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| ***Executive Office of Health and Human Services*** |
| **Deoartment of Youth Services** |
| **Official Policy** |

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This policy shall apply to DYS employees, contracted providers, youth, volunteers and interns.

***Applicability:***

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**1 *Signature:***

**Prison Rape Elimination Act (PREA) Code of Employee Conduct Policy Youth Grievance Process Policy Serious Incident Policy**

**Legal Advisory on 51A and 51B Reporting**

***References:***

**01.05.07(a), Prevention of Sexual Abuse and Sexual Harassment of Youth**

***Repeals:***

**June 30, 2014**

***Effective Date:***

**01.05.07(b)**

***Policy #:***

**Prevention of Sexual Abuse and Sexual Harassment of Youth**

***Policy Name:***

**Policy**

It is the policy of the Department of Youth Services ("DYS") to comply with the requirements of the Prison Rape Elimination Act ("PREA'') to protect its youth and have zero tolerance toward all forms of sexual abuse and sexual harassment. In accordance with PREA, DYS seeks to prevent, detect and respond to allegations of such conduct. All allegations of sexual boundary violations, sexual abuse sexual harassment or retaliation for reporting such conduct against youth by employees shall be considered a serious incident, investigated and may subject employees to appropriate discipline in accordance with these procedures.

All youth in DYS care and staff are prohibited from engaging in sexual boundary violations , sexual abuse, sexual harassment and retaliation for reporting such conduct as defined in this policy. All acts of a sexual nature are considered non-consensualdue to the fact that DYS youth are persons in custody. Youth cannot consent to any such act(s) due to age and/or their custodial status. All allegations against youth by another youth shall be investigated in accordance with these procedures.

The DYS PREA Coordinator shall oversee the agency's efforts to comply with the Federal Juvenile PREA standards in all its locations including state and contracted

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provider locations. PREA Compliance Managers shall coordinate efforts within each location in coordination with the DYS PREA Coordinator.

## Procedure

1. Definitions
	1. The following definitions shall have the meanings assigned to them in this policy for purposes of interpreting this policy.

Administrative Team: Such team includes the Program Director, Assistant Program Director, and Clinical Director.

First Clinical Session: First scheduled meeting a youth has with his or her assigned clinician or clinical designee following the completion of the Intake Procedures, and occurs within 72 hours of admission to DYS custody.

Sexual Boundary Violations: Any behavior in an alternative lockup, residential or community placement of a sexual or overly personal nature that does not maintain appropriate and respectful verbal and/or physical boundaries and is not otherwise defined in this policy. Such acts include but are not limited to making threats of a sexual nature, unreasonable invasion of privacy, inappropriate discussion of matters of a sexual nature, written communication of a sexual or overly personal nature, and exerting pressure or coercion to engage in inappropriate physical behavior. Such acts are violations of this policy whether or not they are welcomed by the youth. Other boundary violations not defined here may be a violation of the DYS Code of Conduct or other policy, advisory or practice.

Emergency Grievance: Any complaint alleging that a youth in residential placement believes he or she is at substantial risk of imminent sexual abuse.

Grievance: An allegation by a youth or third party on behalf of a youth based upon actual, perceived or alleged circumstances concerning a violation of this or other policies, or conditions of confinement.

Grievance Box: Locked drop box labeled 'grievance box' to collect completed youth grievance forms.

Grievance Form: Standardized form that a youth, employee or third party, on behalf of a youth, may submit in order to file a grievance.

Mental Health Evaluation: Assessment conducted by a licensed clinician of a youth's current emotional state and current mental health needs.

Mandated Reporter: All DYS and provider employees in direct care positions who are required to report to the Department of Children and Families ("DCF") abuse or neglect of a child by a caretaker, under the provisions of G.L. c. 119, §5 IA.

# PREA: Prison Rape Elimination Act: The Federal juvenile standard that creates requirements to prevent, detect and respond to allegations of sexual abuse, sexual harassment or retaliation by employees or youth for reporting such conduct.

