



Department of Juvenile Justice  
Administrative Procedure

<b>Administrative Procedure: VOL I – 1.7 – 01</b>	<b>Statutory Authority:</b> Title 66 of the <u>Code of Virginia</u> §§ 66-21 and 66-3 PREA §115.134(a)-(d)
<b>Subject:</b> <b>The Roles, Functions and Responsibilities of the Investigative Unit and Personnel Reporting Responsibilities</b>	<b>New Regulations:</b> 6VAC35-71-70; 6VAC35-71-75; 6VAC35-41-100; 6VAC35-41-105
	<b>Old Regulations:</b> 6VAC35-140-45; 6VAC51-1040 ACA # 4-JCF-3D-01; 4-JCF-3D-04, 4-JCF-3D-07; 4-JCF-3D-09

**I. PURPOSE**

To establish and clarify the responsibilities of the Department of Juvenile Justice (DJJ) when an allegation is made or a complaint is filed alleging a crime was committed within a juvenile correctional center (JCC) or by a DJJ staff.

**II. SCOPE**

This procedure applies to all investigations conducted by the DJJ Investigative Unit, including administrative investigations and investigations of criminal activity affecting DJJ operations.

**III. DEFINITIONS**

**Abuse** -The improper use or treatment of individual, a corrupt practice or application of policy or procedure that directly or indirectly affects an individual in an unjust manner, or any intentional act that causes or threatens to cause physical, mental, or emotional injury to an individual.

**Circumstantial Evidence** – Evidence that tends to prove a factual matter by proving other events or circumstances from which the occurrence of the matter at issue can be reasonably inferred.

**Direct Evidence** – Evidence that, if believed, immediately establishes the factual matter to be proved by it, without the need for inferences.

**Fraud** – The deliberate deception to procure unfair or unlawful gain. It includes an array of intentional irregularities and illegal acts performed by persons inside and outside of DJJ.

**Preponderance of Evidence** – The greater weight of the evidence required in a civil (non-criminal) lawsuit for the trier of fact (jury or judge without a jury) to decide in favor of one side or the other. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

**Physical Evidence** – Tangible evidence (e.g., weapon, document, or visible injury) that is in some way related to the incident that gave rise to the case.

**Rape - Prison Rape Elimination Act (PREA)**, or sexual fondling of a person, forcibly or against that person's will; or not forcibly or against the person's will, where the victim is incapable of giving consent because of his or her youth, or his or her temporary or permanent mental or physical incapacity; or ... the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person achieved through the exploitation of the fear or threat of physical violence or bodily injury."

*Code of Virginia § 18.2-61* defines rape as any person who has "sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape."

**Sexual Abuse** – The Prison Rape Elimination Act provides the following definition of sexual abuse: Sexual abuse of a resident by a 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:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- Contact between the mouth and the penis, vulva, or anus;
- Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- 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 a resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the 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 a resident, and
8. Voyeurism by a staff member, contractor, or volunteer.

***Voyeurism by a Staff Member, Contractor, or Volunteer*** – An invasion of privacy of a resident by staff for reasons unrelated to official duties, such as peering at a resident who is using a toilet in his or her cell 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 resident’s naked body or of a resident performing bodily functions.

***Sexual Harassment*** – (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 resident directed toward another; and (2) Repeated verbal comments or gestures of a sexual nature to a 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.

***Substantiated Allegation*** – An allegation that was investigated and determined to have occurred.

***Unfounded Allegation*** – An allegation that was investigated and determined not to have occurred.

***Unsubstantiated Allegation*** – An allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

#### **IV. PROCEDURE**

##### **A. Initiating an Investigation**

1. Referrals for investigations should be made using the supervisory chain of command. Once the Organizational Unit Head, Superintendent or designee is made aware of a potential situation of an administrative, criminal, PREA, or other violation, he/she shall notify, as soon as practical, the Investigative Unit Manager and/or the Investigative Unit Supervisors.
2. The Investigative Unit Manager and/or Investigator Supervisors shall have the responsibilities to assign and/or conduct investigations regarding incidents that are reported and/or referred to the Investigative Unit. When required by law, or as otherwise appropriate to the circumstances, the Unit shall consult with the Virginia State Police (VSP), local law enforcement, respective Commonwealth’s Attorney Offices and/or the Office of the State Inspector General (OSIG) for guidance and resources.
3. The Investigative Unit shall cooperate with local, state and federal agencies that are investigating criminal law violations and allegations of employee misconduct in accordance with PREA Standard 115.371(m).
4. When the Investigative Unit receives an allegation, one or more investigators shall initiate an investigation as soon as practicable, but no later than two (2) calendar days including weekends and holidays after receiving the allegation. Incidents shall be referred to the Virginia State Police for investigation, as appropriate.

**B. PREA Investigations**

All allegations of sexual abuse and sexual harassment as defined by the Prison Rape Elimination Act of 2003, 42 USC §§15601-09 (PREA), including third-party and anonymous reports, shall be investigated in accordance with DJJ's Procedure, VOL IV-4.1-1.03 PREA Standard 115.71(a).

