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	CHAPTER: 12 Youth Rights and Remedies	SUPERSEDES (Policy No. Name & Date): 12.12 Prison Rape Elimination Act (PREA) dated 9/23/16	
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1.0 PURPOSE


To outline the Hawaii Youth Correctional Facility's (HYCF) approach to ensure compliance with the Prison Rape Elimination Act ("PREA") of 2003, through the application of a zero-tolerance policy toward all forms of sexual abuse and sexual harassment in secure juvenile facilities confining juveniles under the auspices of the Office of Youth Services (OYS) including contracted community confining facilities.

This policy will outline HYCF's approach to preventing, detecting, and responding to sexual abuse and sexual harassment, while a youth offender is under the legal and physical custody of HYCF. HYCF will apply the PREA Standards to prevent, reduce, eliminate, investigate, provide treatment to victims, discipline and refer for prosecution any violators who commit sexual abuse and/or sexual harassment or retaliates against those that report sexual abuse and/or sexual harassment.

2.0 REFERENCES AND DEFINITIONS

.1 Reference:

- a. Hawaii Revised Statutes, Part V, Sexual Offenses, §707-730 Sexual assault in the first degree, §707-731 Sexual assault in the second degree, §707-732 Sexual assault in the third degree, §707-733 Sexual assault in the fourth degree, §707-733.6 Continuous sexual assault of a minor under the age of fourteen years, §707-734 Indecent exposure and §707-741 Incest
- b. Prison Rape Elimination Act (2003)
- c. Department of Justice, National Standards to Prevent, Detect, and Respond to Prison Rape, Final Standards, May 17, 2012
- d. §352-4, Hawaii Revised Statutes, Rules and Regulations
- e. §352-5, Hawaii Revised Statutes, Staff Standards and Training
- f. Title II of the Americans With Disabilities Act, 28 CFR 35.164
- g. Department of Human Services, DIRECTOR'S MEMORANDUM #13-01, Opportunities to Participate in Programs and Services, dated 1/16/13
- h. Section 703 of Title VII of the Civil Rights Act of 1964, as amended
- i. DHRD, Policy 701.002, Employee Related Personnel Files
- j. DHRD, Policy 702.003, Separation From Service
- k. DHRD, Policy 800.002, Workplace Violence Program
- l. Chapter 378, Part VI, Victims Protections, Hawaii Revised Statutes
- m. ACA Standard(s): 4-JCF-3A-02, 3D-02, 3D-03, 3D-04, 3D-05, 3D-06, 3D-07, 3D-08, 3D-09, 4C-50
- n. DHS Policy 4.10.3, Opportunities To Participate In Employment, Programs and Activities
- o. §350, Hawaii Revised Statutes, Child Abuse
- p. Violence Against Women Act and Department of Justice
- q. Reauthorization Act of 2005
- r. Standards for Health Services in Juvenile Detention and Confinement Facilities (2004), Y-A-13, Y-A-09, Y-A-08, Y-A-7, Y-A-01
- s. PREA Resource Center website at www.prearesourcecenter.org and review the "frequently asked questions (FAQs)."


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.2 Definitions:


a. General definitions [§115.5]

For purposes of this part, the term—

1. **Agency** means the unit of a State, local, corporate, or nonprofit authority, or of the Department of Justice, with direct responsibility for the operation of any facility that confines inmates, detainees, or residents, including the implementation of policy as set by the governing, corporate, or nonprofit authority.
2. **Agency head** means the principal official of an agency.
3. **Community confinement facility** means a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours.
4. **Contractor** means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency.
5. **Detainee** means any person detained in a lockup, regardless of adjudication status.
6. **Direct staff supervision** means that security staff are in the same room with, and within reasonable hearing distance of, the resident or inmate.
7. **Employee** means a person who works directly for the agency or facility.
8. **Exigent circumstances** means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.
9. **Facility** means a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals.
10. **Facility head** means the principal official of a facility.
11. **Full compliance** means compliance with all material requirements of each standard except for de minimis violations, or discrete and temporary violations during otherwise sustained periods of compliance.
12. **Gender nonconforming** means a person whose appearance or manner does not conform to traditional societal gender expectations.
13. **Intersex** means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

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14. **Jail** means a confinement facility of a Federal, State, or local law enforcement agency whose primary use is to hold persons pending adjudication of criminal charges, persons committed to confinement after adjudication of criminal charges for sentences of one year or less, or persons adjudicated guilty who are awaiting transfer to a correctional facility.
15. **Juvenile** means any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail.
16. **Juvenile facility** means a facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system.
17. **Medical practitioner** means a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified medical practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.
18. **Mental health practitioner** means a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified mental health practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.
19. **Pat-down search** means a running of the hands over the clothed body of an inmate, detainee, or resident by an employee to determine whether the individual possesses contraband.
20. **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.
21. **Resident** means any person confined or detained in a juvenile facility or in a community confinement facility.
22. **Secure juvenile facility** means a juvenile facility in which the movements and activities of individual residents may be restricted or subject to control through the use of physical barriers or intensive staff supervision. A facility that allows residents access to the community to achieve treatment or correctional objectives, such as through educational or employment programs, typically will not be considered to be a secure juvenile facility.
23. **Security staff** means employees primarily responsible for the supervision and control of inmates, detainees, or residents in housing units, recreational areas, dining areas, and other program areas of the facility.
24. **Staff** means employees.
25. **Strip search** means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person’s breasts, buttocks, or genitalia.
26. **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.


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27. **Substantiated allegation** means an allegation that was investigated and determined to have occurred.
28. **Unfounded allegation** means an allegation that was investigated and determined not to have occurred.
29. **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.
30. **Volunteer** means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.

b. **Definitions related to sexual abuse** [§115.6]

For purposes of this part, the term—

1. *Sexual abuse* includes—
 - (A) Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and
 - (B) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.
2. Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident 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:
 - (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 an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or 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

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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 (1)-(5) 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 an inmate, detainee, or resident, and
 - (H) Voyeurism by a staff member, contractor, or volunteer.
4. Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.
 5. *Sexual harassment* includes—
 - (A) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and
 - (B) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or 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.

3.0 POLICY

HYCF is committed to the safety of any resident assigned to the care of OYS/HYCF. OYS/HYCF shall maintain a zero-tolerance standard and will act to prevent and eliminate any sexual contact, harassment, abuse, assault or misconduct of any youth under the supervision or care of OYS/HYCF through proper screening, assessment, classification, housing, youth education, staff training, investigation and administrative discipline and/or prosecution of alleged sexual misconduct. [§115.311a]

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. This policy is intended to set forth the procedures to implementing and managing a “zero tolerance” policy.

PREA incidents based on sexual abuse or sexual harassment, including retaliation against individuals for reporting, if substantiated, shall be subject to the administrative disciplinary

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process. The PREA incident shall be referred for criminal investigation to the county Law Enforcement (LE), unless the allegation does not involve potentially criminal behavior.

Resident's under the custody of the OYS/HYCF are never regarded as being able to consent to any kind of inappropriate and/or non-professional relationship. No matter who initiates the contact or how "consensual" the relationship is, it is considered a rule violation by the resident if there is a finding that the staff member did not consent to such contact and an abuse of power by staff. OYS/HYCF will respond to all reports of sexualized behavior or abuse as nonconsensual, regardless of perception, rumor, appearance, or participant disclosure.


4.0 PROCEDURES

.1 ZERO-TOLERANCE

- a. HYCF has a zero-tolerance policy concerning all forms of sexual abuse and sexual harassment towards: (1) an resident by another resident, or (2) a staff member on an resident, in any HYCF facilities and any contracted facilities operating under direct control or under contract. All references to staff members will include contractors and volunteers. **[§115.311a]**
- b. 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.
- c. All reports of PREA incidents based on sexual abuse or sexual harassment, including retaliation against individuals for reporting, will be subject to the administrative disciplinary processes. The matter will be referred for investigation to the county law enforcement agency to conduct a criminal investigation, unless the allegation does not involve potentially criminal behavior.

.2 DEPARTMENT PREA COORDINATOR/PREA COMPLIANCE MANAGER

- a. The Executive Director has designated the Office of Youth Services (OYS) Program Specialist IV as the Department PREA Coordinator. In the event that the OYS Program Specialist IV position is vacant, the HYCF Deputy Youth Facility Administrator (DYFA) will fulfill the duties and responsibilities of the PREA Coordinator. The PREA Coordinator serves to fulfill the role of the an upper-level staff member with sufficient time and authority to develop, implement, and oversee HYCF's efforts to comply with the PREA standards in all of its facilities and contracted facilities. The Department PREA Coordinator reports to the Executive Director (EDIR) of the Office of Youth Services (OYS) and the Youth Facility Administrator (YFA) of the Hawaii Youth Correctional Facility (HYCF). **[§115.311b]**
- b. HYCF is not required to designate a PREA Compliance Manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards, which may be part of their other related duties since HYCF is the only Juvenile Correctional Facility operated by the agency. The Department PREA Coordinator will monitor the relevant PREA duties of the Facility PREA Compliance Manager(s) if one or more are assigned. **[§115.311c]**
 1. The Department PREA Coordinator and PREA Compliance Manager positions may be reviewed annually or at the discretion of the EDIR.


