



Vista Maria Residential Programs

Department/Program:	All Programs
Section:	Child Protection
Title:	PREA – Prison Rape Elimination
Policy Number:	POL-004-007
Effective Date:	March 2017
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Title: PREA – Prison Rape Elimination Act

Policy: To prevent incidents of sexual abuse and sexual harassment to the maximum extent practical and to take prompt, effective and compassionate action in the event that allegations of sexual abuse or harassment are made.

Residential juvenile justice staff must have zero tolerance for sexual abuse and sexual harassment of residents. Vista Maria and specifically Lourdes Hall must ensure that preventive plans are in place. Should allegations regarding sexual abuse or harassment be made, staff must be appropriately trained to take actions to rapidly restore safety, attend to and support the victim, and promptly begin the investigative process.

DEFINITIONS:

- **Resident-on-resident sexually abusive penetration:** Any sexual penetration by a resident of another resident without the latter's consent, or of a resident who is coerced into the sexual contact by threats of violence, or of a resident who is unable to refuse. The sexual acts included are: contact between the penis and the vagina or the anus; contact between the mouth and the penis, vagina, or anus; or, penetration of the anal or genital opening of another person by a hand, finger, or other object.
- **Resident-on-resident sexually abusive contact:** Non-penetrative touching (either directly or through the clothing) of the genitalia, anus, groin, breast, inner thigh, or buttocks without penetration by a resident of another resident, without the latter's consent, or of a resident who is coerced into sexual contact by threats of violence, or of a resident who is unable to refuse.
- **Resident-on-resident sexual harassment:** Repeated and unwelcome sexual advances, requests for sexual favors, verbal comments, or gestures or actions of a derogatory or offensive sexual nature by one resident directed toward another.
- **Staff-on-resident sexually abusive contact:** Includes non-penetrative touching (either directly or through the clothing) of the genitalia, anus, groin, breast, inner thigh, or buttocks by a staff member or a resident that is unrelated to official duties.
- **Staff-on-resident sexually abusive penetration:** Sexual penetration by a staff member of a resident, including contact between the penis and vagina or anus; contact between the mouth and the penis, vagina, or anus; or, penetration of the anal or genital opening of another person by a hand, finger, or other object.



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- **Staff-on-resident indecent exposure:** The display by a staff member of his or her uncovered genitalia, buttocks, or breast in the presence of a resident.
- **Staff-on-resident voyeurism:** An invasion of a resident's privacy by staff for reasons unrelated to official duties or when otherwise not necessary for safety and security reasons

Staff-on-resident sexual harassment: Repeated verbal comments or gestures of a sexual nature to a resident by a staff member. Such statements include demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or profane or obscene language or gestures.

- **Staff sexual misconduct:** Includes any behavior or act of a sexual nature directed toward a juvenile or youthful offender by an employee, volunteer, contractor, official visitor, or other agency representative. Sexual relationships of a romantic nature between staff and youth are included in this definition.
- **Sexual Exploitation:** Includes allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as defined in MCL 750.145c

Age of legal consent in Michigan:

While no statute specifically establishes an age at which a minor may legally consent to sexual activity, there can be criminal penalties for consensual sexual activity with a minor under 16 years of age. See MCL § 750.520b. There also can be criminal penalties for consensual sexual activity with a minor under 18 years old when certain circumstances exist. For example, it is considered "third degree criminal sexual conduct" for a teacher or school administrator to sexually penetrate a student under 18 years old, irrespective of consent. MCL § 750.520d.

First Responder:

Includes any/all agency personnel to whom an incident or report of alleged sexual abuse, or any other form of abuse/neglect of youth is reported. This includes staffs own observation or suspicion, direct report (verbal or written) from youth or third parties of abuse or neglect in accordance with Mandated Reporting laws and agency policies.



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STANDARD OPERATING PROCEDURE:

A. Providing Sexual Assault/Rape Prevention Information to Youth

The facility youth orientation process includes policy and procedures relating to prevention of and response to reports of sexual assault/rape. This orientation must occur within the first 72 hours of youth intake.

The information provided includes but is not limited to:

- The zero-tolerance policy.
- Self-protection including avoiding risk situations related to sexual assault preventions/intervention.
- Reporting procedures.
- Treatment and counseling, how to obtain counseling services and/or medical assistance if victimized.
- Protection against retaliation.
- Risks and potential consequences for engaging in any type of sexual activity while at the facility.
- Disciplinary action(s) for making false allegations.

NOTE: A youth can be disciplined for knowingly making a false allegation of sexual abuse, however a youth may not be disciplined for making an allegation of sexual abuse if the allegation was made in good faith, even if the allegation is unsubstantiated. Youth may not be disciplined for have sexual contact with staff unless staff did not consent to such contact.”

The information is provided verbally and in written form, and the information is in a language and format that the youth can understand. Accommodations must be provided so that LEP, deaf, blind, or otherwise disabled residents have full access to this information and may benefit from the full range of PREA protections and services.

Resident readers or interpreters may not be used to provide this information, except when to do so would cause an unnecessary delay that could compromise the youth’s safety.

Video presentations may be used to supplement the content of the presentation but direct verbal and written information must be included.

Each resident signs a written acknowledgement form for the sexual assault/rape prevention portion of the orientation. The signed acknowledgment form is filed in the youth’s case record. Youth must be provided with comprehensive PREA education within 10 days of intake.

B. Youth Assessment



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The resident's behavior history must be reviewed, within 72 hours of arrival at the facility, as part of orientation to determine the resident's potential risk of sexual vulnerability based on the following risk factors:

- Age
- Physical Stature
- Developmental Disability
- Mental Illness
- Sex Offender Status (per offense history)
- First-time Offender Status
- Past History of Victimization
- Physical Disabilities and the Resident's Own Perception of Vulnerabilities.

The youth must be evaluated as part of orientation to determine if the youth is prone to victimize other youth, especially in regard to sexual behavior, based on the following risk factors:

- History of sexually aggressive behavior
- History of violence as related to sexual offense
- Anti-Social attitudes indicative of sexually aggressive behavior
- If the risk assessment completed by the Case Manager during Youth Orientation indicates that the resident has been a victim of sexual abuse or has committed sexual abuse, the resident will be examined by a medical or mental health provider within 14 days of the completed assessment.

The agency must use all information obtained to make housing, bed, program, education, and work assignments for residents with the goal of keeping residents safe and free from sexual abuse. The agency must document how the assessment information was used to inform placement and assignments.

Lesbian, gay, bisexual, transgender, or intersex (LGBTI) residents may not be housed solely on the basis of such identification or status. In addition, the agency must:

- Decide on a case-by case basis whether to place a transgender or intersex youth in a facility for male or female residents. Placement decisions are based on whether the placement could ensure the resident's health and safety, and whether the placement would present management or security problems.
- Review placement and programming assignments at least twice each year to assess any threats to safety experienced by the resident.
- Allow transgender and intersex youth the opportunity to shower separately from other residents.
- The resident's own view of his/her gender identity should be considered when determining placement.



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- Youth must not be considered more likely to perpetrate sexual abuse solely because of LGBTBI identity.

A youth may be isolated from other youth as a preventive and protective measure, but only as a last resort when other less restrictive measures are inadequate to keep the youth safe from other youths, and then only until an alternate means of keeping all youths safe can be arranged. During any periods of protective isolation, facility staff may not deny a youth otherwise under control, access to daily large-muscle exercise and legally-required educational programming or special education services. Any youth in isolation must receive daily visits from a medical or mental health care clinician and must have access to other programs to the extent possible.

Assessment activities must be documented. Review placement and programming assignments at least twice each year to assess any threats to safety experienced by the resident.

Staff must not search or physically examine a transgender or intersex resident for the sole purpose of determining a youth's genital status. If a youth's genital status is unknown, it may be determined during conversations with the youth, 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.

C. Staff Training on Offender Sexual Assault/Rape Prevention and Reporting

1. All Lourdes Hall staff, contractors, and volunteers must complete training for sexual assault/rape prevention, incident response, and reporting. All facility staff, contractors and volunteers must complete annual refresher training. At the conclusion of each training session, staff, contractors and volunteers must sign that they attended and understood the training. This signature sheet is kept on file for a period determined by the Record Retention Schedule. This signature sheet is kept on file for a period of seven years.

