Overview Statement (Policy/Regulation)

1.1 The purpose of this Procedure is to confirm JJS’s compliance with the Federal Prison Rape Elimination Act (PREA) and its ongoing commitment to prevent, detect, and respond to all allegations of sexual misconduct – including sexual abuse and harassment.

1.2 JJS is committed to providing a safe and secure environment, free from all forms of sexual misconduct and retaliation for clients and employees. To that end, JJS has zero tolerance for sexual misconduct and maintains comprehensive procedures regarding prevention, detection, and response to such conduct.

1.3 All sexual contact between employees and clients; contractors, volunteers, or student interns and clients; and clients and clients, regardless of consensual status, is prohibited and subject to disciplinary action and possible criminal prosecution.

1.4 All JJS employees, contractors, volunteers, and student interns are required to report any suspected or witnessed sexual misconduct.
2 PREA Definitions

2.1 **Sexual Misconduct** is an umbrella term that defines all incidents of Sexual Abuse or Sexual Harassment. Examples of sexual misconduct include:

1. Requests for sexual favors, sexual acts, or sexual contact.
2. Influencing, promising, or threatening a client’s safety, custody, or security level, including recommendations for court actions, privacy, housing, privileges, work detail, or program status in exchange for sexual favors.
3. Promise of protection in exchange for sexual favors.
4. Statements, comments, or innuendo made directly or indirectly concerning the sexual orientation or perceived sexual orientation of any person.
5. Employees having intimate or close relationships with a client, defined as any relationship beyond the boundaries of a professional relationship.
6. Employees engaging in intimate conversation or correspondence with a client.
7. Employees exchanging personal information with clients such as letters, pictures, phone numbers, home addresses, social media, and email addresses.
8. Viewing an unclothed client or watching a client perform bodily functions for reasons unrelated to official duties.
9. Any verbal, non-verbal, or physical conduct which is sexual in nature or sexually suggestive.
10. Creating an intimidating, hostile, or offensive environment by engaging in or permitting sexually offensive behavior or language that is directed at or observable by clients or others.
11. Kissing, hugging, fondling, or other touching of an individual’s breast, genital, anus, or other intimate area either directly or through clothing for sexual arousal, gratification, abuse, or assault of either party.
12. Rape, sexual assault, sexual intercourse, oral sex, anal sex, and vaginal sex.
13. Sex or penetration with any object or body part.

2.2 **Sexual Abuse of client by another client** 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:

1. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
2. Contact between the mouth and the penis, vulva, or anus;
3. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
4. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, excluding contact incidental to a physical altercation.

2.3 **Sexual Abuse of a client by an employee, contractor, volunteer, or student intern** includes any of the following acts, with or without consent of the client:

1. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
2. Contact between the mouth and the penis, vulva, or anus;
3. Contact between the mouth and any body part where the employee, contractor, volunteer, or student intern has the intent to abuse, arouse, or gratify sexual desire;
(4) 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 employee, contractor, volunteer, or student intern has the intent to abuse, arouse, or gratify sexual desire;

(5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or buttocks, that is unrelated to official duties or where the employee, contractor, volunteer, or student intern has the intent to abuse, arouse, or gratify sexual desire;

(6) Any attempt, threat, or request by a staff member, contractor, volunteer, or student intern to engage in the activities described in (1)-(5) of this definition;

(7) Any display by an employee, contractor, volunteer, or student intern of his or her uncovered genitalia, buttocks, or breast in the presence of a client; and

(8) Voyeurism by an employee, contractor, volunteer, or student intern.

2.4 **Voyeurism** by an employee, contractor, volunteer, or student intern is a kind of sexual abuse that is an invasion of privacy of a client by employees for reasons unrelated to official duties, such as peering at a client who is using a toilet to perform bodily functions; requiring a client to expose buttocks, genitals, or breasts; or taking images of all or part of a client’s naked body or of a client performing bodily functions.

2.5 **Sexual Harassment of a client by another client** is repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one client directed toward another.

2.6 **Sexual Harassment of a client by an employee, contractor, volunteer, or student intern** is verbal comments or gestures of a sexual nature, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

3 Purpose

3.1 The purpose of this Procedure is to outline the process to hire, train, support, and hold accountable all JJS employees, contractors, volunteers, and student interns charged with the obligations of PREA.

3.2 This Procedure may reference other procedures and documentation that confirm PREA compliance. Several CYFD Human Resources procedures and JJS Procedure P.16.11 address code of conduct and training requirements for employees, contractors, volunteers, and student interns.

4 Hiring JJS Employees

4.1 CYFD conducts background checks of all applicants: potential JJS employees, contractors, volunteers, and student interns.