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.3 CONTRACTING WITH OTHER ENTITIES FOR THE CONFINEMENT OF OFFENDERS

- a. OYS mandates that any new contracts or contract renewals with private agencies or other entities for the confinement of HYCF's residents are required to adopt and comply with PREA, specifically the finalized PREA standards. **[§115.312a]**
- b. The private entity shall be subject to OYS/HYCF monitoring/audits as part of its contract with OYS to ensure compliance with the PREA Standards. **[§115.3112b]**
- c. The private entity is 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.

.4 SUPERVISION AND MONITORING

- a. The Department PREA Coordinator in conjunction with the Youth Facility Administrator (YFA) shall ensure that [each] facility develops, implements, documents, and make its best efforts to comply with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect residents against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration: **[§115.313a]**
 1. Generally accepted juvenile detention and correctional/secure residential practices;
 2. Any judicial findings of inadequacy;
 3. Any findings of inadequacy from Federal investigative agencies;
 4. Any findings of inadequacy from internal or external oversight bodies;
 5. All components of the facility's physical plant (including "blind-spots" or areas where staff or residents may be isolated);
 6. The composition of the resident population;
 7. The number and placement of supervisory staff;
 8. Institution programs occurring on a particular shift;
 9. Any applicable State or local laws, regulations, or standards;
 10. The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
 11. Any other relevant factors.
- b. HYCF shall comply with the staffing plan except during limited and discrete exigent circumstances, and shall fully document deviations from the plan during such circumstances by:
 1. Notation in the Cottage/Unit Log of the discrepancy in staff to resident ratio with the period of time and how the discrepancy was handled (i.e., Staff ratio 1:9 @ 1400 hours.)
 2. Notation in the Central Control Log of the discrepancy in staff to resident ratio with the period of time, with reason for discrepancy and how the discrepancy was


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handled (i.e., Module A, Staff ratio 1:9 @ 1400 hours due to one staff being reassigned to 1:1 due to new intake and no response for overtime).

3. Completing the HYCF 200 Incident form for every instance of deviation to be submitted to the PREA Coordinator by the end of the shift in the PREA designated locked box at Central Control. [\[§115.313b\]](#)
- c. HYCF shall 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 shall be fully documented. Only direct care staff shall be included in these ratios. Control Room Officer(s), support staff or supervisors are not included in these ratios. [\[§115.313c\]](#)
- d. The YFA shall review the facility staffing plan annually in the month of July, at the start of the fiscal year, and submit his/her assessment to the Department PREA Coordinator via email, fax, or mail by the end of the month. The review shall consist of assessing, determining, and documenting whether adjustments are needed to: [\[§115.313d\]](#)
 1. The staffing plan established pursuant to paragraph (a);
 2. Prevailing staffing patterns;
 3. The facility's deployment of video monitoring systems and other monitoring technologies; and
 4. The resources the facility has available to commit to ensure adherence to the staffing plan.
- e. The YFA shall ensure that correctional supervisors conduct and document unannounced walk-throughs on all watches to aid in identifying and deterring staff sexual abuse and sexual harassment. This shall be documented in the housing unit Log Book, Central Control Log Book and the HYCF Physical Plant Vulnerability Assessment Form. [\[§115.313e\]](#)
- f. HYCF staff are prohibited from alerting other staff of the above unannounced walk-throughs by superiors, unless such an announcement is related to the legitimate operational functions of the facility. [\[§115.313e\]](#)


.5 LIMITS TO CROSS-GENDER VIEWING AND SEARCHES

- a. HYCF staff shall not conduct cross-gender strip searches 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. [\[§115.315a\]](#)
- b. HYCF staff shall not conduct cross-gender pat-down searches of either male or female residents, absent exigent circumstances. [\[§115.315b\]](#)
 1. Whenever a cross-gender strip search, cross-gender visual body cavity search, and cross-gender pat-down search occurs, staff shall document the incident in the Cottage log with date, time, name of resident, name of staff conducting search and justification for the cross-gender search. The Cottage YCS or AYCS shall complete a HYCF 200 Incident Report form with the same information recorded in the cottage log book and submit through the proper channels with a

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copy to the PREA Coordinator through the PREA box located at Central Control by the end of the shift. **[§115.315c]**

2. HYCF staff shall not restrict resident access to regularly available programming or other out-of-cell opportunities in order to comply with this provision. Should a resident be restricted by staff due to exigent circumstance, the Cottage YCS or Acting YCS shall complete a HYCF 200 Incident Report form documenting the exigent circumstance and note the date, time, description of exigent circumstance, activities restricted and length of time restricted. The incident shall also be recorded in the cottage log book and the incident report submitted through the proper channels with a copy to the PREA Coordinator through the PREA box located at Central Control by the end of the shift.
- d. Residents will be 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 checks. **[§115.315d]**
- e. Staff of the opposite gender are required to announce their presence when entering an area where a resident are likely to be showering, performing bodily functions, or changing clothing. For example, a male staff is entering the secured cell area of the female resident in a female housing unit to conduct cell checks or headcounts, he must announce his presence via an intercom or a verbal broadcast and ensure that this notice is logged in the Cottage Log Book. **[§115.315d]**
1. Whenever a resident is placed on "Precautionary Direct Supervision" or "one-to-one" (HYCF Policy 10-G-07 Suicide Prevention), HYCF shall ensure that the direct supervision staff is of the same gender, except in exigent circumstances where all attempts to meet this requirement have failed.
 - A. If exigent circumstances exist, document the circumstances in the Central Control log if in the secured lock-up cell and/or in the Cottage log if in the housing unit cell. Complete a HYCF 200 Incident Report form with date, time, resident being supervised, staff supervising the resident and explanation of the exigent circumstance. Submit the Incident Report through the proper channels and a copy to the PREA Coordinator by the end of the shift in the PREA designated locked box at Central Control.
 - B. Corrections Supervisor 1 (CS1) shall review each incident to confirm exigent circumstances.
- f. HYCF staff shall not search or physically examine a transgender or intersex resident for the sole purpose of determining the residents genital status. **[§115.315e]**
 1. In situations where the residents genital status is unknown, staff shall seek to determine the status by conversing 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]**
- g. HYCF staff are to ensure that cross-gender pat-down searches and 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]**

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.6 RESIDENTS WITH DISABILITIES AND RESIDENTS WHO HAVE LIMITED ENGLISH PROFICIENCY

- a. HYCF staff shall ensure that resident with disabilities (including, for example, residents who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the HYCF's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. **[§115.316a]**
 1. HYCF shall solicit and procure, free of charge, appropriate services to 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, both receptively and expressively, using any necessary specialized vocabulary. **[§115.316a]**
 - A. Services solicited and/or procured shall be in accordance with the Department of Human Services, DIRECTOR'S MEMORANDUM #17-01, Opportunities to Participate in Programs and Services, dated 1/12/17, or the most current directive; and Section 703 of Title VII of the Civil Rights Act of 1964, as amended.
 2. HYCF shall ensure that written materials are provided in formats or through methods that ensure effective communication with residents with disabilities, including youths who have intellectual disabilities, limited reading skills, or who are blind or have low vision. **[§115.316a]**
 3. HYCF shall ensure that the nature of a service, program, or activity, complies with the terms or regulations promulgated in Title II of the Americans With Disabilities Act, 28 CFR 35.164. **[§115.316a]**
- b. HYCF shall take reasonable steps to ensure meaningful access to all aspects of the HYCF's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to residents who are Limited English Proficient (LEP), including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. **[§115.316b]**
 1. Upon identifying a resident with special needs under this section, the assigned social worker shall solicit and procure, free of charge, appropriate services, to interpret any speech, pamphlet, poster, video, etc. to ensure the LEP resident is orientated to PREA.
- c. HYCF shall not rely on resident interpreters, resident readers, or other types of resident/youth assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise a residents safety, the performance of first-response duties under § 4.25 of this policy, or the investigation of the residents allegations. **[§115.316c]**
 1. In the limited circumstances where resident interpreters, or other types of resident assistance are utilized, it shall be documented on a HYCF 200 Incident Report form and a copy forwarded to the PREA Coordinator through the PREA box located at Central Control by the end of the shift.

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.7 HIRING AND PROMOTION DECISIONS

- a. HYCF shall not hire or promote anyone who may have contact with residents, and shall not enlist the services of any contractor who may have contact with residents , if that person: **[§115.317]**
 1. Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997), for example the Hawaii State Hospital or other State 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, 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 activity described in paragraphs above (a)(1 & 2) of this section. **[§115.317a]**
- b. HYCF shall 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 residents; **[§115.317b]**
- c. Before hiring new employees, contractors, or volunteers, who may have contact with residents, the HYCF shall: **[§115.317c/d]**
 1. Perform a criminal background records check, consistent with Federal, State, and local law;
 2. Make “best effort” to consult any child abuse registry maintained by the State or locality in which the employee would work; and
 3. Consistent with Federal, State, and local law, make its “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. HYCF will make its best efforts to conduct criminal background records checks yearly but shall conduct criminal background records checks at least every five years of current employees, contractors and volunteers who may have contact with residents. **[§115.317e]**
- e. HYCF shall ask all applicants and employees who may have contact with residents directly about previous misconduct described in paragraph (a) of this section in: **[§115.317e]**
 1. written applications;
 2. interviews for hiring;
 3. in any promotional interviews; or
 4. as part of an annual performance evaluation review.
- f. All HYCF staff have an affirmative duty to immediately disclose any such misconduct by immediately reporting any type of misconduct as related in paragraphs (a) (1-3) to the YFA through their chain of command. **[§115.317f]**

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- h. Any HYCF staff, who materially omits reporting such misconduct or provides materially false information shall be subject to discipline based on the just and proper cause standard, up to and including discharge. See Department of Human Resources, Policy 702.003, Separation From Service. [\[§115.317g\]](#)
- i. Unless prohibited by law, HYCF shall 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 conducting a background check on the employee with a signed consent to release information form. See Department of Human Resources, Policy 701.002, Employee Related Personnel Files. [\[§115.317h\]](#)
 1. If the Department Personnel Officer receives such a request from an institutional employer, the request will be forwarded to the Department PREA Coordinator Office for review and drafting of a response.

.8 UPGRADES TO FACILITIES AND TECHNOLOGY


- a. When designing or acquiring any new facility, and in planning any substantial expansion or modification of existing facilities, HYCF shall consider the impact that the design, acquisition, expansion, or modification will have on HYCF's ability to protect residents from sexual abuse. [\[§115.318a\]](#)
- b. When installing or updating a video monitoring system, electronic surveillance system, close circuit television (CCTV), or other monitoring technology, HYCF shall consider how such technology may enhance the HYCF's ability to protect residents from sexual abuse. [\[§115.318b\]](#)

.9 EVIDENCE PROTOCOL AND FORENSIC MEDICAL EXAMINATIONS

- a. HYCF is responsible for conducting all administrative sexual abuse investigations. All criminal sexual abuse investigations shall be referred to the appropriate county law enforcement (LE) agency (Honolulu Police Department, Hawaii Police Department, Maui Police Department, and Kauai Police Department).
- b. If county LE declines to investigate the initial report related to a criminal case, then a referral shall be made to the State of Hawaii, Department of the Attorney General (AG) to investigate the criminal case. HYCF staff are required to cooperate with the county LE's or AG's criminal investigation. HYCF staff shall be afforded protections based on Garrity Warnings in the administrative investigation, if the facts warrant a criminal investigation.
- c. HYCF utilizes evidence protocols that maximize the potential for obtaining usable physical evidence for administrative proceedings and preserves the crime scene for county law enforcement's criminal prosecutions. [\[§115.321a\]](#)
- d. HYCF does not perform Sexual Assault Medical Forensic Evaluations. Upon receiving a report alleging sexual abuse and/or assault, HYCF Medical First responders shall stabilize the victim while using "best efforts" to preserve forensic evidence and use developmentally appropriate protocols while assisting the victim. [\[§115.321b\]](#)

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1. Health Care Staff shall make the determination for transport to a hospital emergency unit and method of transportation.
2. Emergency personnel will make the determination for transport directly to the Sex Abuse Treatment Center at the Kapi'olani Medical Center for Women & Children Emergency room for a rape analysis, (rape kit) or any other health care facility. **[§115.321b,c]**
3. HYCF shall offer all residents who experience sexual abuse access to forensic medical examinations, without financial cost, where evidentiarily or medically appropriate. **[§115.321c]**
4. HYCF shall attempt to make available to the victim a victim advocate from the SATC. If the SATC is not available to provide victim advocate services, HYCF shall make available to provide these services a qualified staff member from a community-based organization or a qualified FCLB staff member. **[§115.321d]**
5. HYCF shall document efforts to secure services from the rape crisis center. For the purpose 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]**
6. Health Care Services Staff shall inform the Youth Facility Administrator, (YFA) and the Executive Director, (EDIR) of the allegation of sexual abuse and/or assault before sending the residents to the Emergency Room or Kapi'olani Medical Center for Women & Children Emergency room for a rape analysis, (rape kit) or any other Health care.
7. Health Care Services Staff shall contact the Sex Abuse Treatment Center (SATC), to inform them of the possible pending arrival of a resident who has reported being the victim of a sexual assault.
- e. The use of Sexual Assault Forensic Examiners ("SAFEs") or Sexual Assault Nurse Examiners ("SANEs") shall be utilized at the SATC. If a SAFE or SANE is not available, the examination may be performed by other qualified medical practitioners. SATC utilizes victim advocates and HYCF Health Care and FCLB Mental Health practitioners shall follow-up on the prescribed treatment plan or develop a treatment plan. **[§115.321c]**
- f. At the request and approval of the victim, a victim advocate from SATC will support the victim through the forensic medical examination process and investigatory interviews to provide emotional support, crisis intervention, information, and referrals. **[§115.321e]**
- g. Upon conducting an administrative investigation and/or referral to an appropriate agency for investigating allegations of sexual abuse, HYCF shall request that the investigating agency follow the requirements of paragraphs (a) through (e) and any subparagraphs of this section. **[§115.321f]**
1. The PREA Coordinator shall be responsible for quality assurance and adherence to protocols of paragraphs (a) through (f) of this section. **[§115.321g,h]**

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.10 POLICIES TO ENSURE REFERRALS OF ALLEGATIONS FOR INVESTIGATIONS

- a. HYCF ensures that an administrative investigation and a referral for criminal investigation are completed for all allegations of sexual abuse and sexual harassment with the limitation that any criminal referral for sexual harassment must meet a criminal standard. **[§115.322a]**
- b. In the event of allegations of sexual abuse and/or sexual harassment, HYCF staff shall complete the HYCF-200 Incident Report form and the HYCF PREA Incident Response Checklist (HYCF 401) for all allegations of sexual abuse and sexual harassment and contact the YFA and/or the EDIR. These forms shall be completed and submitted to the PREA Coordinator either directly or via the PREA Box at Central Control before the end of the shift. **[§115.322a]**
- c. If an allegation of sexual abuse or sexual harassment involves potentially criminal behavior, the allegation shall be immediately referred to a county law enforcement agency. **[§115.322b]**
- d. OYS will publish the HYCF Policy 12.12; Prison Rape Elimination Act on the official department website. **[§115.322b]**
- e. YFA shall make an official request for investigation of any allegation of sexual abuse or potentially serious incident of sexual harassment to the EDIR. The administrative investigation may be completed by an investigator assigned by OYS, referred to the Attorney General's Office or at the facility level pursuant to the EDIR's or his/her designee's instructions.
- f. County law enforcement have their own policy governing how criminal investigations of sexual abuse are conducted. HYCF does not manage criminal investigations for sexual abuse or criminal sexual harassment. **[§115.322c,d]**
- g. HYCF does not have any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in juvenile facilities at present. **[§115.322e]**

.11 EMPLOYEE TRAINING

HYCF provides a comprehensive training module for all employee's emphasizing HYCF's zero-tolerance policy and the importance of preventing sexual assault and sexual harassment toward residents. HYCF educates staff about the serious impact of youth sexual victimization within an institutional setting.