**C. Administrative Investigations:**

1. Administrative investigations shall:
  - a. Include an effort to determine whether staff action or failure(s) to act contributed to the abuse as indicated in PREA Standard 115.371 (g)(1);
  - b. 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 as indicated in PREA Standard 115.371 (g)(2);
2. Written reports shall be retained for as long as the alleged abuser is committed to or employed by DJJ plus five (5) years, whichever is longest as indicated in PREA Standard 115.371 (j).

**D. Criminal Investigations**

1. The Investigative Unit shall investigate allegations of criminal behavior affecting DJJ operations in accordance with a written agreement entered into with the VSP in accordance with PREA Standard 115.371 (h).
2. Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attached copies of all documentary evidence where feasible.
3. Written reports shall be retained for as long as the alleged abuser is committed to or employed by DJJ plus five (5) years, whichever is longest as indicated in PREA Standard 115.371 (j).
4. Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution as indicated in PREA Standard 115.371(i).
5. No standard higher than a preponderance of the evidence shall be imposed in determining whether allegations of sexual abuse or sexual harassment are substantiated as indicated in PREA Standard 115.372.

**E. Theft / Fraud Investigations**

If theft or fraud is alleged, the Investigative Unit may request appropriate internal or external personnel to assist with identifying weaknesses in financial and operating procedures that led to the loss.

## **F. Access to Records, Property and Personnel in the Course of Investigations**

1. The Investigative Unit shall have unrestricted access to all DJJ records and property.
2. The Director of DJJ or the Director's designee shall intervene with any disputes regarding the release of information to investigators and his/her determination shall be final.
3. While in the course of an investigation, Investigative Unit personnel shall not be required to notify or seek approval of DJJ supervisors or management personnel before contacting individual employees and volunteers. However, in some circumstances when notification shall not jeopardize the investigation, Investigative Unit personnel may notify DJJ supervisors and management that an employee or volunteer has been contacted.
4. During the course of investigations, Investigative Unit personnel shall make every effort not to disrupt staff work routines, particularly when staff are involved in security positions and/or assigned to critical posts.

## **G. Investigative Findings**

1. In addition to the findings of fact resulting to the investigation, the Investigative Unit may recommend improvements of identified weaknesses and may conduct additional reviews to identify similar weaknesses in other areas within DJJ.
2. The Investigative Unit shall not recommend disciplinary action or other personnel actions. Investigative Unit personnel will make referrals to the appropriate Commonwealth's Attorney's office when a criminal investigation confirms theft, fraud, abuse, sexual misconduct or other serious or illegal misconduct. The individuals who are found to be responsible may be subject to criminal, civil, or personnel actions.
3. Investigations involving possible policy, procedure, regulation, and/or criminal conduct shall be processed through the Investigative Unit Manager and forwarded for review to the Deputy Director of Residential Services and/or the Superintendent of the Division of Education for notice of action, if applicable. Any authorized criminal, civil, or personnel action shall be reported back to the Investigative Unit Manager.
4. The DJJ Human Resources (HR) Unit shall assist in the review of potential disciplinary actions to ensure compliance with DJJ HR procedures.
5. When designated by statute, regulation and/or Executive Order, the results of an investigation shall be provided to any federal, state, or local agency showing just cause.

## **H. Personnel Reporting Responsibilities**

1. Reporting of Misconduct, Criminal Violations Affecting DJJ Operations, and Other Violations
  - a. All DJJ employees, volunteers, and contractors ("personnel") shall report any observed or suspected criminal activity affecting DJJ operations and employee misconduct/sexual misconduct to include violations of statutes, the Prison Rape Elimination Act of 2003, 42 USC §15601-09, Executive Orders of the Governor, personnel and fiscal policies of the

## **The Roles, Functions and Responsibilities of the Investigative Unit and Personnel Reporting Responsibilities**

Commonwealth, Board policies and standards, or DJJ directives to the Investigative Unit in accordance with established procedures. The commonly used reporting procedures are summarized in this Administrative Procedure.

- b. When DJJ personnel become aware of alleged violations, they shall:
    - 1) The appropriate DJJ personnel shall report the allegations through the chain of command according to required DJJ procedures to the Investigative Unit;
    - 2) The shift commander immediately gathers information to help establish the facts and circumstances of the alleged violation(s); and
    - 3) The appropriate DJJ personnel shall take immediate action to correct deficiencies with procedures and practices.
  - c. DJJ personnel shall report known and/or suspected criminal activity affecting DJJ operations and violations of the DJJ Code of Conduct as required in the Code of Conduct. The person receiving the report shall forward this information to the Investigative Unit for investigation as soon as practicable, but no later than the next business day.
  - d. DJJ personnel, while in the performance of their official DJJ duties, who intend on proceeding with a criminal petition and/or criminal warrant involving criminal activity affecting DJJ operations and/or persons that are committed within a JCC shall contact the Investigative Unit before obtaining any criminal petitions and/or warrants.
  - e. The Investigative Unit, upon being notified by DJJ personnel who intend on proceeding with a criminal petition and/or criminal warrant, shall:
    - 1) Review the facts and circumstances surrounding the reported criminal activity and determine the investigative course or action.
    - 2) Determine which *Code of Virginia* has been violated in reference to the reported criminal activity.
    - 3) Ensure the elements of the reported criminal activity are in accordance with the *Code of Virginia*.
    - 4) Assist DJJ personnel in obtaining the criminal petition and/or warrant.
    - 5) Once the criminal petition and/or warrant has been issued, the Investigative Unit shall prepare an Investigative Report in accordance with section (D) above.
  - f. Personnel within the Investigative Unit who have been certified as law enforcement officers by the Department of Criminal Justice Services (DCJS) shall have by law, the same powers as a sheriff or a law enforcement officer and have the authority to investigate allegations of criminal conduct and shall have the powers to arrest for violations of laws that affect the operations of DJJ.
2. The Reporting of Waste, Fraud, and Abuse of Government Resources
- a. To report suspected waste, fraud, or abuse of government resources, personnel shall: (i.) notify their supervisor, (ii.) contact the Investigative Unit Supervisor or Manager at the DJJ central number at 804-371-0700, 804-588-3884, (iii.) or anonymously notify the State Waste, Fraud, and Abuse Hotline at 1-800-723-1615.

