

Chapter: Personnel

Subject: PREA Investigations

Reference: WV Minimum Jail Standards 95CSR1, 4.10; Policy and Procedure Statements 3052, Prevention and Intervention of Inmate Sexually Abusive Behavior and Staff Sexual Misconduct and 3036, Internal Affairs; Policy and Procedure Statement 9036, Evidence / Contraband Handling and Disposal; National PREA Standards, 28CFR Part 115, 2012

Cancellation: None

Policy: A PREA investigation is defined as a formal in-depth inquiry conducted by the PREA Compliance Officer or other staff member, as designated by the Director of Internal Affairs or higher rank. The inquiry will investigate acts, inferences, and circumstances surrounding an allegation made by any person, information received in the form of a grievance, or information acquired in the normal routine course of business, by any staff, who by virtue of their position came into possession of the allegation/information, which tends to indicate the possibility of criminal activity or policy violations on the part of an offender, visitor, employee, volunteer, contractor, or other member of the public. A need for an investigation may result from the occurrence of unusual incidents or allegations of inappropriate or illegal conduct of inmates, contractors or staff.

1. The Director of Internal Affairs or designee will investigate all allegations involving Staff, Court Complaints, Attorney Complaints and Lawsuits to include all Legal Allegations filed against the WVRJA.
2. The Facility PREA Compliance Officer or designee will file all PREA grievances, allegations and investigations of inmate-on-inmate sexual abuse, assault or misconduct.

PURPOSE: The purpose of the PREA investigation is to determine whether sufficient information is available to:

1. Substantiate, refute, or dismiss allegations of criminal activity or administrative violations;
2. Recommend final disposition, based on a culmination of information received during any level of the investigative process;

3. Pursue prosecution of matters involving criminal activity; and
4. Pursue administrative actions involving policy and procedural violations.

Procedure A: General

1. Investigative Reports

Investigations are an internal management tool used to assist managers in making informed decisions in either day-to-day operations; amending operating procedures; conducting disciplinary actions involving employees or offenders; initiating criminal or civil proceedings against employees, offenders, contractors, or members of the public; and detecting violations of procedures or law. The investigative report is intended to present facts and information obtained during the investigative process. As such, it will not contain the opinion of the agent(s).

2. Procedure

- a. Each employee of the Authority has an affirmative duty to report unusual incidents and/or allegations of inappropriate or illegal conduct of inmates, contractors, volunteers or staff to the Administrator, PREA Compliance Officer and Director of Internal Affairs.
- b. Reports that need to be further reviewed should be sent to the PREA Coordinator, and the Director of Internal Affairs.
- c. It is the Lieutenant's duty to review and determine what reports should be sent to the PREA Coordinator or if a staff member is involved to Internal Affairs Unit.
- d. The designated Facility PREA Compliance Officer will field all grievances, allegations and investigations of inmate-on-inmate sexual abuse, assault or misconduct. All observed inmate on inmate sexual abuse and sexual misconduct allegations will be immediately

reported to the Chief of Operations and if the allegation involves a staff member the Director of Internal Affairs must also be notified.

- e. All facilities shall develop 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 facility leadership.

3. PREA Allegations Involving Staff

- a. Upon notification of staff sexual misconduct the Director of Internal Affairs will provide further direction regarding the process of the investigation.
- b. Depending upon the seriousness of the allegation or incident involving staff, the Director of Internal Affairs, or designee, shall conduct an investigation regarding the facts and circumstances of the allegations within a reasonable time.
- c. If the Director of Internal Affairs designates a staff member to complete the investigation, said staff member shall submit his or her findings to the Director of Internal Affairs within a time period specified by the Director of Internal Affairs. The Director of Internal Affairs shall review the findings and report actions taken on minor matters to the Executive Director/Deputy Director or designee.
- d. If the Director of Internal Affairs conducts the investigation, he or she shall do so in a timely manner and report the findings of the investigation to the Executive Director/Deputy Director or designee.
- e. Any staff member interviewed during the investigation, internal or otherwise, will not discuss, record, or indicate to anyone the facts or circumstances of said investigation, unless required by a designated investigator.
- f. Any staff member questioned by a designated investigator is required to provide relevant, truthful and complete information. Failure to do so will result in disciplinary action, up to and including dismissal.

- g. Depending upon the severity of the allegation against a staff member, said staff member may be placed on non-disciplinary suspension from duty, without pay, for a period of time pending the outcome of an investigation of said allegations.
- h. The purposes of said non-disciplinary suspension is to preserve the integrity of the investigation, protect the accused from further allegations, protect the accuser from retaliation or retribution, and protect the security of the facility, staff, inmates and the general public.
- i. If allegations for which a staff member is suspended without pay are found, through investigation, to be groundless/unsubstantiated, the staff member will be reinstated to duty with reimbursement for wages lost as a result of the suspension and the staff member's personnel file regarding the sexual abuse shall be expunged.
- j. If the allegations for which a staff member is suspended are found to be true, or any evidence of wrong doing is proven during an investigation, the staff member will be subject to disciplinary action based upon the investigation results, up to and including dismissal from employment. The presumptive disciplinary action for substantiated staff sexual misconduct with inmates will be immediate dismissal.
- k. If during the course of an investigation involving staff the investigating officer determines that an unlawful act has been committed, they will immediately contact the Director of Internal Affairs with their findings, and await further instructions. It will be the responsibility of the Director of Internal Affairs or designee to notify the appropriate authority and to forward all information to that authority for review and disposition, unless otherwise specified in this policy.
- l. All terminations for violations of sexual abuse / harassment policies, or resignations by staff that would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the act was clearly not criminal.

- m. Substantiated allegations of conduct that appear to be criminal shall be referred for prosecution.
- n. Any contractor or volunteer who engages in sexual abuse is prohibited from contact with inmates and shall be reported to law enforcement agencies, and to relevant licensing bodies unless the activity was clearly not criminal.
- o. The authority will take further appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of sexual abuse or sexual harassment policies by a contractor or volunteer.

Procedure B: Allegations Of sexual Assault/Abuse by Offenders

1. All allegations of sexual abuse, harassment and misconduct, including third-party and anonymous reports, will be taken seriously and an administrative or criminal investigation will be completed promptly, thoroughly, and objectively by trained investigators. Where sexual abuse is alleged, the authority shall use investigators who have received special training in sexual abuse.
2. The facility shall ensure that investigators tasked with conducting such investigations have received training in conducting investigations in confinement settings, interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection, and the criteria and evidence required to substantiate a case for Administrative action or prosecution referral.
3. If another facility or agency refers allegations of sexual abuse or sexual harassment that occurred within one of the Regional Jails the point of contact will be The Chief of Operations or designee who will in turn notify the PREA Coordinator and the Jail Administrator. Allegations received will be investigated by the PREA Compliance Officer or designee in accordance with these standards.
4. Upon receiving an allegation that an inmate was sexually abused at another facility, the Administrator or designee that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged

abused occurred. Notification shall be as soon as possible but no later than 72 hours after receiving the allegation. The facility reporting the allegation shall document that the facility provided the notification to the corresponding agency. Copy of the notification shall be sent to the Chief of Operations and the PREA Coordinator.

5. Upon learning that an inmate was sexually abused within a time period that still allows for the collection of physical evidence, generally up to 96 hours, the first security staff member to respond to the report shall be required to:
 - a. Ensure that the crime scene is secured and protected until appropriate steps can be taken to collect the evidence.
 - b. Crime scene should remain protected and documented by a staff member until the arrival of the State Police or the verbal release by the State Police.
 - c. If physical evidence is not present due to the assault occurring more than 96 hours prior to notification or the event is defined as abusive sexual contact rather than a non-consensual sexual act, initiate the investigation.
 - d. Ensure the victim's safety, ensure the alleged victim and the aggressor are physically separated;
 - e. Ensure that the victim is immediately escorted to the facility's medical unit; All victims of sexual abuse shall be provided access to free forensic medical examinations;
 - i. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFE) 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. Efforts to provide SAFEs or SANES will be documented
 - ii. The Medical Supervisor and the Shift Supervisor shall make the victim aware that a qualified Victim Advocate Counselor can be made available to help him/or her if requested at the hospital or at any time during the investigation.
 - f. Preserve any evidence such as discouraging the victim from showering, eating, brushing teeth, drinking, changing clothes, urinating, or defecating until after evidence collection;

10. The departure of the alleged abuser or victim from the employment or control of the Regional Jail Authority shall not provide a basis for terminating an investigation.
11. Investigators shall 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.
12. The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No inmate who alleges sexual abuse shall be required to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
13. Written reports shall include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
14. Administrative investigations shall include an effort to determine whether staff actions or failures to act contributed to the alleged inmate-on-inmate sexual abuse.
 - a. All Substantiated allegations of conduct that appear to be criminal shall be referred for prosecution.
 - b. The authority shall retain all PREA written reports for as long as the alleged abuser is incarcerated or employed by the authority, plus five years.
15. Protection of witnesses and the victim shall be paramount throughout the investigation process. If any individual who cooperates with an investigation expresses a fear of retaliation, the Authority shall take appropriate measures to protect that individual against retaliation.
 - a. For at least 90 days following a report of sexual abuse, the facility PREA Compliance Officer or designee shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse; and of inmates who were reported to have suffered sexual abuse

to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. In the case of inmates monitoring shall include periodic status checks.

