



# County of Fairfax, Virginia

## MEMORANDUM

### Memorandum of Understanding Between Fairfax County Police Department and Fairfax Juvenile and Domestic Relations District Court, Court Services Unit

#### Purpose

This memorandum of understanding is being executed by the Fairfax County Police Department (FCPD) and the Fairfax County Juvenile and Domestic Relations District Court, Court Services Unit (FJDRDC). The FCPD and FJDRDC jointly and separately agree to abide by the terms and provisions of this memorandum of understanding throughout the term of this agreement unless terminated by one or both parties. The purpose of this agreement between the FCPD and the FJDRDC is to establish that the FCPD has the legal authority and shall be the investigating authority for all allegations of sexual abuse or sexual harassment as defined by the Department of Justice (DOJ) (See Appendix A) referred for investigation by any of the residential programs operating under the FJDRDC, unless the allegation does not involve potentially criminal behavior.

#### Background

FJDRDC operates five residential programs that fall under the United States Department of Justice National Standards to Prevent, