the PREA standards. [§115.312a]**
- B. **Any contracted entities will be subject to DYA's monitoring/audits as part of its contract with the government of Guam to ensure compliance with the PREA standards. [§115.312b]**
- C. **The contracted entity (entities) will be responsible with complying with the audit requirements of the PREA standards and any cost associated with audits as required by §115.401 to §115.404 for juvenile facilities.**

VI. PREVENTING AND DETECTING SEXUAL ABUSE AND HARASSMENT

DYA is committed to the safety of any resident assigned to the care and custody of this department. DYA has adopted and implemented the following measures to prevent and detect sexual abuse and sexual harassment in the Youth Correctional Facility and Cottage Home:

- A. **Staffing Plan/Video Monitoring [§115.313a]**
 - 1. **DYA's staffing plan provides for adequate levels of staffing and video monitoring to protect residents against sexual abuse, DYA will ensure that the following factors are taken into consideration:**
 - (a) **Generally accepted detention and correctional practices;**
 - (b) **Any judicial findings of inadequacy;**
 - (c) **Any findings of inadequacy from Federal investigative agencies;**
 - (d) **Any findings of inadequacy from internal or external oversight bodies;**
 - (e) **All components of the YCF and CH physical plans;**

- (f) The composition of the youth population;
 - (g) The number and placement of staff;
 - (h) Programs occurring on a particular shift;
 - (i) Any applicable federal or local laws, regulations, or standards;
 - (j) The prevalence of substantiated and unsubstantiated incidents of sexual abuse;
 - (k) and any other relevant factors.
2. DYA will comply with the staffing and video monitoring plan except during limited and discrete exigent circumstances where it is not complied with, will document and justify all deviations by:
 - (a) Notation in the Unit Log of the discrepancy in staff to resident ratio with the period of time and the discrepancy (i.e. staff ratio 1:9 @1400 hours) and subsequent time of correction of discrepancy (i.e. staff ratio 1:8 corrected @ 1500 hours).
 - (b) Notation in the Intake Control Logbook of the discrepancy in staff to resident ratio indicating the period of time, which unit and for what reason the discrepancy occurred and how the discrepancy was handled (i.e., staff to ratio 1:9 @ 1400 hours due to one staff being reassigned to 1:1 due to new intake/admissions). [§115.313b]
 3. DYA will maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances, which will be fully documented. Only direct supervision staff (YSW tier) will be included in these ratios. Control Room Officers, Transport Officers, the Superintendent, support staff, and supervisors are not included in these ratios except in exigent circumstances when the ratio does not meet the standard and these officers must be reassigned to direct supervision. [§115.313c]
 4. At least once every year, in collaboration with the PREA Coordinator, DYA will conduct an assessment to determine whether adjustments are needed to the staffing plan and the deployment of video monitoring systems and other technologies. See attached staffing plan. [§115.313d]

B. Unannounced Rounds [§115.313e]

1. The Superintendent, Youth Service Supervisors or their designee will conduct and document unannounced rounds and walk throughs covering all shifts, and all areas of the facility, to identify and deter staff sexual abuse or harassment of residents. This will be documented in each Unit Log.
2. DYA policy prohibits staff members who are aware of these unannounced rounds from alerting other staff as to when or where these rounds are occurring, unless related to the legitimate operational needs of the facility.
3. The PREA Coordinator will determine how and when the unannounced rounds will be conducted, and review and manage all documentation from such rounds.

C. Cross Gender Viewing and Searches/Searches of Transgender Youth Residents
[§115.315]

1. Searches

(a) **DYA personnel do not conduct cross-gender strip searches** (meaning a search that requires a person to remove or arrange clothing so as to permit a visual inspection of their breasts, buttocks, or genitalia) or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners. “Cross-gender” refers to the search of a female resident by male staff and the search of a male resident by female staff. [§115.315a]

(b) **DYA personnel are not permitted to conduct cross-gender pat-down searches** on either male or female residents (a running of the hands over the clothed body of a resident by staff to determine whether the individual possesses contraband) absent exigent circumstances. The facility will not restrict residents’ access to regularly available programming or other out-of-cell opportunities in order to comply with this provision. [§115.315b]

(c) If any exigent circumstance results in a cross-gender search the Officer-In-Charge will obtain authorization from the YSS on duty and will document circumstances of all such cross-gender strip searches and body cavity searches of residents and all cross-gender pat-down searches of male or female residents in the Unit Log with date, time, name of resident, name of staff/medical practitioner conducting search and justification for the cross-gender search/pat-down. A DYA Incident Report/Point of Information will be completed with the same information and submitted to the YSS on duty with a copy to the PREA Coordinator through the PREA box located in Intake. [§115.315c]

(d) **DYA staff will not conduct a search of a transgender or intersex resident solely for the purpose of determining genital status.** If the resident’s genital status is unknown, it may be determined during conversations with the resident, 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. [§115.315e]

(e) **DYA staff are to ensure that cross-gender pat-down searches of transgender and intersex offenders are conducted in a professional, respectful, and in the least intrusive manner possible while maintaining security needs.** [§115.315f]

Note: “Transgender” means a person whose gender identity (internal sense of feeling male or female) is different from the person’s assigned sex at birth. “Intersex” means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.

D. Viewing

1. Residents are allowed to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell/dormitory checks and facility security. YSS on shift will review each incident to confirm exigent circumstances. [§115.315d]
2. Staff members of the opposite gender are required to announce their presence when entering a resident dormitory or housing unit or where residents are likely to be showering, performing bodily functions, or changing clothing. For example, a male staff is entering the secured cell area of a female resident in the female unit to conduct cell checks or headcounts must announce his presence by verbally broadcasting and ensuring such notice is logged in the Unit Log. Example: “Male on the Floor” and ensuring visit is notated in the Unit Log. [§115.315d]

VII. RESIDENTS WITH DISABILITIES OR WHO HAVE LIMITED ENGLISH PROFICIENCY

A. Disabled Residents [§ 115.316a]

1. DYA will take appropriate steps to ensure that residents with disabilities have an equal opportunity to benefit from all aspects of DYA’s efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps will include – when necessary to ensure effective communication with residents who are deaf or hard of hearing – providing access to interpreters who can interpret effectively, accurately, and impartially. See Language Access Policy Note: Residents with disabilities includes residents who are deaf, hard of hearing, blind or have low vision, and those who have intellectual, psychiatric, or speech disabilities.
2. In addition, DYA will ensure that written materials are provided in formats and through methods that ensure effective communication with residents with disabilities.

B. Residents Who Have Limited English Proficiency [§115.316b]

DYA will take reasonable steps to ensure all residents have meaningful access to all aspects of efforts to prevent, detect, and respond to sexual abuse and sexual harassment to residents who have limited English proficiency, including by providing interpreters who can interpret effectively, accurately and impartially.

