

2.1 Prison Rape Elimination Policy

Minnehaha County Juvenile Justice Center

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Date Signed: 04/02/2024

Approved by: Gravett, Jamie

Effective Date: 04/02/2024

Scheduled Revision Date: 03/15/2026

Revision Number: 1

I. Policy

Statement of Policy:

The Minnehaha County Juvenile Detention Center has zero tolerance for any form of sexual abuse/assault/misconduct or rape and the failure of “duty to report” such incidents of youth who are placed in our care and housed in the juvenile detention facility. This policy sets forth standards for reporting and investigating alleged sexual abuse of youth within the JDC. This policy also addresses the Prison Rape Elimination Act (PREA) and how its standards will be implemented at JDC to maintain a safe environment for youth detained in the facility. JDC will designate one administrative staff to serve as the Center’s PREA coordinator. This staff will work to ensure that JDC is in compliance with PREA standards. (115.311)

II. Definitions

Sexual Abuse: Sexual abuse of a juvenile by another juvenile, staff member, contractor, or volunteer, includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
- Contact between the mouth and the penis, vulva, or anus
- Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument
- 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 or, in the case of staff, that is unrelated to official duties such as searches
- Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of a juvenile
- Voyeurism by a staff member, contractor or volunteer

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

Sexual Harassment: Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by another juvenile, staff member, contractor, or volunteer. Also, repeated verbal comments

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demeaning to another gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

III. Procedures

A. General Provisions

1. It is the policy of JDC to ensure that any form of sexual activity between youth or between youth and staff/volunteers/outside professionals, regardless of consensual status, is strictly prohibited. Such conduct is subject to administrative disciplinary sanctions and may result in criminal prosecution.
2. Youth being held in the JDC cannot give consent to engage in behavior defined as sexual abuse under this policy, regardless of the youth's age.
3. All allegations of sexual abuse or sexual harassment will be investigated either by JDC or by the Minnehaha County Sheriff's Office
4. Retaliation against any youth or employee who reports or assists in the investigation of alleged sexual abuse is strictly prohibited and is grounds for disciplinary action up to and including termination of employment.
5. The Director of the JDC is responsible for the implementation of this policy. The Director may choose to delegate certain duties and authorizations to the JDC PREA coordinator.
6. JDC Administration will conduct/document bi-monthly unannounced rounds of the facility to include night shifts in order to identify and deter sexual abuse and harassment. Staff may not alert other staff members to the unannounced round, unless such announcement is related to the legitimate operational function of the facility.

B. Reporting Methods

1. JDC will accept: **(115.351)**
 - a. Written reports
 - b. Verbal reports
 - c. Anonymous reports
 - d. Third party reports (fellow juveniles, staff members, family members, attorneys, or outside advocates)
2. All verbal reports will be immediately documented via a JDC Incident Report by the staff member receiving the report, or e-mailed to the Director to maintain confidentiality **(115.351)**

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3. Juveniles will be provided access to the tools necessary to make a written report if requested, including, but not limited to, a writing utensil, paper, and envelope. **(115.351)**
 4. JDC will provide and maintain multiple internal ways for juveniles to privately report physical abuse, sexual harassment, sexual abuse, retaliation by other juveniles or staff for reporting sexual abuse or sexual harassment, and staff neglect or violation of duties that may have contributed to such incidents, including, but not limited to: **(115.351)**
 - a. Reporting to staff members
 - b. Reporting to administrative staff
 - c. Reporting to the Compass Center (by phone in the conference room)
 - d. Reporting via the grievance box which will be checked every business day by the Director or another designee.
 5. JDC may discipline a juvenile for filing a grievance related to alleged sexual abuse only where JDC demonstrates that the juvenile filed the grievance in bad faith **(115.352)**
 6. JDC has a memorandum of understanding with the Compass Center to provide counseling and victim advocacy for juveniles. Juveniles will be given access to these services via phone, in private, or in person at JDC. If the Compass Center is not available juveniles will be offered counseling with a QMHP. **(115.353)**
 7. JDC will establish a method to receive third-party reports of sexual abuse and sexual harassment and will distribute, publicly, information on how to make such reports on behalf of a juvenile. **(115.354)**
 8. JDC will not rely on other juveniles as interpreters in order to communicate PREA information except in situations where a delay in obtaining an interpreter may compromise the juvenile's safety, the ability of a first responder to perform their duties, or the investigation of a juvenile's allegations. Instead JDC staff will utilize the Language Line as the preferred method for interpreting for juveniles. **(115.316)**
- C. Official Response Following a Resident Report
1. JDC requires all staff to immediately report any knowledge, suspicion, or information they receive regarding an incident of sexual abuse or sexual harassment; retaliation against a juvenile or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. **(115.361)**
 - a. Apart from reporting to a Supervisor, administrative staff, law enforcement, or the Department of Social Services, staff are prohibited from revealing any information related to a sexual abuse report to anyone.