- b. Examples of Fraud include:
    - 1) Offering or accepting bribes or kickbacks;
    - 2) Embezzlement (e.g., misappropriating money or property and falsifying records to cover up the act, thus making detection difficult);
    - 3) Self-dealing that results in the award of state business to an enterprise in which the state employee holds an interest;
    - 4) Receiving any benefit from a source other than the Commonwealth for just doing one's job;
    - 5) Using insider information for personal gain;
    - 6) Accepting anything of value that may reasonably be perceived as tending to influence one in the performance of his/hers official duties;
    - 7) Intentionally concealing or misrepresenting events or data; and
    - 8) Submitting claims for services or goods not actually provided to the DJJ or for reimbursement of expenses not actually incurred.
  - c. Upon receiving an allegation of theft or fraud or abuse from the Waste, Fraud, and Abuse Hotline, the Investigative Unit Manager and/or Investigator Supervisor shall immediately notify the Director and implement an appropriate plan of action to include circumstances that would require that notification be made to the OSIG and/or the VSP, pursuant to *Code of Virginia* § 30-138.
  - d. Personnel who report theft, fraud, abuse, or other misconduct in good faith shall be protected from retaliation.
  - e. Generally allegations of fraud, waste, and abuse will be investigated by the State Office of the State Inspector General. However, the Investigative Unit may investigate such matters when specifically authorized by the Office of the State Inspector General.
3. Reporting Allegations of Child Abuse
- a. When there are allegations of abuse or neglect of a resident under the age of 18, the *Code of Virginia* § 63.2-1509 requires that the DJJ JCC/Court Service Unit (CSU) having custody of said resident promptly report through chain of command the allegation. The Organizational Unit Head, Superintendent, and/or the Administrator on Call (AOC) shall notify the Department of Social Services (DSS). Allegations of sexual abuse, in addition to notifying DSS, shall be reported to the VSP by the Investigative Unit per current Memoranda of Agreement (MOA). Following notification to DSS, the JCC Superintendent or designee shall notify the Investigative Unit Manager and/or Investigator Supervisor as soon as practicable, but no later than the next business day.
  - b. If the Organizational Unit Head Superintendent or designee is not the same individual who identified the allegation of abuse or neglect, he/she shall:
    - 1) Notify the individual who identified the allegation of abuse or neglect when the report is made to DSS;
    - 2) Provide the name of the DSS individual who received the report; and
    - 3) Forward any communication resulting from the report, including any information about any actions taken regarding the report to the Investigative Unit.

**I. Reports from Local, Regional, and Contract Programs**

The Deputy Director of Residential Services shall ensure that the Investigative Unit receives copies of all serious incidents including PREA allegations of sexual abuse and sexual harassment reported by local, regional, and contract programs in accordance with standards or contract terms. Although DJJ has no authority over the operation and security of detention homes, any local, regional, or contract program may ask the Investigative Unit for assistance or advice at any time.

**V. RESPONSIBILITY**

The Investigative Unit Manager and JCC Superintendent shall be responsible for ensuring this procedure is implemented and followed.

**VI. INTERPRETATION**

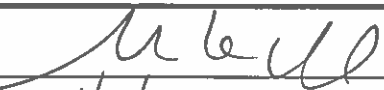
The Investigative Unit Manager shall be responsible for the interpretation of this administrative procedure.

**VII. CONFIDENTIALITY**

All procedures and bulletins are DJJ property and shall only be used for legitimate business purposes. Any redistribution of the documents or information contained in the procedures or bulletins shall be in accordance with applicable state and federal statutes and regulations and all other DJJ procedures. Any unauthorized use or distribution may result in disciplinary and/or criminal action, as appropriate and applicable.

**VIII. REVIEW DATE**

This procedure shall remain in effect until rescinded or otherwise modified by the appropriate authority.

Approved by: 	Date: 4/9/18
Effective Date: 4/10/18	Office of Primary Responsibility: Investigative Unit; Division of Operations
Supersedes: August 7, 2013	Forms: MOA between DJJ and VSP