C. Use of Resident Interpreters [§115.316c]

DYA will not rely on resident interpreters, resident readers, or other types of resident assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise a resident's safety, the performance of first-responder duties, or the investigation of a resident's allegations.

VIII. HIRING AND PROMOTION PRACTICES [§115.317]

- A. DYA will not hire or promote anyone who may have contact with residents, or retain the services of any contractor or service provider who may have contact with residents if that person:
1. Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution, for example in the Guam Memorial Hospital or other skilled nursing, intermediate, long-term care, custodial or residential care institution; [§115.317a]
 2. Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, threats of force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or [§115.317a]
 3. Has been civilly or administratively adjudicated to have engaged in the described in the above paragraphs. [§115.317a]
- B. DYA will consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with YCF/CH residents. [§115.317b]
- C. Before hiring new employees who may have contact with residents, DYA (through the Department of Administration's recruitment process) will: [§115.317c/d]
1. Perform a criminal background records check consistent with federal and local law and
 2. Make "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.
 3. A criminal background records check through the Guam Police Department is required before retaining the services of any contractor, intern or service provider who may have contact with residents, prior to admission into the facility.

- D. DYA will make its best efforts to conduct criminal background records checks yearly but will conduct criminal background checks at least every five years of current employees, contractors and volunteers who may have contact with YCF/CH residents. [§115.317e]
- E. DYA will ask all applicants and employees who may have direct contact with YCF/CH residents about previous misconduct described in this section, in: [§115.317e]
 - 1. Written applications and during hiring or promotional interviews; and
 - 2. Interviews or evaluations conducted as part of reviews of current employees for annual performance evaluations.
- F. All DYA personnel have an affirmative duty to disclose any such misconduct described in this section by immediately reporting such through their chain of command. [§115.317f] (See also Title 4 Guam Code Annotated §4202.1)
- G. Material omissions regarding such misconduct, or the provision of materially false information, will be grounds for termination. [§115.317g] (See also Title 4 Guam Code Annotated §4202.2)
- H. Unless prohibited by law, DYA will provide information on substantiated allegations of sexual abuse or sexual harassment involving a current or former employee upon receiving a request from an institutional employer for whom such employee has applied to work. [§115.317h] If DYA receives such a request it will be forwarded to the PREA Coordinator for review and draft response for the Director's signature.

IX. UPGRADES TO FACILITIES AND TECHNOLOGIES [§115.318]

- A. When designing or acquiring any new facility and in planning any substantial expansion or renovation of existing facilities, the Department of Youth Affairs (DYA) will consider the effect of the design, acquisition, expansion, or renovation on its ability to protect residents from sexual abuse. [§115.318a]
- B. When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, DYA will consider how such technology may enhance its ability to protect residents from sexual abuse and provide for increased monitoring in all areas populated by residents. [§115.318b]

X. EVIDENCE PROTOCOL AND FORENSIC MEDICAL EXAMS [§115.321]

- A. DYA is responsible for conducting administrative sexual abuse allegations. All criminal sexual abuse investigations will be referred to the Guam Police Department and Child Protective Services. As DYA is not responsible for investigating criminal allegations of

sexual abuse, it will request that the investigating agencies follow the requirements of this section.

- B. **DYA will use evidence protocols that maximize the potential for obtaining usable physical evidence for administrative proceedings and preserves the crime scene for law enforcement's criminal prosecutions. [§115.321a]**
- C. **DYA does not perform Sexual Assault Medical Forensic evaluations. Once a report is received by DYA personnel, direct supervision staff will contact the Guam Police Department to initiate proper protocol for victims of sexual abuse to access forensic medical examinations, without financial cost to the victim, where evidentiarily or medically appropriate through Healing Hearts or the Guam Memorial Hospital. Such examinations will be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs), where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. DYA will document SAFEs or SANEs for this purpose. [§115.321b]**
- D. **Direct supervision staff in coordination with the Guam Police Department will make the determination for victim transport to Healing Hearts or the Guam Memorial Hospital for a rape analysis (rape kit) or any other health care facility. [§115.321c]**
- E. **DYA will offer all residents who experience sexual abuse access to forensic medical examinations without financial cost, where evidentiarily or medically appropriate. [§115.321c]**
- F. **DYA social worker will coordinate victim advocacy services for the victim from Healing Hearts, VARO, through the Guam Behavior Health and Wellness Center, through the court, a private provider or a qualified staff member. [§115.321d]**
- G. **DYA social worker will document in victim case file efforts to secure services from the rape crisis center. For purposes of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C) to victims of sexual assault of all ages. [§115.321d]**
- H. **At the request and approval of the victim, a victim advocate will support the victim through the forensic medical examination process and investigatory interviews to provide emotional support, crisis intervention, information and referrals. [§115.321e]**
- I. **Upon conducting an administrative investigation and/or referral to an appropriate agency for investigating allegations of sexual abuse, DYA will request that the investigating agency follow the requirements of this section. [§115.321f]**
 - a. **The PREA Coordinator will be responsible for quality assurance and adherence to the protocols of this this section. [§115.321h]**

XI. POLICIES TO ENSURE REFERRALS OF ALLEGATIONS FOR INVESTIGATIONS [§115.322]

- A. **DYA will ensure that an administrative investigation and a referral for criminal investigation are completed for all allegations of sexual abuse and sexual harassment. [§115.322a]**
- B. **In the event of allegations of sexual abuse and/or sexual harassment, DYA staff will complete an incident report and notify the Superintendent and Director. A copy of the incident report will be submitted to the PREA Coordinator via the PREA Coordinator Box in Bldg. H Intake Unit before the end of the shift. [§115.322a]**
- C. **If an allegation of sexual abuse or sexual harassment involves potentially criminal behavior, the allegation will immediately be referred to the Guam Police Department. [§115.322]**
- D. **DYA publishes the DYA Prison Rape Elimination Act on the official agency website. [§115.322b]**
- E. **DYA will make an official request for investigation of any allegation of sexual abuse or potentially serious incident of sexual harassment to the Director. The investigation may be completed by an internal or external investigator(s) assigned by the Director or referred to the Attorney General's Office pursuant to the Director's or his/her designee's instructions.**
- F. **The Guam Police Department (GPD) has their own policy governing how criminal investigations for sexual abuse are conducted. DYA does not manage criminal investigations for sexual abuse or criminal sexual harassment. [§115.322c,d]**
- G. **DYA currently does not have any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in juvenile facilities. [§115.322c]**

XII. TRAINING AND EDUCATION

DYA is committed to communicating to the residents, to its employees, and to contractors and volunteers, the following information through the training, education and orientation programs described in this section:

- **DYA's Zero tolerance policy;**
- **DYA's policies to prevent, detect, and respond to sexual abuse and sexual harassment; and**
- **Other rights and obligations under this policy.**