- b. In the event any individual who cooperates with an investigation expresses fear of retaliation, the Facility Administrator shall take appropriate measures to protect the individual from retaliation. Protection measures may include, but not be limited to the following;
 - (i) Housing changes or transfers for inmate victims or abusers;
 - (ii) Removal of alleged staff or inmate abusers from contact with victims;
 - (iii) Provide emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

Procedure C: Reporting

1. A report of investigation shall be completed by the designated Investigator, at a minimum, the report shall contain:
 - a. **INCIDENT TYPE:** Enter the description of the incident. (e.g. Use of Force, Contraband, etc.)
 - b. **INVESTIGATION STATUS:** Complete or pending. If the investigation is pending this will require updates to the PREA Coordinator as the investigation progresses.
 - c. **INCIDENT LOCATION:** The specific location where the incident occurred.
 - d. **INCIDENT DATE:** Day, month, year and time of incident occurrence (e.g. 25 Dec 95, 1800 hrs. to 1830 hrs.).

- e. **DATE AND TIME OF INCIDENT/REPORTED:** The date and time of the incident was reported to proper authority, to include month, day, year, and hour.
- f. **VICTIM DATA:** The name of the individual or institution suffering a loss, damage, or injury, and all available videos and photographs (if applicable).
- g. **SUBJECT OF INVESTIGATION:** A description of the alleged incident, to include any violation of law or policy involved.
- h. **ACCUSED/SUSPECT:** Complete physical description to include inmate/employee identification numbers and criminal history, and all available videos and photographs (if applicable).
- i. **ACTION TAKEN:**
 - i. What information was reported to the Officer by the Complainant, witness, and/or victim.
 - ii. What physical evidence was collected and its disposition.
 - iii. A written narrative identifying statements, facts and information obtained throughout the investigation.
- j. **WITNESSES:** Names, addresses, and telephone numbers of all persons involved in, or witness to the incident, and to what each has the ability to testify (if applicable).
- k. **ATTACHMENTS:** Written statements, transcripts, logs, incident reports, or other documents relevant to the investigation.
 - i. **Statements:** The investigator may obtain a signed written statement from any or all persons having knowledge relevant to the investigation.
 - ii. If needed, a taped interview may be conducted. Interviewees are not allowed to use personal audio or video recorders during the interview.
- l. **EVIDENCE:** Evidence will be documented by a written description of items collected that are relevant to the investigation. A complete

description of items collected to include location where discovered, quantity, time and date obtained, and from whom received and/or delivered to. All obtained evidence will be properly secured, identified, and maintained by the investigator pending the completion of the investigation.

- m. **CONCLUSION:** At the end of every investigation there will be a conclusion written as to what the facts are. Every person(s) involved will need to be identified along with the Policy and Procedures that they have violated.
- n. **SIGNATURE:** Signature of staff member completing investigation.
- o. **SUPPLEMENTARY REPORT:** A Supplementary report shall be written anytime information is received that will modify, change, or alter previous information submitted in an earlier report.

Procedure D: Filing of Criminal Charges

- 1. Upon completion of the investigation and upon finding probable cause of felony wrongdoing or sexual assault, the case will be referred to the appropriate district attorney's office or United States attorney to determine if criminal prosecution will be pursued. Upon finding probable cause of misdemeanor wrongdoing not involving sexual assault, the investigating officer may or may not refer the case for prosecution with the approval of the Director of Internal Affairs.
- 2. When an investigation is referred for criminal prosecution, the investigating officer will submit a copy of the report, an affidavit and all work products obtained during the investigation to the prosecuting authority.
 - a. Materials deemed highly sensitive or which may create a threat to the safety of others if released should be so indicated to the prosecuting authority.
 - b. The PREA Compliance Officer will ensure that all physical evidence is preserved pending adjudication of the charge

Procedure E: Follow-Up

1. Following an investigation into an inmate's allegation that he or she suffered sexual abuse in a Regional Jail Facility the facility shall inform that inmates as to whether the allegation has been determined to be substantiated, instantiated, or unfounded.
- 2.
3. Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the authority shall subsequently inform the inmate (unless it is determined that the allegation is unfounded) whenever:
 - a. The staff member is no longer posted within the inmates pod.
 - b. The staff member is no longer employed at the facility;
 - c. The authority learns that the staff member has been indicted on a charge related sexual abuse within the facility; or
 - d. The authority learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
4. Following an inmate's allegation that he/ she has been sexually abused by another inmate the authority shall subsequently inform the inmate (unless it is determined that the allegation is unfounded) whenever:
 - a. The authority learns that the alleged abuser has been indicted on a charge related sexual abuse within the facility; or
 - b. The authority learns that alleged abuser has been convicted on a charge related to sexual abuse within the facility.
 - c. All notifications or attempted notifications will be documented. The authority's obligation to report the information shall terminate if the allegation is unfounded or the inmate is released from the authority's custody.

6/09/14

Signature Date

Joe DeLong

Executive Director