PREA Compliance Manager: A DYS state or contracted provider employee assigned to coordinate a location's efforts to comply with the PREA standards. Such individual has the title of Facility Administrator of a set of programs located within one or more buildings or Program Director for locations that physically stand alone and do not share a building or campus with DYS or another provider.

PREA Coordinator: DYS employee who develops, implements and oversees statewide agency efforts to comply with the PREA standards.

Serious Incident Report (SIR): A standardized form used by DYS state and contracted employees to report serious incidents in accordance with the DYS Serious Incident Reporting Policy.

Sexual Abuse of a youth by another youth: As defined by PREA, sexual abuse includes any of the following acts, even with consent by a youth:

* + 1. contact between the penis and the vulva or the penis and the anus, 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 a youth by an employee, volunteer or contracted provider: As defined by PREA, sexual abuse includes any of the following acts, even with consent by a youth:

1. contact between the penis and the vulva or the penis and the anus, however slight;
2. contact between the mouth and the penis, vulva or anus;
3. contact between the mouth and any body part where the employee, contractor, 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 employee, contractor, or volunteer has the intent to abuse, arouse or gratify sexual desire; and
5. any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the employee, contractor, contracted provider or volunteer has the intent to abuse, arouse or gratify sexual desire;
6. any attempt, threat, or request by an employee, 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 youth; and
8. voyeurism by a staff member, contractor or volunteer.

Sexual Harassment by a youth to another youth: As defined by PREA, repeated and unwelcomed sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one youth directed toward another.

Sexual Harassment by an employee, volunteer or contracted provider toward a youth: As defined by PREA, repeated verbal comments or gestures of a sexual nature including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing or obscene language or gestures.

Third Parties: Individuals who can report a grievance on behalf of a youth or assist a youth in filing a grievance including other youth, employees, family members, attorneys, and outside advocates.

Youth Orientation Materials: Information presented to youth that shall include but is not limited to the DYS approved postings of Rape Crisis Centers and the pamphlet on 'How to Conduct Yourself which contains information regarding the Department of Children and Families Child at Risk Hotline 1- 800-792-5200.

Youth Education Materials: Information presented to youth that shall include but is not limited to the following: the DYS approved intake presentation; Policy on the Youth Grievance Process; Policy on the Prevention of Sexual Abuse and Sexual Harassment of Youth; notification of the Department of Children and Families Child at Risk Hotline 1- 800-792-5200; and numbers for the MA Rape Crisis Programs.

Volunteer: Any individual with authorization to be at a DYS location that is not a DYS staff or contracted provider including interns.

Voyeurism by a staff member, contractor or volunteer: As defined by PREA, an invasion of privacy of a youth by an employee for reasons unrelated to official duties such as peering at a resident using the toilet, talcing images of all or part of a youth's naked body or of youth performing bodily functions.