A. Employee Training [§115.331]

1. **DYA will train all employees who may have contact with residents on:** [§115.331a]
 - a) **DYA zero-tolerance policy for sexual abuse, sexual harassment and retaliation;**
 - b) **How to fulfill their responsibilities regarding prevention, detection, reporting, and response to sexual abuse and sexual harassment;**
 - c) **Residents right to be free from sexual abuse and sexual harassment;**
 - d) **The right of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment;**
 - e) **The dynamics of sexual abuse and sexual harassment in confinement;**
 - f) **The common reactions of sexual abuse and sexual harassment victims;**
 - g) **How to detect and respond to signs of threatened and actual sexual abuse;**
 - h) **How to avoid inappropriate relationships with residents; local law regarding “age of consent”**
 - i) **How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents;**
 - j) **How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.**
2. **Secure staff employees will be trained in how to conduct cross-gender pat-down searches, and how to conduct searches of transgender and intersex residents, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.**
3. **Training will be tailored for each facility and with respect to gender and gender identity. All secure staff will undergo comprehensive training.**
4. **All current employees will receive this training at least every two years, and DYA will provide each employee with refresher training annually to ensure that all employees who work directly with residents know DYA’s current sexual abuse and sexual harassment policies and procedures.** [§115.331c]
5. **DYA training sign-in sheets, webinar/online certificates will verify that the employee participated and understood the required training.** [§115.331d]
 - a) **DYA Training Officer will maintain documentation to substantiate that employees have completed the required training;** [§115.331d]
 - b) **Copies will be supplied by the Training Officers of the respective Divisions to the PREA Coordinator within 3 days of completion of required training as well as** [§115.331d]
 - c) **a copy will be placed in the employee’s personnel file maintained by the Administrative Services Unit.** [§115.331d]

B. Volunteer and Contractor Training [§115.332]

1. **DYA will ensure that all volunteers and contractors who have contact with residents will be trained on their responsibilities under DYA’S PREA policy regarding the prevention,**

detection, and response to sexual abuse and sexual harassment. DYA will verify that volunteers and employees sign the DYA PREA Notification and Acknowledgement Form as well as submit completed PREA training certificates to the Training Officer and the PREA Coordinator. [§115.332a]

2. The level and type of training provided to volunteers and contractors will be based on the services they provide and the level of contact they have with residents, but all volunteers and contractors who have contact with residents will be notified of DYA'S zero-tolerance policy regarding sexual abuse and sexual harassment and how to report such incidents prior to initial entry into a DYA facility.[§115.332b]
3. DYA will maintain documentation confirming that volunteers and contractors received an appropriate level of training and that they understood the information provided. [§115.332c]
 - a) A copy of this documentation will be maintained with the DYA Training Officer and the DYA PREA Coordinator.
 - b) A copy will be provided to the PREA Coordinator within three (3) working days of completion of the training via the PREA Coordinator box located in Bldg. H, Intake.

C. Youth Education [§115.333]

1. During the intake process, residents will receive information explaining, in an age appropriate manner, DYA's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment. [§115.333a]
2. Within 10 days of intake, DYA will provide comprehensive, age-appropriate education to youth residents either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents. Assigned social worker will meet with residents to ensure they are aware of their protections against sexual harassment and sexual assault. [§115.333b]
3. DYA will ensure that current residents who have not received such education, will be educated within one year of the effective date of these standards and receive education upon transfer to a different facility to the extent that the policies and procedures of the resident's new facility differ from those of the DYA facility. [§115.333c]
4. DYA will provide resident education in formats accessible to all youth residents, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to residents who have limited reading skills in accordance with DYA's Language Access Plan and DYA's Methods of Administration Civil Rights Compliancy Policy. [§115.333d] Accommodations will be made free of charge for residents with disabilities and if services are offered, refused and/or services are provided a Point of Information report will be completed by the assigned Social Worker and forwarded to the PREA Coordinator via the PREA Coordinator box located

5. DYA will maintain documentation of youth resident's participation in these education sessions through the Intake PREA form, attendance sheets, certificates, etc. which will be submitted to the PREA Coordinator within 3 days of participation. [§115.333e]
6. In addition to providing such education, DYA will ensure that key information is continuously and readily available or visible to youth residents through posters, resident handbooks, or other visual formats.

D. Specialized Training for Sexual Abuse Investigators [§115.334]

1. The Director will assign an investigator to conduct an administrative investigation for allegations of sexual abuse and sexual harassment. In either case, in addition to the general training provided to all employees under this policy, DYA investigators will receive specialized on conducting sexual abuse investigations in confinement settings. [§115.334a]
2. The specialized training will include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral. [§115.334b]
3. DYA's training coordinator will maintain documentation substantiating DYA's investigators have completed the required specialized training and it will be documented on the staff member's training record. Copies will also be provided to the PREA Coordinator either directly or via email or in the PREA Coordinator box located in Bldg. H, Intake Unit. [§115.334c]
4. DYA investigators may comply with this provision through the webinars for Specialized PREA Investigations Training offered on the PRC website and the National Institute of Corrections website or through other training opportunities. [§115.334d]

E. Specialized Training: Medical and Mental Health Professionals [§115.335]

1. All full-time and part-time contract medical and mental health care practitioners, who work regularly in DYA will be trained in: [§115.335a]
 - a) How to detect and assess signs of sexual abuse and sexual harassment;
 - b) How to preserve physical evidence of sexual abuse;
 - c) How to respond effectively and professionally to juvenile victims of sexual abuse and sexual harassment; and
 - d) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.
2. DYA medical and mental health staff and contract workers are not responsible for conducting forensic examinations. [§115.335b]

3. **DYA will maintain documentation substantiating that medical and mental health practitioners have completed the required training and it will be documented on the staff member's training record with the Training Officer and personnel files. A copy will also be provided to the PREA Coordinator via the PREA Coordinator box located in Bldg. H, Intake within three days. [§115.335c]**
4. **Medical and mental health care practitioners will receive the training mandated for employees under section XII A. and B of this policy based on the practitioner's status. [§115.335d]**

XIII. SCREENING OF NEW AND RETURNING RESIDENTS

1. Screening for Risk of Victimization and Abusiveness [§115.341]

- (a) **All incoming youth will be screened during intake and upon transfer from another facility for their risk of being sexually abused by other residents or sexually abusive toward other residents using the PREA Vulnerability Assessment Instrument. [§115.341b]**
- (b) **Intake processing and screening will take place within 72 hours of arrival to the Youth Correctional Facility; screening also includes the MAYSI-2, a behavioral health screen. [§115.341a]**
- (c) **The intake screening will consider, at a minimum, the following criteria to assess youth for risk of sexual victimization: [§115.341c]**
 - (c1) **Whether the youth has a mental, physical, intellectual or developmental disability;**
 - (c2) **The age of the youth;**
 - (c3) **The physical build (size and stature) of the youth;**
 - (c4) **Whether the resident has previously been incarcerated;**
 - (c5) **Whether the youth's criminal history is exclusively nonviolent;**
 - (c6) **Whether the youth has prior convictions for sex offenses against an adult or child;**
 - (c7) **Whether the youth is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;**
 - (c8) **Whether the youth has previously experienced sexual victimization;**
 - (c9) **The youth's perception of his or her own vulnerability to sexual abuse or sexual harassment; and**
 - (c10) **Any other specific information about the youth that may indicate a heightened need for supervision, additional safety precautions, or separation from certain other residents.**