4.2 During the hiring process, JJS employee applicants are informed that in addition to an initial background check, CYFD receives notification (via the RAP Back Program) of any JJS employees involved in a triggering event. A triggering event can be a change in criminal history record information, a fingerprint-verified arrest, and/or a sex offender registration.
4.3 All potential JJS candidates for employment and promotion must complete the PREA Questions for Applicants.

4.4 CYFD conducts reference checks at all previous facilities of employment for all facility employee applicants. Specifically, those reference checks include questions about any substantiated allegations of sexual misconduct and/or any resignation during a pending investigation of sexual misconduct, per the PREA Questionnaire for Prior Institutional Employers.

4.5 JJS administration will not hire or promote any applicants who have engaged in sexual abuse in any confinement facility, been convicted of engaging in or attempting to engage in sexual abuse in the community, and/or been civilly or administratively adjudicated for sexual abuse.

4.6 JJS administration considers any and all substantiated and unsubstantiated incidents of sexual harassment in determining whether to hire or promote any applicant.

4.7 An applicant who does not reveal any issues of sexual misconduct, but is later discovered to have a history of sexual misconduct, may be subject to disciplinary action, up to and including dismissal.

4.8 JJS administration considers any and all substantiated and unsubstantiated incidents of sexual misconduct in determining whether to enlist the services of contractors who may have client contact.

5 Training Employees, Contractors, Volunteers, and Student Interns

5.1 The JJS PREA Coordinator, in coordination with CYFD Academy of Professional Development and Training (APDT) and the Office of Inspector General (OIG), ensures all JJS employees, contractors, volunteers, and student interns complete PREA training.

5.2 PREA training for all JJS employees, contractors, volunteers, and student interns includes information on the following:
   - JJS’s zero-tolerance policy for sexual misconduct – including sexual abuse and sexual harassment;
   - How to fulfill their responsibilities to prevent, detect, report, and respond to sexual misconduct, per JJS policies and procedures;
   - Clients’ right to be free from sexual misconduct;
   - The right of clients and employees to be free from retaliation for reporting sexual misconduct;
   - The dynamics of sexual misconduct in juvenile facilities;
   - The common reactions of juvenile victims of sexual misconduct – including sexual abuse and sexual harassment;
   - 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 clients;
   - How to avoid inappropriate relationships with clients;
   - How to communicate effectively and professionally with clients, including Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex (LGBTQI) or gender-nonconforming clients;
How to comply with relevant laws related to mandatory reporting of sexual abuse to
outside authorities; and
Relevant laws regarding the applicable age of consent.

5.3 All contractors, volunteers, and student interns, regardless of their client-contact status, must
complete PREA training in order to work in facilities.

5.4 After completing PREA training, all employees, contractors, volunteers, and student interns
must sign acknowledgement forms affirming that they have received and understand their
training and that they understand that they serve as mandatory reporters.

5.5 In addition to the initial training, CYFD conducts mandatory refresher courses so that all JJS
employees recertify in PREA training every other year.

5.6 The JJS PREA Coordinator maintains all acknowledgement forms.

6 Specialized PREA Training
6.1 Regardless of their regular job duties, employees who serve in PREA-specific roles are required
to complete and recertify on required, specialized PREA trainings.

6.2 All Facility PREA Compliance Managers (FPCMs), OIG employees, PREA Investigators, and
Grievance Officers (GOs) are required to complete training for PREA Investigators.

6.3 All facility employees responsible for conducting searches are required to complete training on
PREA-compliant searches.

6.4 All facility employees are required to complete training tailored to the gender of the clients who
live in their assigned work units.

6.5 All Behavioral Health (BH) clinicians are required to complete specific training for BH
practitioners.

6.6 All BH clinicians are required to complete victim advocacy training and may serve as in-house
advocates. In-house advocates are screened for the role and receive continuing education on
sexual abuse, forensic examinations, and victim services.

6.7 All Medical providers are required to complete specific training for medical responders to PREA
incidents.

6.8 Specialized PREA training for all BH clinicians and Medical providers include information on the
following topics:
   How to detect and assess signs of sexual misconduct;
   How to preserve physical evidence of sexual abuse incidents; and
   How to respond effectively and professionally to victims of sexual misconduct.

6.9 All Office of Quality Assurance (OQA) employees are required to complete new employee PREA
trainings so that they can assess compliance during monitoring.
6.10 After completing any specialized PREA training, all employees, contractors, volunteers, and student interns must sign acknowledgement forms affirming that they have received and understand their training.

7 PREA Team Members

7.1 The JJS PREA Team consists of the following members:
   - Deputy Directors for Facilities and Field Services;
   - JJS PREA Coordinator;
   - OIG investigators; and
   - FPCMs.