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- b. JDC nursing staff and contracted qualified mental health professionals will also be required to report any allegation pursuant to paragraph (1.) to either a supervisor or administrative staff. JDC nursing staff and contracted QMHP's will inform juveniles at the initiation of services of their duty to report and the limitations of confidentiality
 - c. Upon receiving any allegation of sexual abuse, the JDC Director will promptly report the allegation to the alleged victim's parents and/or guardians (including DSS workers, JCA's, or legal representatives appointed by the court) unless there is legal reason as to why the guardian should not be notified.
 - d. All allegations of sexual abuse and sexual harassment, including third party and anonymous reports, will be reported to one of JDC's designated investigators
 2. If JDC learns that a juvenile is subject to a substantial risk of imminent sexual abuse it will take immediate action to protect that juvenile **(115.362)**
 3. Upon receiving an allegation that a juvenile was sexually abused while in another facility the JDC Director will notify the other facilities director or appropriate office of the facility where the abuse is alleged to have occurred and any relevant investigation agencies if necessary **(115.363)**
 - a. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation
 - b. JDC will document that it has provided notification
 - c. If JDC receives such an allegation it will be investigated in accordance with this policy
 4. Upon learning of an allegation that a juvenile was sexually abused, the first staff member to respond to the report will: **(115.364)**
 - a. Separate the alleged victim and abuser
 - b. Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence
 - c. If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating.
 5. JDC Caseworkers along with Shift Supervisors will be responsible for monitoring retaliation against any juveniles or staff who report or cooperate with the investigation of sexual abuse or sexual harassment. Caseworkers will monitor the conduct of any juveniles who have reported or cooperated in an investigation into sexual abuse or sexual harassment in an effort to detect any signs of retaliation. Caseworkers will document this monitoring on a Sexual Abuse Retaliation Monitoring Document weekly until release, or 90 days after incident. **(115.367)**

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- a. JDC will take measures to protect staff and juveniles against retaliation if any is reported.
6. If the first staff member to respond is not a JDC security staff they will request that the alleged victim not take any actions that could destroy physical evidence and immediately notify the Shift Supervisor.
7. JDC staff will follow the PREA incident checklist in regards to responding and reporting sexual abuse/harassment. **(115.365)**

D. Investigations

1. When JDC conducts investigations into allegations it will be done in a prompt, thorough, and objective manner, including allegations made by third party and anonymous sources. **(115.321)**
2. JDC will designate multiple staff to serve as PREA investigators. These investigators will receive special training in accordance with PREA standards.
 - a. Investigator duties include, but are not limited to: **(115.334)**
 - i. Collecting physical evidence
 - ii. Conducting interviews of juveniles and staff (victims, alleged perpetrators, and witnesses), including proper use of Miranda and Garrity warnings
 - iii. Gather and review any electronic monitoring data
 - iv. Criteria and evidence required to substantiate a case for administrative action or prosecution referral
 - b. This training will be documented
3. JDC will not terminate an investigation solely because the source of the allegation recants the allegation. **(115.371)**
4. If, at any time, the allegations appear to be criminal in nature, JDC will immediately contact the Minnehaha County Sheriff's Department to proceed with the investigation and document that they have been contacted **(115.322)**
5. 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 a juvenile or staff. Juveniles who make an allegation will not be asked to submit to a polygraph examination as a condition for proceeding with the investigation. **(115.371)**

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6. JDC will make an effort to determine whether staff actions or failures to act contributed to the abuse. **(115.371)**
7. All investigation findings will be documented in a written report which will include, but is not limited to: a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and all other facts and findings. **(115.371)**
 - a. JDC will retain all written reports referenced in section (a) for as long as the alleged abuser is detained or employed by JDC, plus five years, or until the juvenile turns 21. **(115.371)**
8. The departure of the alleged abuser or victim from the employment or custody of JDC will not provide a basis for terminating an investigation. **(115.371)**
9. Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements. **(115.371)**
10. When outside agencies investigate sexual abuse, JDC will cooperate with the agency and shall endeavor to remain informed about the progress of the investigation. It is the expectation that outside agencies will adhere to the standards set forth in this policy when conducting investigations. **(115.371)**
11. JDC will impose no higher standard than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated. **(115.372)**
12. Following an investigation into a juvenile's allegation of sexual abuse suffered in JDC, JDC will inform the juvenile as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. **(115.373)**
13. Following a juvenile's allegation that a staff member has committed sexual abuse against the juvenile, JDC will subsequently inform the juvenile (unless the allegation has been determined to be unfounded) whenever: **(115.373)**
 - a. The staff member is no longer posted on duties that would allow them contact with the victim
 - b. The staff member is no longer employed
 - c. JDC learns that the staff member has been indicted on a charge related to sexual abuse within JDC or,
 - d. JDC learns that the staff member involved has been convicted on a charge related to sexual abuse within JDC
 - e. All of these notifications will be documented.
14. Following a juvenile's allegation that he or she has been sexually abused by another juvenile, JDC will subsequently inform the alleged victim whenever: **(115.373)**
 - a. JDC learns that the alleged abuser has been indicted on a charge related to sexual abuse within JDC; or

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- b. JDC learns that the alleged abuser has been convicted on a charge related to sexual abuse within JDC.
 - c. All such notifications will be documented
 - d. JDC's obligation to report under this policy will terminate if the juvenile is released from JDC's custody.
15. Within 30 days of the conclusion of any investigation, even if an allegation has not been substantiated, a review team of JDC will conduct a sexual abuse incident review. The review team will consist of the PREA Coordinator, the Assistant Director, a Supervisor, and medical staff. This team may also ask for assistance from investigating entities (i.e. Sheriff's Office).
- a. The review team will make recommendations for any improvements which could be made to better handle a sexual abuse situation in the future. If the recommendations are not implemented the reasons for not doing so will be documented. The review team shall also: **(115.386)**
 - i. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse.
 - ii. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification status; or, gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility
 - iii. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse
 - iv. Assess the adequacy of staffing levels in that area during the shift
 - v. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff
 - vi. Prepare a report or its findings, including but not necessarily limited to determinations made pursuant to paragraphs (1.) (a.) (i-v) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager
- E. Screening for Risk of Sexual Victimization and Abusiveness
- 1. During the admission process JDC still will utilize an objective screening instrument to obtain information which may indicate a heightened need for supervision, additional safety precautions, or separation from certain other juveniles. **(115.341)**
 - a. This information will be kept confidential from other juvenile's and placed into the juvenile's file

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2. Group assignments will be made based on information gathered during this process. A juvenile's status as lesbian, gay, bisexual, transgender, or intersex will not be the sole basis for determining group assignments. **(115.342)**
 - a. JDC will not search or physically examine a transgender or intersex juvenile for the sole purpose of determining the juvenile's genital status. If the juvenile's genital status is unknown, it may be determined through conversations with the juvenile, by reviewing medical records, or by talking to the juvenile's parents or guardians.
 - b. Individuals identified as needing heightened supervision/precautions will be reviewed at a team meeting within 72 hours of admission. The team will consist of the following, (QMHP, PREA Coordinator, Compass Center Staff, and JDC Caseworker).
 - c. This meeting will review all information, including the youth's preference for group assignment, to make determinations as to whether group placement would ensure the residents health and safety, and whether the placement would present management or security problems.
 3. Group assignments for any transgender or intersex juveniles will be reassessed at least twice each year to review any threats to safety experienced by the juveniles. **(115.342)**
 - a. Transgender and intersex juvenile's own views with respect to his or her own safety shall be given serious consideration in determining their group assignment
 - b. Transgender and intersex juveniles will be given the opportunity to shower separately from other juveniles
- F. Hiring and Promoting
1. JDC will not hire or promote anyone who may not have contact with juveniles, and shall not enlist the services of any contractor who may have contact with the juveniles who: **(115.317)**
 - a. Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution.
 - b. Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse;
 - c. Has been civilly or administratively adjudicated to have engaged in the activity described above (1.(b)).
 - d. JDC shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the service of any contractor, who may have contact with juveniles.

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2. In conjunction with the Minnehaha County Human Resources department the following steps will be taken before any new employee will have contact with juveniles:
 - a. Perform a criminal background check
 - b. Consult the state child abuse registry where the new employee worked
 - c. 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.
 - d. A background check will be completed on all employees and contractors at least every 5 years.
 - e. Applicants and employees who may have contact with juveniles directly will be asked about previous misconduct described previously in section c in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees.
 - f. Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.
 - g. In accordance with South Dakota law, JDC will provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.
- G. Medical and Mental Health Care
1. If the initial screening during admission indicates that a juvenile has experienced prior sexual victimization or has been the perpetrator of sexual abuse, whether or not it occurred in another facility, they will be offered a follow-up meeting with either a QMHP or someone from the Compass Center within 72 hours of admission to JDC. **(115.381)**
 2. Juveniles who are the victim of sexual abuse will receive unimpeded access to emergency medical and mental health services. If the JDC nurse is not on duty at the time JDC will make arrangements for the juvenile to be transported to a medical facility for services. **(115.381)**
 - a. If the abuse occurred in JDC there will be no financial cost to the victim for medical services
 - b. Follow-up services will be made available to victims of sexual abuse, including, but not limited to: STD information/testing, pregnancy testing (when applicable), mental health services.
 - c. If pregnancy results from sexual abuse the victim will receive timely and comprehensive information about and timely access to all lawful pregnancy related medical services

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3. All juveniles who experience sexual abuse will be given the opportunity to receive a forensic medical examination at no cost. When possible, this examination will be performed by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE). If one is not available JDC will document that it made its' best effort to provide one. **(115.383)**
(115.321)
 - a. At the victim's request, a victim advocate will be present through this process.
4. JDC will attempt to conduct a mental health evaluation of all known juvenile-on-juvenile abusers within 60 days of learning such abuse history **(115.383)**
5. JDC will provide on-going medical and mental health care for any juveniles who have been the victims of sexual abuse in a previous facility. **(115.383)**

H. Discipline

1. Staff shall be subjected to disciplinary sanctions up to and including termination for violating agency sexual abuse and sexual harassment policies. **(115.376)**
2. All disciplinary action will be in accordance to Minnehaha County Human Resources guidelines. **(115.376)**
3. Any contractor or volunteer who engages in sexual abuse will be reported to law enforcement, unless the activity was clearly not criminal in nature. **(115.377)**
 - a. Any contractor or volunteer who is alleged to have committed sexual abuse or sexual harassment will be prohibited from entering JDC pending the results of an investigation.
4. Any discipline action taken against juveniles who violate this policy will follow the standards set forth in JDC policy 13.3 (Juvenile Consequences) **(115.378)**
 - a. A juvenile will not receive a consequence if a report of sexual abuse or sexual harassment is made in good faith. Even if the claim is investigated and found to be unsubstantiated. **(115.378)**
 - i. Residents who engage in consensual sexual activity will not be subjected to sexual abuse allegations unless dictated by State laws.

I. Training and Education

1. Each juvenile will receive PREA information, including but not limited to: the JDC zero-tolerance policy and how to report any instances of sexual harassment or sexual abuse, upon admission to JDC as part of the admission process. **(115.333)**
 - a. Within 10 days of being admitted to JDC each juvenile will receive additional comprehensive PREA education including:

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- i. Their right to be free from sexual abuse and sexual harassment
 - ii. Their right to be free from retaliation for reporting sexual abuse or sexual harassment
 - iii. Policies and procedures for responding to such incidents
 - b. All juvenile education will be documented
2. All contractors and volunteers who will regularly work directly with juveniles will receive training on JDC's policies regarding PREA and their responsibilities regarding prevention, detection, and reporting incidents. **(115.332)**
3. All JDC staff will receive the following training: **(115.331)**
 - a. JDC's zero-tolerance policy
 - b. Responsibilities as mandatory reporters of sexual abuse or harassment and JDC procedures on reporting such incidents.
 - c. Juvenile's right to be free from sexual harassment and sexual abuse
 - d. The right of juvenile's to be free from retaliation for reporting sexual abuse and sexual harassment.
 - e. The dynamics of sexual abuse and sexual harassment in juvenile facilities
 - f. The common reactions of juvenile victims of sexual abuse and sexual harassment.
 - g. How to detect and respond to signs of threatened and actual sexual abuse and how to distinguish between consensual sexual contact and sexual abuse between juveniles.
 - h. How to avoid inappropriate relationships with juveniles.
 - i. How to communicate effectively and professionally with juveniles, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming juveniles.
4. All training will be documented and required at least every two years **(115.331)**
5. JDC will designate a number of staff to receive specialized investigation training. **(115.331)**
6. JDC will ensure that our facility nurse has received the following trainings: **(115.335)**
 - a. How to detect 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
 - d. How to and whom to report allegations or suspicions of sexual abuse and sexual harassment.
 - e. Documentation of this training will be made available upon request by JDC to the contractor.

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J. Data Collection

1. JDC will collect accurate, uniform data for every allegation of sexual abuse using the latest version of the Department of Justice Survey of Sexual Victimization. This information will be aggregated yearly. **(115.387)**
2. The PREA coordinator will be responsible for the collecting of this data and preparing an annual report to address any corrective action needed to take place. **(115.388)**
 - a. This report will compare previous year's data and address JDC's progress in addressing sexual abuse.
3. This data will be securely retained for at least 10 years after the initial collection. It will be made available to the public via JDC's website.
 - b. JDC will remove any personal identifiers prior to making the information publicly available.

IV. Attachments