- a. All HYCF employees, who may have contact with youth, are trained on: **[§115.331a]**
 1. HYCF's zero-tolerance policy for offender sexual abuse and sexual harassment;
 2. How to fulfill their responsibility under HYCF sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
 3. Residents rights to be free from sexual abuse and sexual harassment;
 4. The right of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment;

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5. The dynamics of sexual abuse and sexual harassment in juvenile facilities;
 6. The common reactions of juvenile victims of sexual abuse and sexual harassment;
 7. 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 residents;
 8. How to avoid inappropriate relationships with residents based on staff over familiarity and fraternization;
 9. How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents;
 10. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities; and
 11. Relevant laws regarding the applicable age of consent.
- b. HYCF training shall be tailored to the unique needs and attributes of juvenile's and to the gender of the residents at the facility. All HYCF employees shall be trained universally to facilitate assignments supervising male or female residents.
[§115.331b]
 - c. HYCF shall train all current employees who have not received such training and shall provide each employee with refresher training at least every two years. [§115.331c]
 - d. HYCF shall provide refresher information on current sexual abuse and sexual harassment policies annually for all employees who work directly with residents.
[§115.331c]
 - e. HYCF training sign-in sheets shall verify that the employee received and understood the PREA training. [§115.331d]
 1. HYCF Training Unit shall maintain documentation to substantiate that employees have completed the required training; [§115.331d]
 2. Documentation shall be noted in the employee's official personnel file at DHS; and [§115.331d]
 3. A copy shall be provided to the PREA Coordinator within three (3) working days of completion of training. [§115.331d]

.12 VOLUNTEER AND CONTRACTOR TRAINING


- a. All volunteers and contractors who have contact with residents will be trained on their responsibilities under HYCF's PREA policy regarding the prevention, detection, and response to offender sexual abuse and sexual harassment. [§115.332a]
- b. The level and type of training provided to volunteers and contractors will be tailored to the level of contact and services provided to resident offenders. [§115.332b]
- c. All current and future volunteers and contractors shall be informed of HYCF's zero-tolerance policy regarding residents sexual abuse and sexual harassment, as well as how to report such incidents. [§115.332b]

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- d. HYCF will maintain documentation confirming that volunteers and contractors received an appropriate level of training and they understood the information provided. **[§115.332c]**
 1. A copy of this documentation shall be maintained with the HYCF Training Unit, , and the HYCF PREA Coordinator. **[§115.332c]**
 2. A copy shall be provided to the PREA Coordinator within three (3) working days of completion of training.
- e. The HYCF PREA Coordinator shall coordinate with the HYCF Training Unit to ensure that all volunteers and contractors are trained on HYCF's zero-tolerance policy regarding residents sexual abuse and sexual harassment and are trained on how to report such incidents.

.13 YOUTH EDUCATION

- a. During the intake process, residents shall receive information explaining, in an age appropriate fashion, the HYCF'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]**
- b. Within 10 days of intake, HYCF shall provide comprehensive age-appropriate education to residents either in person or through video regarding: **[§115.333b]**
 1. their rights to be free from sexual abuse and sexual harassment;
 2. to be free from retaliation for reporting such incidents; and
 3. regarding HYCF policies and procedures for responding to such incidents.
- c. HYCF shall make "best efforts" to educate all current residents within one year of the effective date of the PREA standards, and residents shall receive education upon transfer to a different facility to the extent that the policies and procedures of the residents new facility differ from those of the previous facility. **[§115.333c]**
- d. HYCF shall provide education to residents in formats accessible to all residents , including those who are Limited English Proficient, deaf, visually impaired, or otherwise disabled, as well as to residents who have limited reading skills. **[§115.333d]**
 1. HYCF shall make appropriate provisions, as necessary, for residents with Limited English Proficiency through the DHS Civil Rights Office that provides a listing of authorized interpreters.
 2. Accommodations shall be made for residents with disabilities (including residents who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities) and residents with low literacy levels through services provided by DHS, another state or county agency, a contracted agency or free of charge from a private or non-profit organization.
 3. Whenever specialized services are offered, refused and/or provided to residents, the assigned social worker will document the offer made, refusal and/or services

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provided on the appropriate form and a copy shall be forwarded to the PREA Coordinator via the PREA box located at Central Control within three (3) days.


- e. HYCF shall maintain documentation of residents participation in these education sessions. This documentation shall be forwarded to the PREA Coordinator via the PREA box located at Central Control within three (3) days and a copy placed in the residents institutional file. [\[§115.333e\]](#)
- f. HYCF shall ensure that key information on HYCF's PREA policies are continuously and readily available or visible through posters, the resident handbooks, and other resources in other written formats (i.e., An End To Silence series of comics through The Washington College of Law). [\[§115.333f\]](#)

.14 SPECIALIZED TRAINING FOR SEXUAL ABUSE INVESTIGATIONS

- a. The EDIR 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 § 4.11 of this policy, OYS investigators shall receive specialized training on conducting sexual abuse investigations in confinement settings. [\[§115.334a\]](#)
- b. HYCF's specialized training will include techniques for interviewing sexual abuse victims, proper use of Miranda (not applicable) and Garrity warnings, preserving sexual abuse evidence for collection in confinement settings, and an understanding of the criteria and evidence required to substantiate a case in an administrative proceeding or for a referral by a county LE agency for criminal prosecution. [\[§115.334b\]](#)
- c. HYCF will maintain documentation substantiating that OYS investigators have completed the required specialized training and it will be documented on the staff member's training record with HYCF and DHS. A copy will also be provided to the PREA Coordinator either directly or via email, fax, or placed in the PREA box located at Central Control within three (3) days. [\[§115.334c\]](#)
- d. OYS/HYCF investigator(s) may comply with this provision through the webinars for Specialized PREA Investigations Training offered at the PRC website and the National Institute of Corrections website and/or through other means that become available. [\[§115.334d\]](#)

.15 SPECIALIZED TRAINING: MEDICAL AND MENTAL HEALTH CARE


- a. All full-time, part-time and contract medical and mental health care practitioners, who work regularly in HYCF shall be trained in: [\[§115.335a\]](#)
 1. How to detect and assess signs of sexual abuse and sexual harassment;
 2. How to preserve physical evidence of sexual abuse;
 3. How to respond effectively and professionally to juvenile victims of sexual abuse and sexual harassment; and
 4. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

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- b. HYCF medical and mental health staff and contract workers are not responsible for conducting forensic examinations. **[§115.335b]**
- c. HYCF shall 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 HYCF Training Unit and DHS Personnel file if a state employee. A copy will also be provided to the PREA Coordinator via the PREA box located at Central Control within three (3) days. **[§115.335c]**
- d. Medical and mental health care practitioners shall receive the training mandated for employees under § 4.11 or § 4.12 of this policy, based on the practitioner's status. **[§115.335d]**

.16 SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS


- a. Within 72 hours of a residents arrival at HYCF, HYCF staff conducting the intake/orientation shall assess each youth for risk of sexual victimization or sexual abusiveness toward other resident by obtaining and using information about each youth's personal history and behavior to reduce the risk of sexual abuse by or upon another resident. **[§115.341a]**
- b. HYCF staff shall utilize an objective screening instrument to conduct the assessment. **[§115.341b]**
- c. At a minimum, HYCF shall attempt to ascertain information about: **[§115.341c]**
 1. Prior sexual victimization or abusiveness;
 2. Any gender nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender, or intersex, and whether the resident may therefore be vulnerable to sexual abuse;
 3. Current charges and offense history;
 4. Age;
 5. Level of emotional and cognitive development;
 6. Physical size and stature;
 7. Mental illness or mental disabilities;
 8. Intellectual or developmental disabilities;
 9. Physical disabilities;
 10. The residents own perception of vulnerability; and
 11. Any other specific information about individual resident that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other residents.
- d. This information shall be ascertained through conversations with the resident:
 1. during the intake process and medical and mental health screenings;
 2. during classification assessments; and

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3. by reviewing court records, case files, facility behavioral records, and other relevant documentation from the residents file(s).
- e. Residents shall not be forced or disciplined for refusing to answer, or for not disclosing complete information related to, the questions asked pursuant to § 4.16.c of this policy.
- f. HYCF shall periodically review each residents institutional record throughout the residents confinement, consistent with the monthly continuing case plan review, or when a referral, request, incident of sexual abuse, or receipt of additional information that may impact the risk level of sexual abuse by or upon a resident. **[§115.341a]**
- g. HYCF shall control the dissemination of the information obtained from the screening instrument. Professional and ethical rules will be enforced to avoid any negative impact to the resident. The information should not be exploited to the residents detriment by staff or other residents. **[§115.341e]**
 1. Controls shall include but may not be limited to staff training on:
 - A. confidentiality, and;
 - B. victim advocacy.