2. All Lourdes Hall staff must read this policy and any related local facility written policy or procedure articles prior to assuming duties with youth, when the policy or procedure changes, and on at least an annual basis. Staff must sign a written acknowledgement that they read and understood the policies and procedures. This signature sheet is kept on file for a period determined by the Record Retention Schedule. This signature sheet is kept on file for a period of seven years.



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3. For staff, contractors, and volunteers that have been trained but later transfer or work at a facility housing a different gender, then additional gender-specific training is required.
4. Direct care staff must be trained in how to conduct a pat down search. Cross gender pat searches are prohibited, except in exigent circumstances. In that event, exigent circumstances shall be documented with justification of the circumstances leading to cross gender pat search.
5. Searches of transgender and intersex residents must be conducted in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.
6. All full and part time medical and mental health care practitioners who work regularly with residents must receive specialized training on: detecting signs of sexual abuse, preserving physical evidence, effective response, and reporting. Training will be documented in personnel records.

D. Staff Supervision Relative to PREA Standards

1. Staff must recognize that sexual assault/rape can occur in virtually any area in a residential facility. Requirements for staff supervision of youth apply at all times. (Minimum of 1 Staff to 10 Residents with line of sight supervision during waking hours; 1 Staff to 20 Residents during sleep hours, for secure facilities until Aug. 19, 2017, when the ratios decrease to a minimum of 1:8 during waking hours and 1:16 during sleeping hours.)
2. Staff must always be aware of warning signs that may indicate that a youth has been sexually assaulted or is in fear of being sexually assaulted. Warning signs include but are not limited to: isolation, depression, lashing out at others, refusing to shower, suicidal thoughts or actions, seeking protective custody, and refusing to leave isolation.
3. Staff must be aware of sexually aggressive behavior. Characteristics or warning signs may include a prior history of committing sex offenses, use of strong arm tactics (extortion), associating or pairing up with a youth that meets the profile of a potential victim, exhibiting voyeuristic and/or exhibitionistic behavior, and a demonstrated inability to control anger.
4. Non-medical staff of the opposite gender of youth may not observe youth changing clothing, showering, or performing other bodily functions where buttocks or genitalia of youth are exposed



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except in exigent circumstances or when such viewing is incidental to routine room checks.

5. When staff of the opposite gender enters the youth sleeping area and bathroom areas of the house they must announce their presence. When a staff of the opposite gender is assigned to work with the group throughout the shift a single announcement at the start of the shift meets this requirement.

E. Youth Response to Sexual Assault/Rape

1. Lourdes Hall residents must be supported and encouraged to report sexual assault/rape, attempted sexual assault/rape, and/or sexual harassment and be protected from retaliation. A youth that believes that they were the victim of a sexual assault/rape, attempted sexual assault/rape or sexual harassment, or believes another youth was the victim of sexual assault/rape, attempted sexual assault/rape, or sexual harassment, must report this information to a staff member. Youths may also write down their report and use residential facility lock boxes/youth grievance system to submit reports.

NOTE: An option must exist for youths to report sexual abuse to someone outside of the facility. The outside reporting options for Lourdes Hall would include:

- ✚ Child Protective Services 1-855-444-3911
- ✚ First Step 734-722-6800 or 1-888-453-5900

- a. Residents may contact the on-duty Supervisor or their assigned Therapist to facilitate the call. The call is confidential. The Supervisor/Therapist will not listen to the youth's reporting.
- b. The Supervisor/Therapist will dial the hotline number.
- c. The Supervisor/Therapist will maintain line of sight supervision of the youth at all times.
- d. Following completion of the call, the Supervisor/Therapist will document accordingly that a youth made a call to the outside reporting option.

NOTE: Calls to CPS or First Step are confidential however; it could occur that a youth also volunteers information to staff about sexual abuse. If at any time, a youth discloses information about sexual abuse to any Vista Maria personnel then staff must respond in accordance with the procedures listed under "Staff Response to Sexual Abuse/Rape".

