

POLICY STATEMENT

IV. Administrative

- Response to Sexual Abuse / Sexual Harassment (Investigation)

PURPOSE: It is the policy of S.W.C.C.C.C/ Hilltop House to adopt the Prison Rape Elimination Act of 2003 by supporting the elimination, reduction, prevention and reporting of all forms of sexual abuse and sexual harassment within the correctional system. PREA applies to all Hilltop House staff, volunteers, contractors and residents.

Hilltop House has a zero-tolerance policy towards all forms of sexual abuse, and sexual harassment.

Staff shall immediately report any knowledge, suspicion, or information regarding sexual abuse and sexual harassment involving a resident and/or any retaliation.”

PREA Standards: 115.211; 115.221; 115.222; 115.265; 115.271

GENERAL PROVISIONS:

Definitions:

Sexual abuse includes—

- (1) Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and
- (2) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

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:

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

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:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or 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;
- (6) 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;
- (7) 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

Voyeurism by a staff member, contractor, volunteer or resident.

- (1) Voyeurism by a staff member, contractor, volunteer or resident means an invasion of privacy of a detainee, or resident by staff or resident for reasons unrelated to official duties, such as peering at a resident who is using a toilet to perform bodily functions; requiring a resident to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a residents naked body or of a resident performing bodily functions

Sexual harassment includes—

- (1) 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
- (2) 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.

Zero Tolerance:

- (1) The practice of not permitting undesirable behavior from offenders or staff to persist by applying immediate consequences for prohibited sexual conduct or incidents of retaliation related to the reporting of sexual abuse and sexual harassment.

Reporting and Investigation:

All staff has an affirmative duty to immediately report to the supervisor any knowledge, suspicion, or information regarding sexual abuse or sexual harassment involving a resident, staff volunteer or contractor and/or any retaliation or other violation of this policy. All reports of sexual abuse and sexual harassment shall be immediately documented.

First Responder Instructions—All Alleged Sexual Assault/Sexual Abuse.

- a. Any resident may report sexual abuse or sexual harassment or threats of sexual abuse or sexual harassment to any staff member. Any staff member who receives a report of sexual abuse or sexual harassment, whether verbally or in writing, shall immediately separate the alleged victim and abuser.” notify the Director (or designee) and complete an incident report.
- b. In every case where the alleged aggressor is an employee, there will be no contact between the alleged aggressor and the alleged victim.
- c. Allegations of sexual abuse and sexual harassment shall be treated with discretion and, to the extent permitted by law, confidential. Individuals who fail to keep allegations of sexual misconduct confidential are subject to disciplinary action.
- d. Staff shall refrain from relying on resident interpreters, resident readers, or other types of resident assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the resident’s safety,

First Responder Instructions--Allegations Involving Sexual Abuse.

- a. If the abuse occurred within five days request the alleged victim not to take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.
NOTE: If the abuse occurred at another confinement facility the Director needs to be made aware of this in the report so that they may contact the other facility within 72 hours.
- b. Secure the scene and preserve evidence of the alleged assault if feasible and secure any video footage.
- c. Notify the Director who will notify Durango Police Department. All Cases involving alleged sexual abuse or sexual harassment that may be criminal shall be documented and reported to Durango Police Department immediately
- d. Staff shall refrain from relying on resident interpreters, resident readers, or other types of resident assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the resident’s safety,
- e. If the abuse occurred within five days the alleged ensure that the alleged abuser does not take any action that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.
- f. If the first staff responder is not a security staff member, the responder shall request that the alleged victim not take any actions that could destroy physical evidence and then notify security staff.

Reports of Sexual Abuse Done Through the Grievance Process:

If a report of sexual abuse is received via the grievance procedures timeframes will be handled as indicated in the above timeframes and not the timeframes in the standard Grievance process in accordance with PREA Standard 115.253. These reports will be handled by the Director. If an allegation of sexual harassment, misconduct, and/or abuse is reported on a grievance form, the Director will address the process per the above Investigation policy process timelines and notify the victim as to those procedures.

Grievances regarding allegations of sexual abuse may be submitted at any time regardless of when the incident is alleged to have occurred. The victim is under no obligation to attempt to address their allegations with the staff member that is alleged to have abused them, in fact this would be a violation of the PREA investigation policy. This is not the case with other general grievances where this is encouraged. They may submit these grievances to the staff person in questions' supervisor, which will be advised to forward immediately to the Director for investigation.

Residents reporting that they are fearful of imminent risk of sexual abuse via the grievance system, will be considered of an emergent nature and safety measures and precautions should be put in place within 24 hours to assure the victims safety. Grievance decisions will be determined within 5 days in these situations.

Decision on the merits of any grievance or portion of a grievance alleging sexual abuse will be determined within 90 days of the filing of the grievance. If the processing of evidence is taking beyond the 90-day period an extension will be afforded and reported in writing to the alleged victim and a date by which the disposition of the case will be determined.

If the resident filing the grievance alleging sexual abuse is found to have filed the grievance in bad faith, they will be reported to local law enforcement for filing a false report of a criminal act. If however the results of the grievance/investigation are unfounded/unsubstantiated but the resident filed the claim in good faith they will receive no discipline.

Investigations.

All reports of sexual abuse and sexual harassment must follow all PREA standards, be considered credible and promptly investigated criminally by A Durango Police Department Investigator and/or administratively without regard to whether:

- The clients who are named in the allegation are clients of the program or not.
- Staff member(s) named in the allegation is currently employed or not.
- The report of the allegation was made in a timely manner or not.
- The client reporting the allegation is known to have made past false allegations.
- The source of the allegation recants the allegations.
- The employee receiving the complaint believes or does not believe the allegations.
- The allegation occurred in another agency/facility.

The Durango Police Department Investigator is responsible for conducting and fully documenting the investigation in accordance with facility policy. The investigator shall:

- a. Gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- b. Assess the credibility of an alleged victim, suspect, or witness on an individual basis and not on the basis of a person's status as an inmate or staff.
- c. Impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.
- d. Not require a client who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of an allegation.
- e. Investigate whether staff actions or failures to act contributed to the abuse.
- f. Document investigations in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
- g. Refer substantiated allegations of conduct that appear to be criminal for prosecution.
- h. Conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle to criminal prosecution when the quality of evidence appears to support criminal prosecution
- i. Retain all written reports of investigations into alleged sexual abuse for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.
- j. Cooperate with outside investigations and Victim Support Person. When the victim alleges that sexual abuse occurred, a designated victim support person shall be notified immediately. This person will consult with the investigator on the case and offer assistance to the alleged victim as is appropriate based on the individual's training. The victim support person may sit in on administrative interviews of the victim but may not in any manner obstruct or interfere with the course of the investigation.

Criminal Investigations

The Durango Police Department is responsible for all criminal investigations at Hilltop House including third party and anonymous reports. The Durango Police Department will be responsible for the following: All referrals to law enforcement shall be documented

- a. Collecting all physical and documentary evidence, including the results of the SANE examinations. Criminal investigations need to attach copies of all documentary evidence where feasible.
- b. Identify the victim, perpetrator and witnesses
- c. Conduct interviews of the victim, witnesses and the perpetrator pursuant to Miranda

- d. Interviewing staff who are subject of an investigation pursuant to Garrity
- e. Using the “Evidence Beyond a reasonable doubt” standard of evidence
- f. Making a determination of probable cause and referring for prosecution

When any outside entity investigates sexual abuse at Hilltop House either the PREA Coordinator, designated administrative staff or member of the Board of Director’s will endeavor to remain informed about the progress of the investigation.

Administrative Investigations:

A criminal and/or administrative investigation will be conducted on all allegations of sexual abuse and sexual harassment. If it is determined that no criminal charges will be filed the Director and or Chairman of the Board of Directors (and/or designee with specialized training) will be responsible for completing the administrative investigation promptly, thoroughly, and objectively. They will be responsible for the following:

- a. Conduct interviews with the victim, and witnesses. Include appropriate outside agencies to aid in the investigation and to determine whether staff actions or failures to act contributed to the abuse.
- b. Interview the staff who is subject of the investigation pursuant to Garrity
- c. Using “a Preponderance of the evidence’ standard of evidence
- d. Document in writing reports that include a description of the physical and testimonial evidence, the reason behind credibility assessments, and investigative facts and findings.
- e. Determine applicable administrative procedures and make sure investigative process is consistent.
- f. Protect victim from retaliation
- g. Make determination of “substantiated” or “unsubstantiated” or “unfounded” (effect disciplinary action if substantiated).

In instances where the Director is the subject of allegations of sexual abuse or sexual harassment the Chairman of the Southwest Colorado Community Corrections Inc. Board of Directors shall be informed via phone immediately by the Business Manager. A list of the Board of Directors and contact numbers is kept in the front of the Policy and Procedure Manual or by contacting any on-call supervisor. If the Chairman is not available or cannot be contacted the Vice Chairman shall be contacted.

Reporting to Clients.

Clients who are currently in the custody of the facility are entitled to know the outcome of investigation into their allegation as follows:

Following an investigation into a client’s allegation of sexual abuse in the facility, the Director shall inform the client whether the allegation was determined to be substantiated, unsubstantiated, or unfounded. The client shall be informed as soon after the agency becomes aware of the findings of the criminal and administrative investigation

In instances when Hilltop House did not conduct the investigation the Director will request relevant information in order to inform the client.

If the client's allegation involved a staff member, the Director shall inform the client whenever:

- The staff member is no longer posted within the inmate's unit;
- The staff member is no longer employed at the facility;
- The staff member has been indicted on a charge related to sexual abuse within the facility; or
- The staff member has been convicted on a charge related to sexual abuse within the facility.

If the allegation involved another client, the Director shall inform the alleged victim when:

- The alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
- The alleged abuser has been convicted on a charge related to sexual abuse within the facility.

Hilltop House will notify a client of the above unless the facility has determined that the allegation is unfounded, or unless the client has been released from custody. All such notifications or attempted notifications shall be documented.

Hilltop House ensures that the departure of an alleged abuser or victim from the employment or control of the agency does not provide a basis for terminating an investigation.

Incident Reviews

The facility shall conduct a sexual abuse incident review within 30 days of the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

The review team shall include Director, Case Manager Supervisor, client Case Manager, Facility Manager, a member of line staff, investigators, and medical and mental health providers.

The review team shall 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 within the facility. In addition to the above the review team shall also:

- Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse.
- Assess the adequacy of staffing levels in that area during different shifts.
- Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff.

The review team shall prepare a report to be submitted to the Director and PREA compliance manager (see attached Sexual Abuse Incident Review Checklist) as to needed policy changes or better practices to detect, prevent or respond to sexual abuse. All recommendations for improvement shall be implemented by the Director or the reasons documented for not doing so.

Updated 3/23