- (d) The initial screening will consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to DYA, in assessing youth for risk of being sexually abusive. Information will be ascertained through conversations with the youth during the intake process and medical and mental health screenings and assessment; and by records review and other relevant information or documentation available. [§115.341d]
- (e) Within a set time period, not to exceed 30 days from admission into YCF/CH, the youth's risk of victimization or abusiveness will be reassessed based upon any additional, relevant information received by DYA since the intake screening. [§115.341a]
- (f) A youth's risk level will be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the youth's risk of sexual victimization or abusiveness.
- (g) Youth may not be disciplined for refusing to answer, or for not disclosing complete information related to, (c1), (c7), (c8) and (c9) above.
- (h) DYA will control the dissemination of the information obtained from the screening instrument and questions asked pursuant to this policy in order to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents. Controls will include but are not limited to training on ethics, confidentiality, victim advocacy and trauma-informed care. [§115.341e]

2. Use of Information Obtained from Screening [§115.342]

- (a) DYA will use information from the risk screening to inform housing, bed, work, education, and program assignments with the goal of keeping separate those residents at high risk of being sexually victimized from those at high risk of being sexually abusive. [§115.342a]
- (b) Residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other residents safe. [§115.342b]
- (c) DYA will make individualized determinations about how to ensure the health and safety of each resident. Lesbian, gay, bisexual, transgender, or intersex residents will not be placed in particular housing, bed, or other assignments solely on the basis of such identification or status, nor will their identification or status be used as an indicator of likelihood of being sexually abusive. [§115.342c]
- (d) In deciding whether to assign a transgender or intersex resident to a unit for male or female residents, and in making other housing and programming assignments, the agency will consider on a case-by-case basis whether a placement would ensure the

resident's health and safety, and whether the placement would present management or security problems. [§115.342d]

- (e) Placement and programing assignments for each transgender or intersex resident will be reassessed at least twice each year to review any threats to safety experienced by the resident. Individualized assessments, results and recommendations are conducted and maintained by the assigned social worker. [§115.342e]
- (f) Staff will respect the opinion and views of a transgender or intersex resident's views with respect to his or her own safety and will be given serious consideration by DYA personnel (which includes the contracted therapist) to their requests while ensuring their health, safety and good management of facility operations. [§115.342f]
- (g) Transgender and intersex residents will be given the opportunity to shower separately from other residents. [§115.342g]
- (h) DYA will not place lesbian, gay, bisexual, transgender, or intersex residents in dedicated facilities, units, or wings solely on the basis of such identification or status unless pursuant to a legal settlement or judgment. If a resident is isolated pursuant to paragraph (b) of this section, the social worker will clearly document the basis of concern for the resident's safety and why no alternative means of separation can be arranged. [§115.342h]
- (i) Every 30 days, the resident will be afforded an opportunity to review the arrangement to determine whether there is a continued need or desire to separate the resident from the general population. [§115.342i]

XIV. YOUTH REPORTING [§115.351]

- A. DYA provides multiple internal ways for residents to privately report sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse or sexual harassment, and staff neglect that may have contributed to such incidents. The resident may use a client request form to speak to his/her assigned social worker, contracted therapist or medical provider, a trusted adult or service provider, the Superintendent, or any other DYA employee; or by using the complaint/suggestion box located in each dormitory or by requesting to use the phone and calling any hotline. [§115.351a]
- B. Residents may report allegations or concerns to a public or private entity or office that is not part of DYA by using a client request form to meet with a trusted adult, teacher, attorney, probation officer, family member, contracted employee, mentor, clergy, service provider, advocate or through another resident to report sexual abuse and/or sexual harassment or by using the complaint/suggestion box located in each dormitory or by requesting to use the phone and calling any hotline. Residents detained solely for civil

immigration purposes will be provided information on how to contact relevant consular officials and Homeland Security Officials. The DYA PREA Coordinator maintains this information for these matters. [§115.351b]

- C. DYA mandate staff, it's contractors and service providers to accept reports of sexual assault and sexual harassment made verbally, in writing, anonymously, and from third parties. All staff will immediately document all verbal reports of sexual assault or sexual harassment and notify superiors through the chain of command. [§115.351c]
- D. DYA staff will provide residents with access to the necessary tools to make a written report and/or provide assistance when necessary. Staff will assist residents ensuring confidentiality and anonymity to the best of their ability. Youth residents with LEP or disabilities will be afforded appropriate services and assistance, free of charge to ensure reporting of their complaints. This assistance is coordinated by the assigned social worker. [§115.351d]
- E. DYA staff may privately report sexual abuse and sexual harassment of residents in accordance with this policy. [§115.351e]

XV. EXHAUSTION OF ADMINISTRATIVE REMEDIES [§115.352]

- A. DYA'S grievance process outlines the administrative procedure available to residents for reporting incidents of sexual abuse, sexual harassment, or retaliation. [§115.352a]
- B. DYA will not impose a time limit on when a youth resident may submit a grievance regarding an allegation of sexual abuse. [§115.352b1] DYA may apply otherwise applicable time limits on any portion of a grievance that does not allege an incident of abuse. [§115.352b2]
- C. DYA will not require a resident to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse. [§115.352b3]
- D. The relevant legal provisions applicable to the statute of limitations will supersede this section as it relates to the administrative filing requirements for a civil action in any court proceeding. [§115.352b4]
- E. DYA will ensure that a resident who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and [§115.352c1]
- F. Such grievance is not referred to a staff member who is the subject of the complaint. [§115.352c2]
- G. DYA will issue a final decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance. [§ 115.352d1] Computation of

the 90-day time period will not include time consumed by residents in preparing any administrative appeal. [§115.352d2]