* 1. Terms that are defined DYS Policy No. 01.01.04, "Policy Definitions," shall have the meanings assigned to them in that policy, unless a contrary meaning is clearly intended.
	2. Terms not defined in DYS Policy No. 01.01.04 or in this policy shall have the meanings assigned to them by reasonably accepted standard dictionary definitions of American English.
1. Notification of Protections
	1. Within 24 hours of arriving at the location, during the DYS Intake Process, employees shall notify every youth of the protections contained in this policy using the youth orientation materials. Youth shall sign the acknowledgement form verifying that they were informed of this information. Employees shall retain a copy within the youth intake packet and scan into JJEMS.
	2. At the first scheduled clinical session, clinical employees shall review the youth education materials with the youth and document that the youth has received the information by noting such in the JJEMS clinical progress notes. Such presentation shall include but not be limited to the following:
2. Protections contained in this policy, including the definitions of sexual boundary violations, sexual abuse and sexual harassment;
3. Information on the various reporting mechanisms for youth who allege being a victim of or witness to sexual boundary violations, sexual abuse and/or sexual harassment including the Youth Grievance Process and the Department of Children and Families (DCF) Child at Risk Hotline (1- 800-792-5200); and
4. Responses to youth who intentionally make false allegations.
	1. This policy and procedures, statewide listing of Massachusetts Rape Crisis Centers and DCF Child at Risk Hotline (1- 800-792-5200) shall be posted at residential and community locations in two or more areas visible to:
5. Youth, in areas such as the library, bathrooms, classroom, cafeteria and clinical offices; and
6. Third parties, in areas outside the youth living areas such as the lobby, visiting locations, bathrooms, entrance areas and waiting rooms.
	1. Information in the youth orientation and education materials and posters on the Rape Crisis Centers, and DCF Child at Risk Hotline (1- 800-792-5200) shall be provided in formats accessible to all youth, including those who have limited English proficiency, are deaf, visually impaired, or otherwise disabled, as well as to youth who have limited reading skills. Employees seeking alternative formats for conveying this information to youth shall notify the Regional Clinical Coordinator upon identifying this need. Youth shall not be used in order to translate or relay this information to other youth.
7. Youth Reporting Allegations of Sexual Boundary Violations, Sexual Abuse and/or Sexual Harassment
	1. Youth may report allegations of sexual boundary violations, sexual abuse and/or sexual harassment in any way including but not limited to:
8. Verbally to any employee;
9. In writing through a grievance form using the Youth Grievance Process;
10. In writing or verbally to any third party who may file a grievance in accordance with the Youth Grievance Process; and/or
11. Verbally through the DCF Child at Risk Hotline (I- 800-792-5200).
	1. Youth may report that he or she is or perceives him or herself to be subject to a substantial risk of imminent sexual abuse. Such report is considered an emergency grievance, can be reported verbally or in writing and requires investigative response within 48 hours as described in section E.3.
12. Employee Reporting and Responding Requirements for Allegations of Sexual Boundary Violations, Sexual Abuse and/or Sexual Harassment
	1. Allegation occurred within an ALP or residential placement: Any DYS state or contracted provider employee, intern or volunteer in an alternative lock up program (ALP), residential or community placement who learns of or suspects alleged sexual boundary violations, sexual abuse or sexual harassment within an ALP or residential placement shall immediately report the information to their Location Manager and either the PREA Compliance Manager or one of the members from the administrative team where the allegation occurred. Such initial report may be verbal, but the reporter must also complete a written incident report prior to the end of the shift.
	2. Allegation occurred in the community: Any DYS state or contracted provider employee, intern or volunteer in the community who learn of or suspect alleged sexual boundary violations, sexual abuse or sexual harassment, including any non consensual sexual activity, against a DYS youth that may have occurred in the community either by a state employee, contract provider or any other individual shall follow the all the same requirements for reporting and responding in Section D(l) and (3). For circumstances involving sexual activity ofa DYS youth under the age of 16, employees shall notify the youth's parent or guardian. Community employees shall also consult with their supervisors regarding their reporting duties, and are encouraged to consult with the PREA Coordinator or Director of Investigations for guidance.
	3. Allegation of Sexual Abuse that includes allegation of contact or penetration as found in the definition of sexual abuse for this policy alleged to have occurred

within the last 5 days: Location Manager and/or designee(s) shall complete the following immediate actions, as applicable:

1. For obvious physical injury, call 911 for emergency medical response and provide immediate first aid, if warranted.
2. Request that the alleged victim not take any actions that could destroy physical evidence including washing or showering, brushing teeth, changing clothes, urinating, defecating, drinking or eating;
3. Attempt to prevent the alleged abuser from leaving the site and taking any action that could destroy physical evidence including washing, brushing teeth, changing clothes, urinating, defecating, drinking or eating;
4. Ensure the transport of the alleged victim to a designated Sexual Assault Nurse Examiner (SANE) Hospital where he or she can be examined by medical personnel not employed by DYS, by either:
	1. Emergency medical transport; or
	2. DYS staff in accordance with the DYS Transportation Policy; or
	3. For alternative lock up programs, by the referring police department.
	4. Employees shall ensure that the client feels safe with the employee chosen to accompany him or her during transport.
	5. Employees shall seek supervisory and regional support if the youth refuses a transport in this circumstance.
5. Preserve and protect any alleged crime scene by not allowing anyone to go in or out of the alleged area, altering the area, or removing anything until investigators arrive and preserve any electronic monitoring data for the time period when the abuse may have occurred;
6. Keep all witnesses apart from one another until law enforcement authorities have an opportunity to speak with them.
7. Follow additional steps outlined below in Section D.4.
	1. For any and all other allegations of Sexual Abuse alleged to have occurred within the last 5 days **or at any other time:** Location Manager and/or designee(s) shall:
8. Make all efforts to have the alleged victim remain in a separate and secure area away from the alleged perpetrator;
9. Call the required regional manager if during regular business hours or On Call Manager for after regular business hours;
10. Call CIC and complete a Serious Incident Report in accordance with the Serious Incident Policy;
11. Call the law enforcement agency for that location who will conduct any resulting criminal investigation and cooperate fully with responding law enforcement personnel;
12. If law enforcement is responding, ensure employees do not question either individual about the specific events while waiting for law enforcement;
13. Call the parent or guardian of the youth, unless there is documentation that the parent or guardian should not be called, notifying them that there has been an allegation of sexual abuse and where the youth is being transported, if applicable.
14. File a 51A report with the Department of Children and Families (DCF), as set forth in DYS Legal Advisory on the 51A and 51B Reports.
15. Offer to transport the alleged victim to a SANE hospital if youth has not already been transported ensuring the client feels safe with the employee chosen to accompany him or her during transport

1. Consider moving youth to other programs to separate the alleged victim and abuser with assistance from the Regional Director of Operations or designee, minimizing any additional impact on the alleged victim.

J. In consultation with the Regional Clinical Coordinator or Crisis Screening Team, if RCC not available, determine if the youth requires one-to-one observation in accordance with DYS Suicide Assessment Policies.

1. Ensure the completion of a mental health evaluation within 72 hours for both the alleged victim and alleged perpetrator after any allegation of sexual abuse that is alleged to have occurred in residential placement. Such evaluation must be completed by a licensed clinician to assess a youth's current emotional state and current mental health needs, and not to investigate the alleged incident.
	1. In consultation with the Regional Clinical Coordinator, make available to the alleged victim a victim advocate from a local rape crisis center to provide support services to the youth and document that such services were offered in the clinical progress notes. For youth in an ALP, the location manager may contact such advocates and note such services in the youth's file.
2. Monitor the conduct or treatment of the youth or employee(s) who reported the sexual abuse and the alleged victim of sexual abuse for possible retaliation for at least 90 days following the report of sexual abuse and follow the DYS Serious Incident Policy to report such information.
3. Upon receiving an allegation that a youth was sexually abused at any other non DYS residential location, the Location Manager shall, in addition to the above, notify the supervisor of that location of the alleged incident.
4. If the alleged victim has an open case, the Location Manager shall report the allegation of sexual abuse to the youth's attorney or other legal representative of record, if known, and supervising court within 14 days of receiving the allegation.
	1. Allegations of Sexual Boundary Violations and Sexual Harassment: Location Manager and/or designee(s) shall:
5. Call the required regional manager if during regular business hours or On Call Manager for after regular business hours;
6. Contact CIC, and complete a Serious Incident Report in accordance with the Serious Incident Policy;
7. Consider ifa SIA report shall be filed with the Department of Children and Families, as set forth in DYS Legal Advisory on the filing of 5lA and 51B;
8. Monitor the conduct or treatment of youth or employee for possible retaliation. Remedy any such retaliation and follow the DYS Serious Incident Policy to report any retaliation.
	1. Individuals shall not disclose information about the youth's allegation to anyone who is not directly involved in the treatment, investigation or any other security or management decisions.
	2. Staff may privately report sexual abuse, sexual harassment and/or sexual boundary violations as required by policy and procedures outside of their chain of command and/or request their name not be used in the DYS reporting documents.
	3. Failure of a state or contract provider employee to report or to make intentional false allegations of sexual boundary violations, sexual abuse or sexual harassment by youth or employees may result in disciplinary action, up to and including termination. Termination shall be the presumptive disciplinary sanction for staff found to have engaged in sexual abuse.
	4. Employees who are covered by a Collective Bargaining Agreement shall be entitled to their rights in accordance with NLRB v. Weingarten, Inc., 420 U.S. 251 (1975), under which employees may refuse to be interviewed without union representation if they (a) are the target of an investigation or if (b) they reasonably believe that an investigation will result in disciplinary action being taken against them.
	5. All employees are entitled to their rights in accordance with *Carney v. City of Springfield,* 403 Mass. 604 (1988). Such rights state that an employee carmot be asked during a DYS interview about potentially criminal conduct unless the