.17 HOUSING, BED, PROGRAM, EDUCATION AND WORK ASSIGNMENTS


- a. HYCF shall use all information obtained pursuant to § 4.16 to make housing, bed, program, education, and work assignments for youth with the goal of keeping all youth safe and free from sexual abuse. **[§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]**
 1. Isolation shall be in accordance with the Administrative Respite and Transition (ART) Program;
 2. Length in the ART program shall only be until an alternative means of keeping all residents safe can be arranged. **[§115.342b]**
 - A. While in ART program or another form of isolation, residents shall not be denied daily large-muscle exercise, legally required educational programming, special education services or religious rights (these services may be provided separate from the general population). **[§115.342b]**
 - B. Medical or mental health care staff shall visit and assess the resident daily. **[§115.342b]**
 - C. Residents shall also have access to other programs and work opportunities to the extent possible while maintaining a safe environment for all residents. **[§115.342b]**
- c. Lesbian, gay, bisexual, transgender, or intersex residents shall not be placed in particular housing, bed, or other assignments solely on the basis of such identification or status, nor shall their identification or status be used as an indicator of likelihood of being sexually abusive. **[§115.342c]**

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- d. Housing and programming assignments for lesbian, gay, bisexual, transgender, or intersex residents shall be on a case-by-case basis to ensure the residents health and safety, while considering facility management and/or security concerns. [§115.342d]
- e. Placement and programming assignments for each transgender or intersex resident shall be reassessed monthly or at least twice each year to review any threats to safety experienced by the resident. [§115.342e]
 1. The Treatment Team shall discuss and document on the residents Continuous Case Plan (CCP) or equivalent document, the status and any changes.
- f. Staff shall respect the opinion and views of a transgender or intersex residents in regard to his or her own safety and shall give serious consideration to their requests while ensuring their health and safety and the good management and orderly running of the facility. [§115.342f]
- g. HYCF staff shall provide the opportunity for transgender and intersex residents to shower separately from other residents in dorm shower situations, if so requested. [§115.342g]
- h. Whenever a resident is segregated pursuant to paragraph (b) of this section, HYCF shall clearly document: [§115.342h]
 1. The basis for the concern for the residents safety; and
 2. The reason why no alternative means of separation can be arranged.
 - A. At least every 30 days, the facility shall afford each resident described in paragraph (h) of this section a review to determine whether there is a continuing need for separation from the general population.
 - B. This review shall be conducted at the scheduled monthly Treatment Team meeting and shall be documented on the continuous case plan or other appropriate document with a copy provided to the resident.

.18 YOUTH REPORTING

- a. HYCF provides multiple internal ways for residents to privately report sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents: [§115.351a]
 1. Residents may report non-consensual sexual acts, abusive sexual contacts, staff sexual misconduct, or staff sexual harassment to any HYCF employee, DOE employee, FCLB employee, contract employee or volunteer using available methods of communication, including but not limited to verbal or written reports.
 2. Youth may write a note, letter, memogram, etc. on any form of writing material and submit it to the PREA Coordinator confidentially by placing it in the box designated as PREA fronting the Central Control in SCF or in a sealed envelope addressed to "PREA" and placed in the grievance box located throughout the facility.
 3. Residents may also utilize the Grievance procedure.

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- b. HYCF provides education to residents on how to report abuse or harassment to a public entity, private entity, or an external agency, who is able to receive and immediately forward residents reports of sexual abuse and sexual harassment to agency officials, allowing offenders to remain anonymous upon request. **[§115.351b]**
 1. Should a resident be detained at HYCF solely for civil immigration purposes, he or she shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security. **[§115.351b]**
 2. Residents, staff, and others may report incidents of sexual abuse, sexual harassment, and retaliation for reporting by:
 - A. Contacting the Ombudsman at 808-587-0770 or at 465 South King Street 4th Floor, Honolulu, HI 96813; a Legislative or Political Representative (at their office address), or the Department of the Attorney General at 808-586-1500 or at 425 Queen Street, Honolulu, HI 9613;
 - B. Writing a note, letter, memogram, etc. on any form of writing material and mailing it to the PREA Coordinator at HYCF or submitting it to the PREA Coordinator confidentially by placing it in the box designated as PREA fronting the Central Control in SCF or in a sealed envelope addressed to "PREA" and placed in the grievance box located throughout the facility;
 - C. Contacting the EDIR, YFA, Deputy YFA, or the Facility Investigator at 42-470 Kalanianaʻole Hwy, Kailua, HI 96734;
 - D. Notifying a family member who can initiate a telephone call or a letter to Key Staff indicated above;
 - E. Filing an Emergency Youth Grievance Complaint, or;
 - F. Contacting the Sex Abuse Hotline at 524-7273 or at 55 Merchant Street, 22nd Floor, Honolulu, HI 96813. This call shall be facilitated by staff in a confidential manner and without reservation.
- c. HYCF mandates that all staff accept reports of sexual assault and sexual harassment made verbally, in writing, anonymously, and from third parties. All Staff shall immediately document all verbal reports of sexual assault or sexual harassment and notify superiors through the chain of command. **[§115.351c]**
 1. Initial documentation shall be on the HYCF-200 Incident Reporting form.
 2. The HYCF PREA Incident Response Checklist (Form HYCF 401) shall also be completed and copies of both forms shall be forwarded to the PREA Coordinator either directly or via the PREA box located at Central Control by the end of the shift.
- d. Staff shall provide residents with access to tools necessary to make a written report and provide assistance if requested. **[§115.351d]**
 1. Residents may request to have staff transcribe his or her verbal report;
 - A. Staff shall assist youth ensuring confidentiality and anonymity to the best of their ability.


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B. Residents with LEP or disabilities shall be afforded appropriate services, free of cost, to assist in transcribing his or her report. (Refer to § 4.6 above)

- e. Staff may privately report sexual abuse and sexual harassment of residents as indicated in § 4.18.b.2 above. [\[§115.351e\]](#)


.19 EXHAUSTION OF ADMINISTRATIVE REMEDIES

- a. The grievance process outlines the administrative procedure available to residents for reporting incidents of sexual abuse, sexual harassment, or retaliation. [\[§115.352a\]](#)
- b. There shall be no time limit on when a resident may submit a grievance regarding an allegation of sexual abuse. [\[§115.352b\(1\)\]](#)
- c. HYCF may apply otherwise-applicable time limits on any portion of a grievance that does not allege an incident of sexual abuse in accordance with grievance procedures. [\[§115.352b\(2\)\]](#)
- d. Staff shall not require a resident to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse. [\[§115.352b\(3\)\]](#)
- e. The relevant legal provisions applicable to the statute of limitations shall supersede this section as it relates to the administrative filing requirements for a civil action in any court proceeding. [\[§115.352b\(4\)\]](#)
- f. HYCF shall ensure that provisions are made for a resident to submit a grievance without submitting it to the staff member who is the subject of the complaint. [\[§115.352c\(1\)\]](#)
 1. Residents shall be permitted to submit a grievance through any HYCF staff member who shall then process the grievance.
 2. Residents shall be permitted to submit a grievance anonymously by placing the grievance in a secured grievance box at various locations throughout the facility.
- g. HYCF shall ensure that a grievance shall not be referred to the staff member who is the subject of the complaint. [\[§115.352c\(2\)\]](#)
 1. The grievance officer/staff member assigned to retrieve grievances from the secured grievance boxes shall ensure that a grievance regarding an allegation of sexual abuse is forwarded directly to the YFA or designee for proper action.
 2. At no time shall the grievance be referred to the staff member, who is the subject of the grievance complaint.
- h. HYCF shall ensure that a final decision on the merits of any grievance or portion of a grievance alleging sexual abuse be made within 90 days of the initial filing of the grievance. [\[§115.352d\(1\)\]](#)
 1. The 90-day time period shall not include time consumed by residents in preparing any administrative appeal. [\[§115.352d\(2\)\]](#)
- i. HYCF 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. HYCF shall notify

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the resident in writing of any such extension and provide a date by which a decision will be made. [\[§115.352d\(3\)\]](#)

- j. 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. [\[§115.352d\(4\)\]](#)
- k. Third parties, including fellow residents, staff members, family members, attorneys, and outside advocates, shall be permitted to assist residents in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of residents. [\[§115.352e\(1\)\]](#)
- l. If a third party, other than a parent or legal guardian, files a request on behalf of a resident, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process. [\[§115.352e\(2\)\]](#)
- m. If the resident declines to have the request processed on his or her behalf, HYCF shall document the residents decision on the HYCF Third Party Waiver form, which shall be forwarded to the PREA Coordinator via email, fax, or placed in the PREA box located at Central Control within three (3) days. [\[§115.352e\(3\)\]](#)
- n. A parent or legal guardian of a resident shall be allowed to file a grievance regarding allegations of sexual abuse, including appeals, on behalf of such resident. [\[§115.352e\(4\)\]](#)
 1. There shall be no conditions placed on the resident agreeing to have the request filed on his or her behalf. [\[§115.352e\(4\)\]](#)
- o. Residents shall be able to file an Emergency Youth Grievance Complaint (expedited grievance) whenever the resident is subject to a substantial risk of imminent sexual abuse. [\[§115.352f\(1\)\]](#)
 1. After receiving an emergency grievance alleging a resident is subject to a substantial risk of imminent sexual abuse, staff shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to the Youth Facility Administrator or designee, where immediate corrective action may be taken.
 2. The YFA shall provide an initial response within 48 hours of receipt of the grievance or verbal notification, and shall issue a final decision within 5 calendar days.
 3. The initial response and final decision shall document the HYCF's determination whether the resident is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance. [\[§115.352f\(2\)\]](#)
- p. HYCF may discipline a resident for filing a grievance related to alleged sexual abuse or sexual harassment, when HYCF demonstrates that the resident filed the grievance in bad faith. [\[§115.352g\]](#)


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.20 RESIDENT ACCESS TO OUTSIDE CONFIDENTIAL SUPPORT SERVICES

- a. HYCF shall 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 where available) for local, state, or national victim advocacy or rape crisis organizations.
 2. Providing residents with mailing addresses and telephone numbers (including toll-free hotline numbers where available) for immigrant services agencies for person 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 running of the facility.
- b. HYCF staff and/or medical or mental health staff shall inform residents, prior to giving them access to outside support services, of the extent to which such communications will be monitored. **[§115.353b]**
 1. HYCF shall 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, state, or local law.
- c. HYCF shall 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. HYCF shall maintain copies of agreements or documentation showing attempts to enter into such agreements. **[§115.353c]**
- d. HYCF shall provide residents with reasonable and confidential access to their attorneys or other legal representation and reasonable access to parents or legal guardians. **[§115.353d]**

.21 THIRD-PARTY REPORTING

- a. OYS/HYCF may receive sexual abuse and sexual harassment reports from third-party sources such as residents family members or the public. **[§115.354]**
 1. Any receipt of third-party reports of residents sexual abuse and sexual harassment shall be forwarded to the YFA or designee.
 2. HYCF shall publically distribute information on how to report sexual abuse or sexual harassment on behalf of residents by: **[§115.354]**
 - A. Providing the information as an attachment to the parent letter sent to all parents or legal guardians upon the intake of a resident, and;
 - B. Making this information available on the Department of Human Services Website.
 1. <http://humanservices.hawaii.gov/>

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3. Third-party reports may also be submitted anonymously directly to:

A. The Office of Youth Services Executive Director;

Princess Victoria Kamamalu Building
1010 Richards Street, Suite 314 , Honolulu, Hawaii 96813
Phone: (808) 587-5710
Email: mchinen@dhs.hawaii.gov

B. The Youth Facility Administrator;

Office: 42-470 Kalanianaʻole Hwy.
Kailua, Hawaii 96734
Phone: (808) 266-9500
Cell: (808) 228-8295
Email: mpatterson@dhs.hawaii.gov

C. The Attorney General's Office;

Department of the Attorney General
425 Queen Street
Honolulu, HI 96813
Telephone: (808) 586-1500
Fax: (808) 586-1239
Email: <http://ag.hawaii.gov/contact-us/email-the-department-of-ag/>

D. The OYS/HYCF Investigator:

Princess Victoria Kamamalu Building
1010 Richards Street, Suite 314 , Honolulu, Hawaii 96813
Phone: (808) 587-5700

E. The Deputy Youth Facility Administrator;


Office: 42-470 Kalanianaʻole Hwy.
Kailua, Hawaii 96734
Phone: (808) 266-9531
Cell: (808) 683-6617
Email: rmello@dhs.hawaii.gov

F. The Ombudsman;

Office of the Ombudsman
465 South King Street, 4th Floor
Honolulu, Hawaii 96813
Telephone: (808) 587-0770
Facsimile: (808) 587-0773
TTY: (808) 587-0774
e-mail: complaints@ombudsman.hawaii.gov

Neighbor island residents may call us using the following toll-free numbers:

Hawaii: 974-4000
Maui: 984-2400

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Kauai: 274-3141


Molokai/Lanai: 1-800-468-4644

Upon dialing the appropriate number for your island, you will be asked to enter the extension number. Our telephone extension is 7-0770, our fax extension is 7-0773, and our TTY extension is 7-0774


- G. The Honolulu Police Department, phone: 911;
- H. The Sex Abuse Hotline at 524-7273. This call shall be facilitated by staff in a confidential manner and without reservation;
- I. Hawaii State Coalition Against Domestic Violence;
810 Richards St.
Suite 960
Honolulu, HI 96813
Phone: 808-832-9316
Fax: 808-841-6028
- J. The Hawaii Coalition Against Sexual Assault; or
PO Box 10596
Honolulu, HI 96816
Phone: 808-533-1637
Fax: 808-733-9032
- K. The Sex Abuse Treatment Center;
Kapi'olani Medical Center for Women & Children, An Affiliate of Hawai'i Pacific Health
Harbor Court
55 Merchant Street, 22nd Fl.
Honolulu, Hawai'i 96813
Phone: (808) 524-7273 (RAPE) 24-hr hotline
www.SATCHawaii.org
- L. Prevent Child Abuse Hawaii
P.O. Box 147
Honolulu, Hawaii 96810
Phone: (808) 951-0200
Fax: (808) 235-3881
www.preventchildabusehawaii.org

.22 STAFF AND HYCF REPORTING DUTIES

- a. HYCF requires that all staff immediately report as dictated by policy and State statute any knowledge, suspicion, or information, they receive regarding:
 - 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 HYCF; **[§115.361a]**
 - 2. retaliation against a resident or staff who reported such an incident; **[§115.361a]**

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3. and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. **[§115.361a]**
- b. HYCF staff is mandated to report any child abuse or neglect. **[§115.361b]**
 1. §350, Hawaii Revised Statutes, Child Abuse, states, notwithstanding any other state law concerning confidentiality to the contrary, the following persons ((4) Employees or officers of any law enforcement agency, including but not limited to the courts, police departments, department of public safety, correctional institutions, and parole or probation offices) who, in their professional or official capacity, have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future, shall immediately report the matter orally to the department or to the police department.
 2. Staff is required to complete form DHS 1516, Mandated Reporter Checklist For Suspected Child Abuse and Neglect or form DHS 1685, Mandated Reporter Checklist For Suspected Human Trafficking from the Department of Human Services, Child Welfare Services (CWS) Intake Unit and follow the instructions on the form.
 - A. In addition to form DHS 1516 or form DHS 1685, staff shall immediately call the CWS Intake Reporting Line at (808) 832-5300 or toll free for neighbor islands at 1-800-494-3991 to report your findings. Be sure to obtain the name of the intake social worker to document receipt and disposition of your referral.
 - B. FAX or Mail this document with comments to CWS immediately after verbally reporting to the intake worker. Doing so fulfills your statutory obligation under Chapter 350-1.1(c), Hawaii Revised Statutes, which requires a report in writing as well as the oral report.
- c. HYCF staff shall 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 the designated supervisors or officials and designated state or local service agencies. **[§115.361c]**
- d. Medical and mental health practitioners shall report sexual abuse to designated supervisors and officials pursuant to paragraph (a) of this section, as well as to the designated State or local services agency where required by mandatory reporting laws. **[§115.361d1]**
- e. Medical and mental health practitioners are required to inform residents at the initiation of services of their duty to report and the limitations of confidentiality. **[§115.361d2]**
 1. The HYCF Consent to Treatment and Medication Terms and Conditions of Service form is utilized.
- f. Upon receiving any allegation of sexual abuse, the YFA or his or her designee shall promptly report the allegation to HPD and to the alleged victim's parents or legal

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guardians, unless the facility has official documentation showing the parents or legal guardians should not be notified. [§115.361e1]


- g. If the alleged victim is under the guardianship of the child welfare system, the report shall be made to the alleged victim's caseworker instead of the parents or legal guardians. [§115.361e2]
- h. If a juvenile court retains jurisdiction over the alleged victim, the YFA or designee shall also report the allegation to the residents attorney or other legal representative of record within 14 days of receiving the allegation. [§115.361e3]
- i. HYCF staff shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports (on the HYCF-200), through the chain of command and a copy shall be forwarded to the PREA Coordinator either directly or via email, fax, or placed in the PREA box located at Central Control within three (3) days. [§115.361f]

.23 PROTECTION DUTIES

- a. When HYCF staff learns that a resident is subject to a substantial risk of imminent sexual abuse, immediate action shall be taken to protect the resident (i.e. action to assess appropriate protective measures) without unreasonable delay.
 1. The immediate action taken shall be of significance to ensure the residents safety until such time the YFA or designee or the Treatment Team process can determine a long term resolution. [§115.362]

.24 REPORTING TO OTHER CONFINEMENT FACILITIES

- a. Upon receiving an allegation that a resident was sexually abused while confined at another facility, the YFA or designee that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred and shall also notify the appropriate investigative agency. [§115.363a]
 1. The YFA or designee shall provide such notification as soon as possible, but no later than 72 hours after receiving the allegation. [§115.363b]
 2. HYCF shall document that it has provided such notification by: [§115.363c]
 - A. submitting an Inter-Office Communication Form (DHS - 0615) or correspondence on facility letterhead with the Agency contacted, Name and Title of person contacted, Date and Time contacted, method of contact, name of the resident or residents involved and a brief description of allegation.
 1. a copy shall be forwarded to the PREA Coordinator either directly or via email, fax, or placed in the PREA box located at Central Control within three (3) days of notification.
- b. The YFA or agency office that receives such notification shall require and advise the other facility that the allegation must be investigated as required by the PREA Standards. [§115.363d]

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.25 STAFF AND FIRST RESPONDER DUTIES


- a. HYCF's protocol for allegations of sexual abuse dictates that, upon learning of an allegation that a resident was sexually abused, the first staff member, who ideally would be a security staff member, to respond to the reported incident is required to: [\[§115.364a\]](#)
 1. Separate the alleged victim and abuser; [\[§115.364a1\]](#)
 2. Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence by law enforcement; [\[§115.364a2\]](#)
 3. If the abuse occurred within a time period (72 hours) 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, smoking, drinking, or eating; and [\[§115.364a3\]](#)
 4. If the abuse occurred within a time period (72 hours) that still allows for the collection of physical evidence, then staff shall ensure that the **alleged abuser** does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating. [\[§115.364a4\]](#)
- b. HYCF requires that if the first responder is not a security staff member, the staff responder shall separate the victim and abuser, if feasible, request that the alleged victim not take any actions that could destroy physical evidence, and then immediately notify security staff. [\[§115.364b\]](#)

.26 COORDINATED RESPONSE

- a. HYCF shall develop a written institutional 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. [\[§115.365\]](#)

.27 PRESERVATION OF ABILITY TO PROTECT RESIDENTS FROM CONTACT WITH ABUSERS

- a. HYCF or any other governmental entity responsible for collective bargaining on HYCF's behalf shall not enter into or renew any collective bargaining agreement or other agreement that limits the HYCF's ability to remove alleged staff sexual 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 shall restrict the entering into or renewal of agreements that govern:
 1. The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of § 4.31 and § 4.33; or [\[§115.366b1\]](#)
 2. Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated. [\[§115.366b2\]](#)

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.28 AGENCY PROTECTION AGAINST RETALIATION


- a. HYCF shall protect all residents and staff who report sexual abuse or sexual harassment or cooperates with a sexual abuse or sexual harassment investigation, from retaliation by other residents, staff or others. The YFA, DYFA and Correctional Supervisors are charged with monitoring any issues related to retaliation. **[§115.367a]**
- b. HYCF shall 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; when the individual fears or experiences retaliation for reporting sexual abuse or sexual harassment or for cooperating with a PREA investigation. **[§115.367b]**
- c. For at least 90 days following a report of sexual abuse, the YFA or designee shall monitor the conduct or 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 shall act promptly to remedy any such retaliation. The YFA or designee shall at a minimum:
 1. Act promptly to remedy any such retaliation;
 2. Monitor any resident incident reports, housing, or program changes, or negative performance reviews or reassignments of staff;
 3. continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need. **[§115.367c]**
- d. In the case of residents, monitoring by the Correctional Supervisor shall include periodic status checks, conducted weekly with a report submitted to the YFA or designee. **[§115.367d]**
- e. If any other individual who cooperates with an investigation expresses a fear of retaliation, HYCF shall take appropriate measures to protect that individual against retaliation. **[§115.367e]**
- f. The obligation for the YFA or designee to monitor shall terminate, if the investigation concludes that the allegation is unfounded. **[§115.367f]**

.29 POST-ALLEGATION PROTECTIVE CUSTODY


- a. Any use of segregated housing to protect residents who is alleged to have suffered sexual abuse shall be subject to the requirements of § 4.17 of this policy. **[§115.368]**

.30 CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS

- a. When HYCF conducts an administrative investigation into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports. **[§115.371a]**
- b. Where sexual abuse is alleged, OYS/HYCF will use investigators who have received special training in sexual abuse investigations involving juvenile victims pursuant to § 4.14 of this policy. **[§115.371b]**

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- c. OYS/HYCF Investigators shall gather and preserve direct and circumstantial evidence, including:
 1. any available physical and DNA evidence and any available electronic monitoring data;
 2. shall interview alleged victims, suspected perpetrators, and witnesses; and
 3. shall review prior complaints and reports of sexual abuse involving the suspected perpetrator. [\[§115.371c\]](#)
- d. OYS/HYCF shall not terminate an investigation solely because the source of the allegation recants the allegation. [\[§115.371d\]](#)
- e. When the quality of evidence appears to support criminal prosecution, OYS/HYCF shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution. [\[§115.371e\]](#)
- f. The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined merely by the person's status as a resident or staff member. [\[§115.371f\]](#)
- g. OYS/HYCF does not require a resident who alleges sexual abuse to submit to a polygraph examination, computer voice stress analysis (CVSA) or other truth-telling device as a condition for proceeding with the investigation of such an allegation. OYS/HYCF staff may offer the victim or non-staff witnesses the option to participate in this type of technological process (polygraph, CVSA or other truth-telling device). [\[§115.371f\]](#)
- h. Administrative investigations:
 1. Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and
 2. Shall 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. [\[§115.371g\]](#)
- i. The procedures for criminal investigations conducted by county LE shall be dictated by their policies. In practice, the county LE's procedures do require a written report that contains a thorough description of the physical, testimonial, and documentary evidence. The county LE shall refer substantiated allegations of conduct based on their investigative process that appears to be criminal for prosecution. [\[§115.371h/i\]](#)
- j. OYS/HYCF shall retain all written reports referenced in paragraph (h) and (i) of this section for as long as the alleged abuser is incarcerated or employed by HYCF, plus five years thereafter, unless the abuse was committed by a 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 custody of the facility or HYCF shall not provide a basis for terminating an investigation. The investigator shall complete the investigation by formulating a conclusion that the allegation is substantiated, unsubstantiated, or unfounded. [\[§115.371k\]](#)

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- l. Any County, State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements. [\[§115.371l\]](#)
- m. When an outside agency is charged with investigating an incident of sexual abuse, the facility staff shall cooperate with the outside investigators and shall endeavor to remain informed about the progress of the outside agency investigation.
[\[§115.371m\]](#)

.31 EVIDENTIARY STANDARDS FOR ADMINISTRATIVE INVESTIGATIONS

- a. OYS/HYCF shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated. [\[§115.372\]](#)

.32 REPORTING TO RESIDENTS

- a. Upon completion of an investigation (administrative or criminal) into a residents allegation that he/she suffered sexual abuse at HYCF, HYCF staff shall inform the resident as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. [\[§115.373a\]](#)
- b. If the OYS/HYCF did not conduct the investigation, OYS/HYCF shall request the relevant information from the investigative agency in order to inform the resident.
[\[§115.373b\]](#)
- c. Following a residents allegation that a staff member has committed sexual abuse against the resident, HYCF shall subsequently inform the resident (unless determined that the allegation is unfounded) whenever: [\[§115.373c\]](#)
 - 1. The staff member is no longer posted within the residents unit;
 - 2. The staff member is no longer employed at the facility;
 - 3. HYCF learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
 - 4. HYCF learns that the staff member has been convicted on a charge related to sexual abuse within the facility. [\[§115.373c\]](#)
- d. Following a residents allegation that he or she has been sexually abused by another resident, HYCF shall subsequently inform the alleged victim whenever:
 - 1. HYCF learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
 - 2. HYCF learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility. [\[§115.373d\]](#)
- e. HYCF shall document all notifications or attempted notifications to the resident victim and a copy shall be forwarded to the PREA Coordinator either directly or via email, fax, or placed in the PREA box located at Central Control within three (3) days.
[\[§115.373e\]](#)
- f. Notification shall be on the Internal Communication Form (ICF), subject: Notification of Status, or other relevant document.