- H. DYA may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. DYA will notify the resident in writing of any such extension and provide a date by which a decision will be made. [§115.352d3]
- I. At any level of the administrative process, including the final level, if the resident does not receive a response within the time allotted for reply, including any properly noticed extension, the resident may consider the absence of a response to be a denial at that level. [§115.352d4]
- J. Third parties, including fellow residents, staff members, family members, attorneys, and outside advocates, are permitted to assist residents in filing requests for administrative remedies relating to allegations of sexual abuse, and will also be permitted to file such requests on behalf of residents. [§115.352e1]
- K. If a third party, other than a parent or legal guardian, files such a request on behalf of a resident, DYA requires as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and that the alleged victim personally agree to pursue any subsequent steps in the administrative remedy process. [§115.352e2]
- L. If the resident declines to have the request processed on his or her behalf, DYA will document the resident's decision on the DYA Third Party Waiver form which will be forwarded to the PREA Coordinator via email, fax, or placed in the PREA Coordinator box located in Bldg. H/Intake within three (3) days. [§115.352e3]
- M. A parent or legal guardian of a resident is allowed to file a grievance regarding allegations of sexual abuse, including appeals, on behalf of such resident; there are no conditions placed on a resident agreeing to have the request filed on his/her behalf. [§115.352e4]
- N. Residents are able to file an expedited grievance whenever the resident is subject to substantial to a substantial risk of imminent sexual abuse. [§115.352f1]
- O. After receiving an emergency grievance alleging a resident is subject to a substantial risk of imminent sexual abuse, DYA will immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to the Youth Service Supervisor, the Superintendent of the facility or the Director so that immediate corrective action will be taken; the Superintendent will provide an initial response within 48 hours, and will issue a final agency decision within 5 calendar days with the concurrence of the Director. [§115.352f2]
- P. DYA may discipline a resident for filing a grievance related to alleged sexual abuse only when it demonstrates that the resident filed the grievance in bad faith. [§115.352g]

XVI. SUPPORT SERVICES FOR VICTIMS OF SEXUAL ABUSE [§115.353]

- A. **DYA will provide residents with access to outside victim advocates for emotional support services related to sexual abuse by: [§115.353a]**
 - 1. **Providing residents with mailing addresses and telephone numbers (including toll-free hotline numbers for local or national victim advocacy or rape crisis organizations.**
 - 2. **Providing residents with mailing addresses of (including toll-free hotline numbers) for immigrant services agencies for persons detained solely for civil immigration purposes.**
 - 3. **Enabling reasonable communication between residents and these organizations in as confidential a manner as is possible while balancing the good government and orderly operations of the facility.**

- B **DYA staff and/or medical or mental health staff will inform residents, prior to giving them access to outside support services, of the extent to which such communications will be monitored. [§115.353b]**
 - 1. **DYA will inform residents of the mandatory reporting rules governing privacy, confidentiality, and/or privilege that apply for disclosures of sexual abuse made to outside victim advocates, including any limits to confidentiality under relevant federal and local law.**

- C. **DYA will maintain or attempt to enter into a memorandum of understanding (MOU) or other agreements with community service providers that are able to provide residents with confidential emotional support services related to sexual abuse.**
 - 1. **DYA will maintain copies of agreements or documentation showing attempts to enter into such agreements. [§115.353c]**

- D. **DYA will provide residents with reasonable and confidential access to their attorneys or other legal representation and reasonable access to parents or legal guardians. [§115.353d]**

XVII. THIRD-PARTY REPORTING [§115.354]

- A. **DYA may receive sexual abuse and sexual harassment reports from third-party sources such as residents family members or the public.**
 - 1. **Any receipt of third-party reports of residents sexual abuse and sexual harassment will be forwarded to the Director or designee.**

2. DYA will publicly distribute information on how to report sexual abuse or sexual harassment on behalf of residents by:
 - (a) Providing the information to the parent at Intake or through the assigned social worker, and;
 - (b) Making this information available on the Department of Youth Affairs website.
(b1) <http://dya.guam.gov>

3. Third-party reports may also be submitted anonymously directly to:
 - (a) Director, Department of Youth Affairs
Government of Guam
P.O. Box 23672
Barrigada, GU 96921
Phone: (671) 735-5001
Email: melanie.brennan@dya.guam.gov

 - (b) Deputy Director, Department of Youth Affairs
Government of Guam
P.O. Box 23672
Barrigada, GU 96921
Phone: (671) 735-5002
Email: krisinda.aguon@dya.guam.gov

 - (c) Superintendent, Youth Correctional Facility
Department of Youth Affairs
Government of Guam
P.O. Box 23672
Barrigada, GU 96921
Phone: (671) 735-5007
Email: david.afaisen@dya.guam.gov

 - (d) Office of the Attorney General of Guam
Victim Service Center
590 S. Marine Corps Drive, Suite 901
Tamuning, GU 96913
Phone: (671) 475-3324 Ext. 5030
Email: law@guamag.org

 - (e) DYA PREA Coordinator
Department of Youth Affairs
P.O. Box 23672
Barrigada, GU 96921
Phone: (671)735-5003

Email: gregorio.artero@dya.guam.gov

- (f) **Child Protective Services**
Department of Public Health and Social Services
Bureau of Social Services Administration
194 Hernan Cortez Avenue,
Suite 309 Terlaje Professional Building
Hagatna, GU 96910
Phone: (671) 475-2653/2672

- (g) **Guam Police Department**
Phone: 911
Phone: (671) 475-8620 Victim Assistance Unit
Phone : (671) 472-8911 Switchboard

- (h) **Guam Coalition Against Sexual Assault & Family Violence**
P.O. Box 1093
Hagatna, GU 96932
Phone: (671) 479-2277
info@guamcoalition.org

- (i) **Guam Behavioral Health & Wellness Center**
Crisis Hotline: 647-8833
Healing Hearts Rape Crisis Center: (671) 674-5351

- (j) **Sanctuary Incorporated**
Phone: (671) 475-7101

- (k) **Victim Advocates Reaching Out (VARO)**
24 Hour Hotline: (671) 477-5552

- (l) **United States Citizenship and Immigrations Services**
Guam Field Office
770 E. Sunset Blvd.
Suite 185 Tamuning, GU 96913
Phone: (671) 472-7349/1-800-375-5283

XVIII. STAFF REPORTING [§115.361]

- A. **DYA requires that any staff member who has knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment; retaliation against residents or staff who reported such an incident; and any staff neglect that may have contributed to such incident or retaliation, will immediately report such incident or retaliation, in the manner specified by this policy and as mandated by Guam statute. Specifically:**

1. an incident of sexual abuse or sexual harassment that occurred in the facility, on the facility grounds, or any other area that is not part of DYA; [§115.361a]
 2. retaliation against a resident or staff who reported such an incident; [§115.361a]
 3. and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. [§115.361a]
- B. All incidents fall under the mandated abuse reporting requirements and confidentiality requirements as outlined in the Guam Code Annotated Title 19 Chapter 13: Child Protective Act §13201 [§115.361b,c]
- C. DYA staff will not reveal any information related to a sexual abuse report to anyone other than and to the extent necessary, as specified in policy, to manage, make treatment, investigation, and other security decisions, inclusive of reporting to chain of command or officials and designated local service agencies. [§115.361c]
- D. Medical and mental health practitioners will report knowledge, suspicion, or information regarding sexual abuse, sexual harassment, retaliation, or staff neglect to designated supervisors and officials pursuant to paragraph A. of this section, as well as to Child Protective Services and the Guam Police Department. This information will be provided to residents, in writing, at the initiation of services. [§115.361d1.2]
- E. Upon receiving any allegation of sexual abuse, the Superintendent or his/her designee will promptly report the allegation to the Guam Police Department, Child Protective Services and to the alleged victim's parents or legal guardians unless such notification is prohibited by the court or they are the source of the investigation. [§115.361e1]
- F. If juvenile court retains jurisdiction over the alleged victim, the Superintendent or his/her designee will also report the allegation to the resident's attorney or other legal representative of record within 14 days of receiving the allegation. [§115.361e2]
- G. DYA staff will report all allegations of sexual abuse and sexual harassment, including third party and anonymous reports, through the chain of command and a copy will be forwarded to the PREA Coordinator either directly or via email, or placed in the PREA Coordinator box located in bldg. H, Intake. [§115.361f]

XIX. PROTECTION OF RESIDENT FACING SUBSTANTIAL RISK

- A. When a resident is identified as subject to a substantial risk of imminent sexual abuse, DYA will take immediate action to protect the resident without unreasonable delay. [§115.362]

XX. NOTIFYING OTHER CONFINEMENT AGENCIES [§115.363]

- A. Upon receiving an allegation that a youth resident was sexually abused while confined at another facility, the Director or his/her designee that received the allegation will notify the head of that facility or appropriate office of the agency where the alleged abuse occurred and will also notify the appropriate investigative authority. [§115.363a]
- C. Such notification will be provided as soon as possible, but no later than 72 hours after receiving the allegation. [§115.363b]
- D. DYA will document that it has provided such notification and forward allegation to the Guam Police Department for investigation. Documentation and notification is provided by: [§115.363c]
 - a) Notification of agency contacted, name of person and title using the Department letterhead, date and time contacted, method of contact, name of resident (s) involved and brief description of the allegation. The notification will require and advise the other facility that the allegation must be investigated as required by PREA standards. [§115.363d]
 - b) A copy will be forwarded the PREA Coordinator either directly, via email or placed in the PREA Coordinator box located in bldg. H, Intake Unit.

XXI. STAFF AND FIRST RESPONDER DUTIES [§115.364]

- A. When a DYA employee or any secure staff first-responder learns that a resident has been sexually abused, they will take immediate action to protect the resident. This includes: [§115.364]
 - 1) Separate the resident from the alleged perpetrator; [§115.364a1]
 - 2) Preserve and protect any crime scene until appropriate steps can be taken to collect evidence; and [§115.364a2]
 - 3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim—and ensure that the alleged abuser—not take any actions that could destroy physical evidence, including washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and [§115.364a3]

- 4) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders will immediately notify the appropriate medical and mental health practitioners. [§115.364a4]
- B. When the first staff responder is not a security staff member, they will request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff. [§115.364b]

Note: The Department of Justice (DOJ) defines “first responder” as the staff person (or persons) who first arrives at the scene of an incident.

XXII. COORDINATED RESPONSE [§115.365]

DYA has developed a written plan to coordinate actions taken in response to an incident of sexual abuse among staff first responders, medical and mental health practitioners, investigators, and DYA leadership. See Facility Coordinated Response to a Sexual Assault Incident.

XXIII. PRESERVATION OF ABILITY TO PROTECT RESIDENTS FROM CONTACT WITH ABUSERS [§ 115.366]

- A. DYA or any other governmental body responsible for collective bargaining on DYA’s behalf will not enter into or renew any collective bargaining agreement or other agreement that limits DYA’s ability to remove alleged staff sex abusers from contact with residents pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted. [§ 115.366a]
- B. Nothing in this policy will restrict DYA from entering into or renewal of agreements that govern: [§ 115.366b]
- 1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §115.372 and §115.376; or [§ 115.366b1]
 - 2) Whether a no-contact assignment that is imposed pending the outcome of an investigation will be expunged from or retained in the staff member’s personnel file following a determination that the allegation of sexual abuse is not substantiated. [§115.366b2]

XXIV. AGENCY PROTECTION FROM RETALIATION [§115.367]

- A. DYA will protect all residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other residents or staff. The Superintendent and Youth Service Supervisors are responsible for

monitoring any issues related to retaliation; any issue will be forwarded to the Director for disposition. [§115.367a]

- B. DYA will employ multiple protection measures, such as housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations. [§115.367b]
- C. For at least 90 days following a report of sexual abuse, the Superintendent or designee will monitor the conduct and treatment of residents or staff who reported the sexual abuse, and of residents who were reported to have suffered sexual abuse, to see if there are changes that may suggest possible retaliation by residents or staff, and will act promptly to remedy any such retaliation. The Superintendent or designee will at a minimum:
 - 1) Act promptly to remedy any such retaliation;
 - 2) Monitor any resident point of information/incident reports, housing, or program changes, or negative performance evaluations or reassignments of staff;
 - 3) continue such monitoring beyond 90 days if the initial monitoring indicates an ongoing need. [§115.367c]
- D. In the case of residents, monitoring by the Unit Officer in Charge will include at least weekly periodic checks with status of resident recorded in the Unit Log and updates or changes discussed with the Youth Service Supervisor on duty. [§115.367d]
- E. If any other individual who cooperates with an investigation expresses a fear of retaliation, the Superintendent or his/her designee will take appropriate measures to protect that individual against retaliation. [§115.367e]
- F. The obligation of the Superintendent or his/her designee to monitor will terminate if the investigation results in the allegation being unfounded. [§115.367f]

XXV. POST ALLEGATION PROTECTIVE CUSTODY [§115.368]

Any use of segregated housing to protect a resident who is alleged to have suffered sexual abuse will be subject to the same requirements that are discussed in XIII 2. of this policy pursuant to [§115.342] CFR.

XXVI. INVESTIGATION OF INCIDENTS [§115.371]

- A. It is DYA's policy to ensure that allegations of sexual abuse or sexual harassment of residents are referred for investigation to the Guam Police Department and Child Protective

Services with the legal authority to conduct such criminal investigations, unless the allegation does not involve potentially criminal behavior. DYA will publish this policy on its website at www.dya@guam.gov and make the policy available through other means. DYA will document all such referrals.