proper law enforcement authority (generally, state or local police, or Attorney General's Office and/or local District Attorney) has offered the employee transactional immunity.

* 1. Disciplinary sanctions for violations ofthis policy by employees shall take into consideration nature and circumstances of the acts committed, employee's disciplinary history and sanctions imposed for comparable offenses by others with similar histories.
1. DYS Investigation Requirements
	1. The DYS Director of Investigations or his/her designee shall investigate all allegations of alleged sexual boundary violations, sexual abuse and/or sexual harassment and retaliation for reporting such allegations or cooperating with an investigation. The investigation will include an effort to determine whether employees' actions or omissions contributed to the allegations.
	2. Substantiated allegations of conduct that appear criminal in nature, including alleged sexual abuse, shall be referred to the appropriate state or local law enforcement agency. In such cases, the Director of Investigations or his/her designee shall:
2. Cooperate and consult with law enforcement and the District Attorney's Office conducting the criminal investigation and ensure that the criminal investigation is completed;
3. Conduct any additional investigation deemed necessary;
4. Issue a final agency decision on the merits of any portion of a client grievance alleging sexual abuse within 60 days of the initial filing of the grievance. The DYS Director of Investigations or his/her designee may claim a reasonable extension if 60 days is insufficient to make an appropriate decision due to the needs of concurrent law enforcement or other outside agency investigations.
5. Notify the youth who is the subject of the allegations of decisions on the merits of the allegations being investigated by the DYS Investigations Unit and law enforcement and any time extensions for the completion of the decision and document such notifications in the JJEMS progress notes. Such notifications shall include whether the:
	1. allegation has been determined to be substantiated, unsubstantiated, or unfounded;
	2. employee or youth alleged to have committed the sexual abuse is no longer within the youth's program or facility; and
	3. employee or youth alleged to have committed the sexual abuse is indicted and/or convicted on a charge related to sexual abuse due to the youth's allegation.

# Upon receipt of a Serious Incident that constitutes an emergency grievance, CIC shall contact the Director of Investigations immediately upon receiving the verbal and/or written report. The Director of Investigations or his or her designee shall provide an initial response within 48 hours and a final decision within 5 calendar days documenting whether or not the youth is subject to a substantial risk of imminent sexual abuse and what action should be taken in response to the emergency grievance.

* 1. All DYS investigations shall be documented in written reports that include a description of the physical, documentary, and testimonial evidence, facts and findings. The reports shall also contain the reasoning behind credibility assessments. No standard higher than preponderance of the evidence in determining whether or not such allegations occurred may be used. Reports will make formal investigative findings, and also detail any corrective action necessary, and will note whether management employee acts or omissions contributed to the abuse if abuse is found.
	2. Investigative reports shall be retained for as long as the alleged abuser is within DYS custody, if a youth, or employed by the agency, plus five years.
	3. After investigation, if it is determined that a youth intentionally made false allegations and did not act in good faith based upon a reasonable belief, program behavior management systems should be utilized to address the youth's behavior.
	4. The following shall not be grounds to terminate an investigation:
1. Withdrawal of the complaint;
2. Failure of the youth to continue with an allegation of sexual abuse, sexual harassment, boundary violation or retaliation;
3. Departure of the abuser or victim from employment or DYS custody or superv1s10n.
	1. Unless the allegation is unfounded, the Administrative Team and PREA Compliance Manager will conduct an incident review within thirty (30) days of the conclusion of the investigation. At the conclusion of the incident review a report shall be prepared of its findings, including but not limited to the determinations identified in 8. (i)-(v) and any recommendations for improvement and submitted to the Location Manager, PREA Compliance Manager and PREA Coordinator. The incident review shall include input from shift administrators, investigators, health services and clinical employees, as appropriate and consider the following:

