

Zero Tolerance for Sexual Abuse and Sexual Harassment

Standard(s): TAC 343.208
PREA 115.311

Policy:

The McLennan County Juvenile Department's (Department) residential programs shall maintain a zero-tolerance policy regarding the sexual abuse and sexual harassment of residents, and shall not tolerate abuse or harassment toward facility residents.

- A. The following conduct is strictly prohibited:
 - 1. Sexual abuse by contact or non-contact, sexual harassment, physical abuse, emotional abuse, neglect, or exploitation of a resident by any individual having contact with a resident of the facility;
 - 2. Sexual conduct between residents as defined in Texas Administrative Code (TAC) 343.100 and the National Prison Rape Elimination Commission standards;
 - 3. Sexual harassment of one resident by another resident(s);
 - 4. Violation of the Juvenile Justice Professional Code of Ethics as outlined in Texas Administrative Code (TAC) 345; and
 - 5. The violation of any professional code of ethics or code of conduct, with regard to sexual abuse or sexual harassment, by any individual, who provides services to or has contact with residents of the facility.
- B. The Department's zero-tolerance policy and practices provides for administrative and/or criminal disciplinary sanctions:
 - 1. The following conduct, when determined by investigation to have violated department policy, will result in termination upon final administrative review:
 - a. Engaging in actual or attempted sexually abusive contact with a resident;
 - b. Engaging in the actual or attempted penetration of a resident;
 - c. Engaging in actual or attempted sexual harassment of a resident;
 - d. A criminal finding of guilt made for actual or attempted sexually abusive contact with a resident;
 - e. A criminal finding of guilt made for actual or attempted penetration of a resident;
 - f. Failing to report an incident of sexual abuse in accordance with Detention Policy;
 - g. Failing or refusing to cooperate fully and truthfully with a sexual abuse or sexual harassment investigation conducted by the facility, the Texas Juvenile Justice Department (TJJD), law enforcement, or other government agency authorized to investigate sexual abuse or sexual harassment allegations to the extent that the cooperation does not violate the person's right against self-incrimination;
 - h. Retaliating against residents or other staff who have reported sexual abuse or sexual harassment;
 - i. Disclosing sexual abuse or sexual harassment allegation information to anyone other than persons who need to know in order to make treatment, investigation, and classification decisions; or
 - j. Failure to disclose having:
 - 1. Engaged in sexual abuse in a prison, jail, lockup community confinement facility, juvenile facility, or other institution;

2. Been civilly or administratively adjudicated for having engaged in activity in B (1) (j) (1-2) above;
2. Any incident or conduct that may constitute a criminal offense shall be referred to law enforcement for investigation and prosecution, regardless of whether an alleged perpetrator is a staff member who is terminated or has resigned from employment, is a service provider, volunteer, or intern who no longer provides services or is another resident.
- C. The Department shall employ or designate an upper-level, agency wide PREA Coordinator with sufficient time and authority to coordinate the Department's efforts to comply with the PREA standards.
- D. Where the Department operates more than one facility, each facility shall designate a PREA Compliance Manager with sufficient time and authority to coordinate the facility's effort to comply with the PREA standards.

Authority:

- A. Prison Rape Elimination Act (Public Law 108-79, 108th Congress)
- B. National Prison Rape Elimination Commission Standards for Prevention, Detention, Response, and Monitoring Sexual Abuse in Juvenile Facilities (08/2012)
- C. Texas Juvenile Justice Department Standards

Purpose:

- A. To provide for the prevention and detection of and response to all forms of actual or alleged incidents of sexual abuse or sexual harassment of residents.

Applicability:

- A. All personnel as applicable including other professionals and their respective professional codes of ethics or conduct.

Procedure:

- A. The imposing of disciplinary sanctions does not remove the requirement to report an incident of conduct that constitutes, or may constitute, a criminal offense to law enforcement for investigation and prosecution.
- B. Disciplinary Sanctions for Staff:
 1. Termination shall be presumed disciplinary action for staff found to have engaged in sexual abuse or sexual harassment or for retaliating against a resident or staff member for having reported sexual abuse or sexual harassment or for cooperating with such investigations.
 2. For termination of employment for a violation of the Department's policies relating to sexual abuse and sexual harassment, or resignations by staff who would have been terminated if not for their resignation, the Facility Administrator or designee shall notify:
 - a. Law enforcement unless the activity was clearly not criminal; and
 - b. TJJD.
- C. Sanctions for Contract Providers:
 1. When a contract service provider is found to have engaged in sexual abuse or sexual harassment or for retaliating against a resident or staff member for having reported sexual

abuse or sexual harassment or for cooperating with such investigations, the resulting sanction shall be termination of the service provider contract.

2. Terminations of service provider contract for violation of the Department's policies relating to sexual abuse and sexual harassment, the Facility Administrator or designee shall notify:
 - a. Law enforcement unless the activity was clearly not criminal; and
 - b. Relevant professional licensing agencies.

D. Sanctions for Volunteer and Interns:

1. When a volunteer or intern is found to have engaged in sexual abuse or sexual harassment or for retaliating against a resident or staff member for having reported sexual abuse or sexual harassment or cooperating with such investigations, the volunteer or inter shall be prohibited from continued service to the facility.
2. Terminations of service for volunteers and interns for violation of the facility's policies relating to sexual abuse and sexual harassment, the Facility Administrator or designee shall notify:
 - a. Law enforcement unless the activity was clearly not criminal; and
 - b. Relevant professional licensing agencies.

E. Disciplinary Sanctions for Residents:

1. When the findings of an internal investigation indicate that a resident engaged in youth – on – youth sexual conduct (sexual abuse by contact or by non-contact), the perpetrating resident may be subject to disciplinary sanctions in accordance with department policy.
 - a. Disciplinary sanctions may only be administered pursuant to a formal disciplinary hearing;
 - b. Disciplinary sanctions shall be commensurate with the nature and circumstances of the abuse committed, the resident's discipline history, and shall be comparable with sanctions imposed on other residents with similar rule violations or disciplinary histories;
 - c. When a disciplinary sanction includes isolation of the resident:
 - i. The resident shall not be denied the opportunity for daily large muscle exercise;
 - ii. The resident shall not be denied access to education programming or special education services;
 - iii. The resident shall receive daily visits from a medical or mental health care professional; and
 - iv. The resident shall have access to other programs and opportunities to the extent the safety, security, and order of the facility is not compromised.
 - d. When determining what type of sanction, if any, to impose, the person or panel of person conducting a formal disciplinary review shall consider whether a resident's mental disabilities or mental illness contributed to the sexual abuse behavior.
2. Disciplinary sanctions shall not be imposed on a resident for sexual contact with staff unless the findings of the internal investigation indicate the staff member did not consent to such contact.
3. Disciplinary sanctions shall not be imposed on a resident for a report of sexual abuse made in good faith and based upon a reasonable belief that the alleged conduct occurred, and shall not constitute a false report of abuse, regardless of the outcome of the internal investigation.