2. Clients must be informed, prior to giving them access to outside victim advocates for emotional support services related to sexual abuse, of the extent to which such communications will be



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monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

3. Following a client's allegation that a staff member has committed sexual abuse against the resident, Vista Maria subsequently informs and documents informing the client (unless the agency has determined that the allegation is unfounded):
 - The staff member is no longer posted within the resident's unit;
 - The staff member is no longer employed at the facility;
 - Vista Maria learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
 - Vista Maria learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
4. Following a resident's allegation that she has been sexually abused by another resident Vista Maria subsequently informs and documents informing the client whenever:
 - Vista Maria learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
 - Vista Maria learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
5. Information for client grievances related to sexual abuse allegations:
 - ✓ A grievance alleging sexual abuse can be filed at any time regardless of when the incident allegedly occurred.
 - ✓ Third party grievances alleging sexual abuse are accepted.
 - ✓ A grievance alleging sexual abuse or sexual harassment does not have to be submitted to the person that is the subject of the allegation.
 - ✓ There is no requirement that youth use an informal process for resolving grievances alleging sexual abuse or sexual harassment.
 - ✓ Emergency grievances alleging sexual abuse and/or the imminent threat of sexual abuse must be responded to immediately.

F. Staff Response to Sexual Assault/Rape



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- ✓ Staff receiving a report of sexual assault/rape or attempted sexual assault/rape that occurred in a facility, whether or not it is part of the agency;
- ✓ Staff that become aware of sexual activity between residents or between a resident and staff, contractor, visitor, or volunteer;
- ✓ Staff that become aware of retaliation against residents or staff that reported such an incident;
- ✓ Staff that become aware of any staff negligence or violation of responsibilities that may have contributed to an incident or retaliation;

must immediately report this to the supervisor. If a supervisor is not on duty, the staff must contact their Building Manager and the Consumer Rights Officer. The staff/designee is responsible for notifying the proper authorities, which may include police, CPS, and the Division of Child Welfare Licensing (formerly BCAL).

The staff member receiving the report of actual or suspected sexual abuse or rape must immediately call Children's Protective Services and report the incident and/or allegation. (See policy POL-004-001 Child Protection Law Compliance)

The staff member receiving the report of actual or suspected sexual abuse or rape must complete an Incident Report before the end of their work shift and must complete a DHHS-3200, Report of Actual or Suspected Child Abuse or Neglect, within 72 hours of becoming aware of the incident.

If it is believed or determined that a sexual assault/rape occurred and that the alleged sexual assault/rape occurred within the last 96 hours, the Building Manager/designee must make immediate arrangements to transport the youth to DMC Children's Hospital for a forensic examination.

Staff must immediately secure the area where the incident allegedly occurred for evidence collection.

If it is believed or determined that a sexual assault/rape occurred more than 96 hours previous, the emergency room will be contacted for further instructions.

Following emergency response and completion of the forensic medical exam/rape kit (if applicable) a youth believed or determined to have been the victim of a sexual assault/rape must also be examined by medical staff for possible injuries, regardless of when the alleged sexual assault occurred.

Victims and perpetrators of a substantiated sexual assault must be encouraged to complete an HIV test. The perpetrator must be requested to complete an HIV test. If the perpetrator will



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not voluntarily take an HIV test, the Building Manager/designee may seek a court order compelling the test.

The victim of sexual assault or attempted sexual assault must be provided mental health assistance and counseling as determined necessary and appropriate. Resident victims of sexual abuse will 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. Female victims of sexually abusive vaginal penetration must be offered pregnancy tests. If pregnancy results from sexual abuse while in residential placement, victims will receive timely and comprehensive information about, and timely access to, all lawful pregnancy-related medical services. All medical and counseling services will be provided at no charge to the victim.

The Building Manager or designee ensures that incidents of sexual abuse/rape, findings from investigations, and other pertinent information is reported to the youth's court of jurisdiction, the youth's worker, and to the youth's parent or legal guardian.

Records of allegations must be kept for as long as the employee is employed or the youth is in residence, plus five years.