- B. When DYA conducts an administrative investigation into allegations of sexual abuse and sexual harassment, it will do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports. [§115.371a]
- C. Where sexual abuse is alleged, DYA will contact the Guam Police Department whose investigators have received specialized training in sexual abuse investigations pursuant to §115.334. [§115.371b]
- D. DYA will assist GPD investigators gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; interview alleged victims, suspected perpetrators, and witnesses; and review prior complaints and reports of sexual abuse involving the suspected perpetrator. [§115.371c]
- E. DYA will not terminate an investigation solely because the source of the allegation recants the allegation. [§115.371d]
- F. When the quality of evidence appears to support criminal prosecution, DYA/GPD will conduct compelled interviews only after consulting and receiving guidance from a prosecutor as to whether compelled interviews may be an obstacle for subsequent criminal prosecution. [§115.371e]
- G. 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 resident or staff. DYA will not require a resident who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with an investigation. DYA may offer the victim or non-staff witnesses the option to participate in this type of technological process if available (polygraph or other truth-telling device). [§115.371f]
- H. **Administrative investigations:** (a) Will include an effort to determine whether staff actions or failures to act contributed to the abuse; and (b) Will be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings. (c) Will be referred for prosecution if there are substantiated allegations of conduct that appear to be criminal. (d) will impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated in administrative investigations. [§115.371g]
- I. **Criminal investigations:** Are conducted by GPD and dictated by GPD policy. Allegations are documented in a written report and assigned a key case number that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all

documentary evidence where feasible [§115.371]; and all substantiated allegations of conduct that appears to be criminal will be referred to the Guam Attorney General's Office for prosecution. [§115.371i]

- J. DYA will retain all written reports required by this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years unless the abuse was committed by a juvenile resident and applicable law requires a shorter period of retention. [§115.371j]
- K. The departure of the alleged abuser or victim from the employment or control of DYA will not provide a basis for terminating an investigation. [§115.371k]
- L. When another agency investigates sexual abuse allegations, DYA will cooperate with outside investigators and will endeavor to remain informed about the progress of the investigation. [§115.371m]

XXVII. EVIDENTIARY STANDARDS FOR ADMINISTRATIVE INVESTIGATIONS [§115.372]

DYA will impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated. [§115.372]

XXVIII. REPORTING TO RESIDENTS [§115.373]

- A. Following an investigation into a resident's allegation that he or she suffered sexual abuse, DYA will inform the resident as to whether the allegation has been determined to be substantiated, unsubstantiated or unfounded. [§115.373a]
- B. If DYA did not conduct the investigation, it will request the relevant information from the investigative agency in order to inform the resident of the findings/results. [§115.373b]
- C. Following a resident's allegation that a staff member committed sexual abuse against him or her, DYA will subsequently inform the resident whenever: [115.373c]
 - a) The staff member is no longer posted within the resident's unit;
 - b) The staff member is no longer employed at the facility;
 - c) DYA learns that the staff member has been charged with or indicted on a charge related to sexual abuse within the facility; or
 - d) DYA learns that the staff member has been convicted on a charge related to sexual abuse within the facility. [§115.373c]

- D. Following a resident's allegation that he or she has been sexually abused by another resident, DYA will subsequently inform the alleged victim whenever: [§115.373d]
 - a) DYA learns that the alleged abuser has been charged with or indicted on a charge related to sexual abuse within the facility; or
 - b) DYA learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
- E. All such notifications or attempted notifications to the resident victim will be documented with a copy sent to the PREA Coordinator either directly, via email or placed in the PREA Coordinator box located in Bldg.H, Intake Unit. DYA's obligation to report under this standard will terminate if the resident is released from the DYA's custody. [§115.373e]
- F. Notification will be in memorandum form, stamped confidential, subject: Notification of Status, or other relevant document. DYA's obligation to report under this section will terminate if the resident is discharged from DYA's custody. [§115.373f]

XXIX. DISCIPLINARY SANCTIONS FOR STAFF [§115.376]

- A. Staff are subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies. [§115.376a]
- B. Termination will be the presumptive disciplinary sanction for all staff who have engaged in sexual abuse. [§115.376b]
- C. Disciplinary sanctions for violations of DYA policies relating to sexual abuse or sexual harassment 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. [§115.376c]
- D. All terminations for violations of agency 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 agencies, unless the activity was clearly not criminal, as well as to any relevant licensing bodies. [§115.376d]

XXX. CORRECTIVE ACTION FOR CONTRACTORS AND VOLUNTEERS [§115.377]

- A. Any contracted worker, service provider, intern or volunteer who engages in sexual abuse will be prohibited from contact with residents and will be reported to the Guam Police Department, Child Protective Services and to relevant licensing bodies, unless the activity was clearly not criminal. [§115.377a]

- B. The facility will take appropriate remedial measures, and will consider whether to prohibit further contact with residents, in the case of any other violation of DYA sexual abuse or sexual harassment policies by a contractor, service provider, intern or volunteer. [§115.377b]

XXXI. INTERVENTIONS AND DISCIPLINARY SANCTIONS FOR YOUTH [§115.378]

- A. Residents will be subject to disciplinary sanctions pursuant to a DYA's disciplinary process following an administrative finding that the resident engaged in resident-on-resident sexual abuse or following a criminal finding of guilt for resident-on-resident sexual abuse. [§115.378a]
- B. Sanctions will be commensurate with the nature and circumstances of the abuse committed, the resident's behavioral history, and the sanctions imposed for comparable offenses by other residents with similar histories. In the event there is a disciplinary administrative finding and recommendation of room restriction the resident will be afforded daily large-muscle exercise; have access to any legally required educational programming or special education services; receive daily visits from a medical or mental health care worker, and will all have access to other programs and work opportunities to the extent possible. [§115.378b]
- C. The disciplinary process will consider whether a resident's mental disability or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed in collaboration with a mental health worker and the assigned social worker. [§115.378c]
- D. If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the disciplinary process will consider whether to require the offending resident to participate in such interventions as a condition of access to programming or other benefits. [§115.378d]
- E. DYA may discipline a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact. [§115.378e]
- F. For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred will not constitute falsely reporting an incident, even if an investigation does not establish evidence sufficient to substantiate the allegation. [§115.378f]
- G. DYA prohibits all sexual activity between residents and may sanction a resident for such activity. DYA will not consider such activity to constitute sexual abuse if it determines that the activity is not coerced. [§115.378g]

XXXII. MEDICAL AND MENTAL CARE [§115.381]

- A. If the screening required in section XIII 1. (c) indicates that a resident has experienced prior sexual victimization, whether in an institutional setting or in the community, staff will ensure that the resident is offered a follow-up meeting with a medical or mental health practitioner within 14 days of intake screening. [§115.381a]
- B. DYA prohibits all sexual activity between residents and may sanction a resident for such activity. DYA will not consider such activity to constitute sexual abuse if it determines that the activity is not coerced. [§115.381b]
- C. Any information related to sexual victimization or abusiveness that occurred in an institutional setting will be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, community service, education, and program assignments. [§115.381c]
- D. Medical and mental health practitioners will obtain informed consent from residents before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the resident is under the age of 18. [§115.381d]