1. Whether the allegation or investigation indicates a need to change a policy or practice to better prevent, detect, or respond to sexual abuse;

11. Whether the incident or allegation was motivated by the victim's 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;

iii. Whether a physical examination of the area in the facility where the incident allegedly occurred reveals any physical barriers in the area that may enable abuse;

1v. The adequacy of staffing levels in the area during different shifts;

v. Whether monitoring technology should be deployed or improved to supplement supervision by staff; and

* 1. On an armual basis, the Director of Investigations in coordination with the PREA Coordinator shall aggregate sexual abuse data from the serious incident database and incident reviews submitted pursuant to section E.8. in order to prepare an armual report. Such armual report shall:
1. Identify any problem areas;
2. Include corrective action plans of each facility and agency as a whole; and
3. Compare the current year's data and corrective action plans to the prior year's with an assessment of progress made in addressing sexual abuse.

1v. Upon approval by the Commissioner, the armual report shall be posted through the DYS website for public review. Information may be redacted if it presents a clear and specific threat to the safety and security of a facility as long as the nature of such redacted information is indicated.

Personal identifiers shall be redacted from the public report.

1. Practices under PREA
	1. When necessary, but no later than once each year, the PREA Coordinator shall assess, determine and document whether adjustments are needed to staffing plans, staffing patterns or video monitoring systems resources.
	2. Supervisory employees in all programs shall be proactive in the prevention of sexual abuse and harassment when making roommate and bedroom selections for youth. Factors staff should consider include compatibility of youths' chronological age, maturity, gang affiliation, level of sophistication, functioning level, size, strength, disabilities, infirmities, behavioral history, and the detaining or committing offenses.
	3. Employees shall consider every request by a youth for a room change and discretely inquire whether the youth is feeling unsafe. If the youth reports feeling unsafe, the employee should bring this to the attention of a supervisor and clinician for further review.
	4. Employees should also consider whether there are any witnesses who should be relocated to insure their safety and protect them from intimidation or retaliation.
2. Training Requirements

# All new employees with direct care responsibilities shall receive training in this policy through DYS Basic Training. Such training will take into consideration the ages and gender of the youth in DYS locations and will include:

1. Responsibilities under PREA and this policy;
2. Youth's right to be free from sexual boundary violations, sexual abuse and sexual harassment; and youth and employees' right to be free from retaliation for reporting violations of this policy;
3. Common reactions of juvenile victims of sexual abuse and sexual harassment;
4. How to detect and respond to signs of threatened and actual sexual abuse, how to distinguish between boundary violations and sexual abuse between youth and how to avoid inappropriate relationships with residents;
5. How to communicate effectively and professionally with residents; and
6. How to comply with mandatory reporting of sexual abuse to outside agencies and laws regarding applicable age of consent.
	1. DYS Training Unit shall provide, at minimum, a refresher training every year to current employees.
	2. Volunteers and interns who may have contact with youth shall receive training on this policy either through Basic Training or the Volunteer Orientation Training.
	3. DYS shall ensure its investigators receive specialized training in conducting sexual abuse investigations to the extent such investigations are done by these investigators. Such training includes:
7. techniques for interviewing juvenile sexual abuse victims;
8. proper use of Miranda and Garrity warnings;
9. criteria and evidence required to substantiate a case for administrative action or prosecutorial referral.
	1. DYS contracted providers shall attend the trainings detailed above in section 1-3 or as otherwise determined by the Director of the DYS Training Academy.
	2. DYS shall ensure that the contracted health services employees receive training detailed in the above section G. 1 and 2 and have training in detecting and assessing sexual abuse and sexual harassment, preserving physical evidence of sexual abuse, and responding to juvenile victims of sexual abuse and sexual harassment.
	3. Those attending the trainings listed above shall sign an acknowledgment after such trainings that they understand and will follow the training received.