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- g. HYCF's obligation to report under this section will terminate, if the resident is discharged from HYCF's custody. [\[§115.373f\]](#)

.33 DISCIPLINARY SANCTIONS FOR STAFF


- 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 shall be the presumptive disciplinary sanction for all staff, who, after an investigation and a pre-disciplinary due process hearing, have been found to have engaged in sexual abuse. [\[§115.376b\]](#)
- c. Disciplinary sanctions for violations of HYCF policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall 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 employment histories. [\[§115.376c\]](#)
- d. All terminations for violations of sexual abuse or sexual harassment within HYCF 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. [\[§115.376d\]](#)

.34 CORRECTIVE ACTION FOR CONTRACTORS AND VOLUNTEERS

- a. HYCF shall require that any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with residents and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies. [\[§115.377a\]](#)
- b. HYCF shall take appropriate remedial measures, and shall consider whether to prohibit further contact with residents, in the case of any other violation of HYCF sexual abuse or sexual harassment policies by a contractor or volunteer. [\[§115.377b\]](#)

.35 INTERVENTIONS AND DISCIPLINARY SANCTIONS FOR YOUTH

- a. A resident may be subject to disciplinary sanctions only pursuant to a formal due process hearing 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. Any disciplinary sanctions shall be commensurate with the nature and circumstances of the abuse committed, the residents behavioral history, and the sanctions imposed for comparable offenses by other youth with similar histories.
 1. In the event a due process hearing results in the isolation of a resident, the resident:
 - A. shall be afforded daily large-muscle exercise;
 - B. shall have access to any legally required educational programming or special education services;
 - C. shall receive daily visits from a medical or mental health care clinician; and


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D. shall also have access to other programs and work opportunities to the extent possible. [\[§115.378b\]](#)

- c. The Due Process hearing in conjunction with the Treatment Team process shall consider whether a residents mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed. [\[§115.378c\]](#)
- d. If HYCF offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, HYCF shall consider whether to offer the offending resident participation in such interventions.
 1. HYCF may require participation in such interventions as a condition of access to any rewards-based behavior management system or other behavior-based incentives, but not as a condition to access to general programming or education. [\[§115.378d\]](#)
- e. HYCF may impose sanctions on a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact. [\[§115.378e\]](#)
- f. HYCF prohibits any sanctions for a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation. [\[§115.378f\]](#)
- g. HYCF prohibits all sexual activity between residents and may sanction a resident for such activity.
 1. HYCF shall deem such activity to constitute sexual abuse if it determines that the activity is not coerced. [\[§115.378g\]](#)

.36 MEDICAL AND MENTAL HEALTH SCREENINGS; HISTORY OF SEXUAL ABUSE

- a. If the screening pursuant to § 4.16 of this policy indicates that a resident has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the resident is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening. [\[§115.381a\]](#)
- b. If the screening pursuant to § 4.16 indicates that a resident has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the resident is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening. [\[§115.381b\]](#)
- c. Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall 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, work, education, and program assignments, or as otherwise required by Federal, State, or local law. [\[§115.381c\]](#)
- d. Medical and mental health practitioners shall 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. [\[§115.381d\]](#)


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.37 ACCESS TO MEDICAL AND MENTAL HEALTH SERVICES

- a. Resident victims of sexual abuse shall 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 no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, staff first responders shall:
 1. take preliminary steps to protect the victim pursuant to § 4.23 and;
 2. shall immediately notify the appropriate medical and mental health practitioners on duty. **[§115.382b]**
 - A. On duty medical and/or mental health practitioners shall then notify their superiors through the chain of command.
- c. Resident victims of sexual abuse while incarcerated shall 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. HYCF shall provide treatment services to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. **[§115.382d]**

.38 ONGOING MEDICAL AND MENTAL HEALTH CARE FOR SEXUAL ABUSE VICTIMS AND ABUSERS

- a. HYCF shall offer medical and mental health evaluation and, as appropriate, treatment to all residents who have been victimized by sexual abuse in any juvenile detention or juvenile facility. **[§115.383a]**
- b. The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody. **[§115.383b]**
- c. HYCF shall provide such victims with medical and mental health services consistent with the community level of care. **[§115.383c]**
- d. Resident victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests. **[§115.383d]**
- e. If pregnancy results from sexually abusive vaginal penetration while incarcerated at HYCF, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services. **[§115.383e]**
- f. Resident victims of sexual abuse while incarcerated at HYCF shall be offered tests for sexually transmitted infections as medically appropriate. **[§115.383f]**
- g. HYCF shall provide treatment services to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. **[§115.383g]**

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- h. HYCF through the Family Court Liaison Branch (FCLB) shall 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 mental health practitioners. [\[§115.383h\]](#).

.39 SEXUAL ABUSE INCIDENT REVIEWS

- a. HYCF shall 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. [\[§115.386a\]](#)
- b. Such review shall ordinarily occur within 30 days of the conclusion of the investigation. [\[§115.386b\]](#)
- c. The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners. [\[§115.386c\]](#)
- d. The review team shall:
 1. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse; [\[§115.386d\]](#)
 2. 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; [\[§115.386d\]](#)
 3. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse; [\[§115.386d\]](#)
 4. Assess the adequacy of staffing levels in that area during different shifts; [\[§115.386d\]](#)
 5. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and [\[§115.386d\]](#)
 6. Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submit such report to the Youth facility Administrator (YFA) or designee and PREA Coordinator. [\[§115.386d\]](#)
- e. The YFA shall employ “best efforts” to implement the recommendations for improvement, or shall document its reasons for not doing so. [\[§115.386e\]](#)

.40 DATA COLLECTION

- a. HYCF shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions. [\[§115.387a\]](#)
- b. HYCF shall aggregate the incident-based sexual abuse data at least annually. [\[§115.387b\]](#)

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- c. The incident-based data collected shall 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. [\[§115.387c\]](#)
- d. HYCF shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews. [\[§115.387d\]](#)
- e. HYCF also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its residents. [\[§115.387e\]](#)
- f. Upon request, HYCF shall provide all such data from the previous calendar year to the Department of Justice no later than June 30th. [\[§115.387f\]](#)

.41 DATA REVIEW FOR CORRECTIVE ACTION

- a. HYCF shall review data collected and aggregated pursuant to § 4.40 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:
 1. Identifying problem areas;
 2. Taking corrective action on an ongoing basis; and
 3. Preparing an annual report of its findings and corrective actions for HYCF, as well as OYS as a whole. [\[§115.388a\]](#)
- b. Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse. [\[§115.388b\]](#)
- c. HYCF's report shall be approved by the Executive Director and made readily available to the public through its website or, if it does not have one, through other means. [\[§115.388c\]](#)
- d. HYCF 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 the nature of the material redacted. [\[§115.388d\]](#)

.42 DATA STORAGE, PUBLICATION, AND DESTRUCTION

- a. HYCF shall ensure that data collected pursuant to § 4.40 are securely retained. [\[§115.389a\]](#)
- b. OYS/HYCF shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means. [\[§115.389b\]](#)
- c. Before making aggregated sexual abuse data publicly available, HYCF shall remove all personal identifiers and comply with HRS § 92(F), Uniform Information Practices Act (Modified). [\[§115.389c\]](#)
- d. HYCF shall maintain sexual abuse data collected pursuant to § 4.40 for at least 10 years after the date of its initial collection unless Federal, State, or local law requires otherwise. [\[§115.389d\]](#)

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.43 AUDITS

- a. HYCF shall make its 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]

.44 FREQUENCY AND SCOPE OF AUDITS

- a. OYS/HYCF shall conduct audits during the three-year period starting on August 20, 2013, and during each three-year period thereafter, the agency will make its best efforts to ensure that each facility operated by OYS, or by a private organization on behalf of OYS, is audited at least once. [§115.401a]
- b. During each one-year period starting August 20, 2013, OYS shall make its best efforts to ensure that at least one-third of each facility type operated by OYS, or by a private organization on behalf of OYS, is audited. [§115.401b]
- c. During an audit, the auditor shall be granted access to, and the ability to observe, all areas of HYCF. [§115.401h]
- d. Prior to and during an audit, the auditor shall be granted the ability to request and receive copies of any relevant documents (including electronically stored information). [§115.401i]
- e. During an audit, the auditor shall be permitted to interview a representative sample of residents, staff, supervisors and administrators. [§115.401k]
- f. During an audit, the auditor may request and HYCF shall provide, any available videotapes and other electronically available data (e.g., Watchtour) that may be relevant to the provisions of the audit. [§115.401l]
- g. During an audit, the auditor shall be granted the ability to conduct private interviews with residents. [§115.401m]
- h. Prior to and during an audit, residents shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel. [§115.401n]
- i. OYS/HYCF bears the burden of demonstrating compliance with the PREA standards through the audit process. The Governor will utilize this information for the Governor's Certification of PREA Compliance.
- j. 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 PRC website at www.prearesourcecenter.org.

.45 CONSULTATION

This policy will undergo the consultation process with the relevant Labor Unions, such as the Hawaii Government Employees Association, United Public Workers, and an advisory should be provided to an excluded employee's organization.

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5.0 SCOPE

This policy is mandatory and applicable to all HYCF Staff, Contractors, and Volunteers, who have contact with youth, or residents. This policy applies to HYCF, all contracted facilities and all community confining facilities under the custody and control of OYS and/or HYCF.


 Youth Facility Administrator
 Hawaii Youth Correctional Facility

11/27/18
 Date

APPROVED:


 Executive Director
 Office of Youth Services

11/27/18
 Date