XXXIII. ACCESS TO EMERGENCY MEDICAL AND MENTAL HEALTH SERVICES [§115.382]

- A. Residents who are victims of sexual abuse will receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment. [§115.382a]
- B. If DYA's medical practitioner or mental health professional is not on duty at the time a report of recent sexual abuse is made, staff first responders will take preliminary steps to protect the victim pursuant to §115.362 and will take steps to immediately notify the medical and mental health professionals of the incident. [§115.382b]
- C. Residents who are victims of sexual abuse while remanded to YCF or CH will be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate. [§115.382c]
- D. Treatment services will be provided to the victim free of cost to the victim and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. [§115.382d]

XXXIV. ONGOING MEDICAL AND MENTAL HEALTH CARE [§115.383]

- A. The facility will offer medical and mental health evaluation and, as appropriate, treatment to all residents who have been sexually abused in a prison, jail, lockup, community corrections facility, or juvenile justice facility. [§115.383a]
- B. The evaluation and treatment of such victims will include, as appropriate, follow-up services, treatment plans, and referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody. [§115.383b]
- C. DYA will provide such victims with medical and mental health services or referrals consistent with the community level of care. [§115.383c]
- D. Resident victims of sexually abusive vaginal penetration while incarcerated will be offered pregnancy tests, as medically necessary. [§115.383d]
- E. If pregnancy results from the conduct described in this section, victims will receive timely and comprehensive information about and timely access to all lawful pregnancy related medical services, such as prenatal care and access to pregnancy termination services, where available. [§115.383e]
- F. Resident victims of sexual abuse while remanded will be offered tests for sexually transmitted infections, as medically appropriate. [§115.383f]
- G. Ongoing treatment services will be provided to the victim free of charge to the victim and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. [§115.383g]
- H. DYA will attempt to conduct a mental health evaluation of all known resident on resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by a mental health practitioner. [§115.383h]

XXXV. DATA COLLECTION AND REVIEW

- A. Sexual abuse incident reviews
 - 1. DYA will conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. [§115.386a]
 - 2. The review will ordinarily occur within 30 days of the conclusion of the investigation. [§115.386b]

3. The review team will include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners. [§115.386c]
4. The review team will:
 - a) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse; [§115.386d1]
 - b) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility; [§115.386d2]
 - c) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse; [§115.386d3]
 - d) Assess the adequacy of staffing levels in that area during different shifts; [§115.386d4]
 - e) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and [§115.386d5]
 - f) Prepare a report of its findings, including determinations made pursuant to this section, and any recommendations for improvement and submit the report to the facility head and the PREA Compliance manager or agency PREA Coordinator. [§115.386d6]
5. DYA will implement the review team's recommendations for improvement, or document its reasons for not doing so. [§115.386e]

XX. DATA COLLECTION AND REVIEW

A. Data Collection

1. DYA will collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions. [§115.387a]
2. DYA will aggregate the incident-based sexual abuse data at least annually. [§115.387b]
3. The incident-based data collected 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. [§115.387c]
4. DYA will maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews. [§115.387d]
5. DYA will also obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its residents. [§115.387e]

6. Upon request, DYA will provide all such data from the previous calendar year to the Department of Justice no later than June 30th.

B. Data Review for Corrective Action

1. DYA will review data collected and aggregated pursuant to Section XIX. of this policy in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:
 - a. Identifying problem areas;
 - b. Taking corrective action on an ongoing basis; and
 - c. Preparing an annual report of findings and corrective actions for DYA. [§115.388a]
2. 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 DYA's progress in addressing sexual abuse. [§115.388b]
3. DYA's report will be approved by the Director and made readily available to the public through the DYA website. [§115.388c]
4. DYA may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate nature of the material redacted. [§115.388d]

C. Data Storage, Publication, and Destruction [§115.389]

1. DYA will ensure that data collected pursuant to Section VII. A. are securely retained. [§115.389a]
2. DYA will make all aggregated sexual abuse data, from the Youth Correctional Facility and Cottage Homes facility and private facilities with which they may later contract, readily available to the public at least annually through its website. [§115.389b]
3. Before making aggregated sexual abuse data publicly available, DYA will remove all personal identifiers. [§115.389c]
4. DYA will maintain sexual abuse data collected pursuant to Section 7. A. for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise. [§115.389d]

XXI. AUDITS

DYA will make best efforts to comply with the frequency and scope of audits pursuant to §§115.401-405 of the PREA Standards for Juvenile Facilities. [§115.393]

A. Frequency and Scope of Audits [§115.401 and §115.402]

1. DYA will make its best efforts to ensure that the Youth Correctional facility and Cottage Homes is audited at least once every three years by qualified auditors certified by the Department of Justice. [§115.401 and §115.402]
2. DYA will ensure that at least one-third of each facility type of the agency is audited annually. [§115.401b]
3. During an audit, the auditor will be granted access to, and the ability to observe, all areas of the Youth Correctional Facility and Cottage Homes. [§115.401h]
4. Prior to and during an audit, DYA will permit the auditor to review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility and request and receive copies of any relevant documents (including electronically stored information). [§115.401i]
5. DYA will cooperate with the auditor to ensure a representative sample of residents, staff, supervisors, managers and administrators can be interviewed by the auditor. [§115.401k]
6. During an audit, the auditor may request that DYA provide any available videotapes and other electronically available data that may be relevant to the provisions of the audit. [§115.401-l]
7. DYA will cooperate with the auditor and grant the ability to conduct private interviews with residents. [§115.401m]
8. Prior to and during an audit, residents will be permitted to send confidential information or correspondence to the auditor in the same manner as if they are communicating with legal counsel. [§115.401n]
9. DYA bears the burden of demonstrating compliance with the PREA standards through the audit process. The Governor of Guam will utilize this information for the Governor's Certification of PREA Compliance.
10. The formalized audit procedures are dictated by 28 C.F.R 115.401 to 28 C.F.R. 115.404. The PREA audit tools are published on the PREA Resource Center website at: www.prearesourcecenter.org.

B. Audit Corrective Action Plan [§115.404]

1. A finding of "Does Not Meet Standard" with one or more standards will trigger a 180-day corrective action period.

2. The auditor and DYA will jointly develop a corrective action plan to achieve compliance.
3. The auditor will take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of the facilities.
4. After the 180-day corrective action period ends, the auditor will issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.
5. If DYA does not achieve compliance with each standard, it may request a subsequent audit once it believes it has achieved compliance.

C. Audit Content and Findings [§115.403 and §115.405]

1. Audit content and findings are dictated by 28 C.F.R 115.403 and 28 C.F.R 115.405 to include how DYA may lodge an appeal with the Department of Justice.

D. Territory Compliance [§115.501]

1. In determining pursuant to 42 U.S.C. 15607(c)(2) whether the Territory is in full compliance with the PREA standards, the Governor will consider the results of the most recent agency audits.
2. The Governor's certification will apply to all facilities in the island under the operational control of the island's executive branch.

Initial: June 2019

Reviewed: July 2020



Melanie W. Brennan, Director
Department of Youth Affairs

15 July 2020

Date

Next Policy Review Date: June 2021