If a report is received of alleged sexual abuse from another facility, the Building Manager must report to the Director of the other facility within 72 hours.

(All other applicable reporting requirements still apply.)

A designated facility employee must monitor staff and youth to prevent retaliation for a minimum of 90 days after a sexual abuse allegation is made. Monitoring should include multiple methods, including but not limited to observation, direct questioning, and review of logs and incident reports.

G. Alternate Housing Placement of Victims and Perpetrators

The Building Manager/Consumer Rights Officer or designee must take immediate steps to protect sexual abuse victims from further victimization (if still at the facility) by separating the alleged victim from the alleged perpetrator(s) including arranging for separate housing, dining, and/or other elements of daily routine to the extent necessary to ensure protection. These same protections must be provided to any youth believed to be in imminent danger of being sexually abused.

H. Investigation Protocols



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Each incident of alleged or reported sexual abuse or sexual assault/rape must be investigated to the fullest extent possible. Evidence collected must be maintained under strict control. Vista Maria will not terminate an investigation solely because the source of the allegation recants the allegation. Vista Maria will not terminate an investigation due to the alleged victim or alleged perpetrators leaving the facility. Investigators will not make a determination based on the credibility of the alleged victim. Substantiation of an allegation will be based on an evidentiary standard no higher than a preponderance of the evidence. Based on the results of the investigation, facility personnel and prosecuting authorities will meet to determine if prosecution is appropriate.

1. Suspected or alleged youth-on-youth rape, sexual assault, or forced sexual activity with or without sexual penetration:

- The victim and alleged perpetrator must be separated, kept isolated from each other, and prevented from communicating.
- All reporting must occur as listed in Section F of this policy.
- If the assault is alleged to have occurred within the past 96 hours, the victim must be transported to DMC Children’s Hospital for a forensic examination. If the assault is alleged to have occurred more than 96 hours earlier, the hospital is contacted for additional instructions.
- The Consumer Rights Officer and any necessary outside investigators (CPS, DCWL and Dearborn Heights Police) must take victim statements, open an investigation, and if applicable collect physical evidence.
- The area where the suspected assault took place is secured until released by the Consumer Rights Officer.
Note: Staff or medical personnel can enter the area if it is necessary to ensure youth safety, for example if a victim needed medical attention or first aid before being transported, but efforts must be made to disturb the area as little as possible.
- Any clothing or articles belonging to the victim are left in place and not handled or disturbed until investigators have gathered evidence. The victim must be requested not to shower, brush teeth, or change clothing before being transported to the hospital. The alleged perpetrator must not be allowed to change clothing, wash, or brush teeth.
- Staff must not interview victims or alleged perpetrators for incident details beyond obtaining the basic information necessary to inform further actions that must be taken, such as separation of victims and perpetrators, facilitating for victim medical needs, etc.
- Staff must complete an Incident Report before the end of their shift. Incident Reports must contain all facts as known, including the victim’s statement of allegation in the victim’s own words. Incident Reports must not express the writer’s opinion.
- Staff must not discuss the details of sexual abuse allegations or incidents, beyond the extent needed to maintain safety and security at the facility,



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with persons other than Supervision/Management, investigators, and prosecuting officials.

2. Suspected or alleged staff-on-youth sexual activity of any type:

- The Consumer Rights Officer and Building Manager are immediately notified. The Consumer Rights Officer or designee will make all required notifications, including notification to the police to open an investigation and notification to the suspected employee restricting work activities.
- Pending notification from the Consumer Rights Officer or the Human Resources Department, the suspected employee must not be in direct contact with any facility residents.
- If there has been suspected or alleged sexual activity of any type the victim is transported for a forensic examination and evidence is protected using the same procedures as listed in items in Section 1 above.
- If it is found/proven that an employee participated in behaviors prohibited by the PREA Policy it will be cause for immediate termination from employment with the agency. Dismissal is the presumptive discipline for staff upon a finding that they engaged in sexual abuse of a youth.

3. Any other intentional youth-on-youth sexual touching (non-penetrative touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks without penetration by a resident of another resident, with or without the latter's consent) and/or alleged or suspected youth-on-youth sexually abusive contact is prohibited at Vista Maria. (See policy POL-004-005 Client Sexual Activity).