7.2 Each facility Superintendent and Juvenile Reintegration Center (JRC) Program Managers (PMs), in coordination with the JJS Director, designates a supervisor-level (or above) employee as that facility’s FPCM. The FPCM must be given sufficient time and authority to coordinate the facility’s efforts to comply with the PREA Standards. This is an additional job duty, not a job title or position.

7.3 As a team committed to uphold PREA guidelines, this group meets semi-annually to monitor PREA compliance.

7.4 This group, in coordination with facility Superintendents and JRC PMs, reviews audit/monitoring tools to ensure PREA compliance.

7.5 This group, in coordination with JJS Policy and Procedure Manager, reviews policy and procedures to ensure PREA compliance.

7.6 This group, in coordination with the facility Superintendents and JRC PMs, determines whether any adjustments are needed to the staffing plan or staffing patterns to protect clients from potential sexual misconduct per the Staffing Plan Assessment Tool. Additionally, this group reviews staffing adjustments and ratios as reported on the Staffing Exception Log.

7.7 This group, in coordination with the Physical Plant Manager, reviews any modifications, redesigns, expansions, and upgrades to existing and newly acquired facilities and technologies, including video monitoring, to ensure ongoing protection for clients from potential sexual misconduct.

7.8 This group, in coordination with the Deputy Director for Administration, reviews and approves any new or renewal contracts with private agencies and other entities that operate facilities or provide services for JJS clients to confirm those external organizations’ compliance with PREA.

7.9 This group, in coordination with the JJS Director and the Office of the Secretary, identifies and develops Memoranda of Understanding (MOUs), contracts, and agreements with community agencies to support PREA compliance, victim advocacy, and trainings for employees.

7.10 This group, in coordination with community partners, serves in Sexual Abuse Response Teams (SARTs), locally and statewide.
7.11 This group ensures that each facility and JRC operated by the agency, or on behalf of the agency, will be audited at least once every three years in accordance with the federal PREA audit cycle.

7.12 Annually at facilities and JRCs without schedule federal PREA audit, this group conducts onsite mock audits that include documentation review.

8 Disciplining Employees, Contractors, Volunteers, and Student Interns
8.1 JJS is obligated to report all allegations of sexual abuse to law enforcement for possible investigation and/or prosecution.

8.2 Dismissal is the presumptive disciplinary action for employees engaged in substantiated incidents of sexual abuse. Disciplinary actions for lesser violations may not result in dismissal. Sanctions for lesser violations will include consideration of the following situations:
   - The nature and circumstances of the incident;
   - The employee’s disciplinary history; and
   - The sanctions previously imposed on employees with similar histories who engaged in comparable offenses.

8.3 JJS is obligated to inform any institution that requests an employment reference on a former employee of any substantiated sexual misconduct.

8.4 JJS reports substantiated sexual misconduct to relevant licensing agencies and oversight boards of Medical providers and BH clinicians who work in facilities.

8.5 JJS may end services of any contractors who refuse to participate in PREA-specific training or who are involved in sexual misconduct. JJS is obligated to report all allegations of sexual abuse to law enforcement. JJS reports sexual misconduct of contractors to relevant licensing agencies and oversight boards.

8.6 JJS may end services of any volunteers who refuse to participate in PREA-specific training or who are involved in sexual misconduct. JJS is obligated to report all allegations of sexual abuse to law enforcement. JJS reports sexual misconduct of volunteers to relevant volunteer agencies and oversight boards.

8.7 JJS may end services of any student interns who refuse to participate in PREA-specific training or who are involved in sexual misconduct. JJS is obligated to report all allegations of sexual abuse to law enforcement. JJS reports sexual misconduct of student interns to relevant educational institutions.

9 Consequences of Noncompliance
   An employee who fails to follow this Procedure may be subject to disciplinary action in accordance with the CYFD Code of Conduct.

10 Additional Documentation and Forms
   PREA Questions for Applicants
   PREA Questionnaire for Prior Institutional Employers
   Staffing Plan Assessment Tool
   Staffing Exception Log
11 Issue Date
   September 1, 2019

12 Effective Date
   October 1, 2019

13 Replaced Procedure
   P.5.24 A PREA Compliance – Employee Preparedness, 09/01/2016

14 Statutory Authority
   Prison Rape Elimination Act of 2003, 42 USC 15601 et seq.

15 Applicable Policy (Regulation)
   NMAC 8.14.5.24 Safety and Emergency Operations (Prison Rape Elimination Act)

16 Authorizing Signatures

Tamera Marcantel, Juvenile Justice Services Deputy Director for Facilities

Nick Costales, Juvenile Justice Services Deputy Director for Field Services

Brian Blalock, Cabinet Secretary of Children, Youth and Families Department