- If reported by youth, observed, or suspected, staff must alert the supervisor or Building Manager if the supervisor is not available. The supervisor or Building Manager must ensure that staff document information in an incident report and must ensure the youth safety is restored or maintained.
- The supervisor is required to notify the Building Manager and Consumer Rights Officer.
- The Consumer Rights Officer will report to the DCWL consultant and the Dearborn Heights Police as necessary.
- Alleged or suspected incidents of youth-on-youth sexually abusive contact are investigated internally by personnel that have received specialized training in conducting administrative investigations of sexual abuse and sexual harassment allegations.

NOTE: Vista Maria prohibits all sexual activity between residents. Sexual activity is NOT deemed sexual assault IF the activity was not coerced.

4. A sexual abuse incident review will be conducted at the conclusion of every sexual abuse investigation unless the allegation has been determined to be unfounded. The sexual abuse incident review team will include the Director of



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Quality and additional designees as decided by the Director of Quality. The review will occur within 30 days of the conclusion of the investigation. The review team must review each incident of sexual abuse for cause, staffing, and physical barriers, and make recommendations for prevention. Recommendations must be implemented or the reason(s) if not implemented must be documented.

I. Independent Audits and Agency Monitoring and Reporting

In addition to internal administrative review and analysis, and DCWL reviews, an independent and qualified auditor must audit the facility at least every three years. Auditors must be able to access and tour the facility, review documents and records, and interview residents and staff. (Applies to state-run and state-contracted facilities only.)

The facility must designate a PREA compliance manager that has the time and authority to oversee facility compliance efforts.

The agency must distribute information to the public on how to report sexual abuse and sexual harassment on behalf of residents, information on its zero tolerance policy for sexual abuse/rape of residents, and sexual abuse data reports. This information must be posted on the facility website, or if the facility does not have a website, made publicly available by other means.

The facility must develop, document, and implement a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring to protect residents from sexual abuse. At least annually, facility Administration and the facility PREA compliance manager must review the plan to ensure:

- Generally accepted secure residential practices are met.
- Findings of inadequacy are addressed.
- Adequate numbers of Supervisory personnel.
- Responses are made where there is a prevalence of sexual abuse reporting on a certain shift, in a certain location, with certain personnel, or as pertaining to other factors.

The facility must collect accurate, uniform data for every allegation of sexual abuse. At a minimum the data must be sufficient to answer all questions on the annually-required Survey of Sexual Victimization. Aggregated data must be:

- Reviewed in order to assess and improve sexual abuse prevention, detection, and response practices.



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- Made available to the public through a public website or some other means at least annually.
(Note: Personal identifiers must be removed.)

J. Exhaustion of Administrative Remedies

The facility must issue a final decision (initial decision and appeal decision if appealed) on the merits of a grievance alleging sexual abuse or harassment within 90 calendar days of the initial filing of the grievance.

The facility may claim an extension of time to respond of up to 70 calendar days if the normal time period for a response is insufficient to make a decision. The facility must notify the youth and the youth's parent/guardian in writing of any such extension.

Third parties, including fellow youths, staff, family, attorneys, and outside advocates may assist a youth filing grievances relating to allegations of sexual abuse and harassment. If a third party, other than the parent or guardian, files a grievance on the youth's behalf, the facility must request as a condition of processing that the alleged victim agree to the grievance filed on his behalf and may also require that the alleged victim pursue any subsequent steps in the remedy process. If the alleged victim declines to have the grievance processed on his behalf, the facility must document the youth's decision.

NOTE: This policy complies with the PREA (Prison Rape Elimination Act) standards signed by the Attorney General on May 16, 2012 and released to the United States Department of Justice on May 17, 2012.

AUTHORITY:

**1939 PA 280, Social Welfare Act, MCL 400.115a(1) (g)
45 USC 15601, Prison Rape Elimination Act**

References

Documents referred to in this Policy include: POL- 004-001, Child Protection Law Compliance; POL-004-005, Client Sexual Activity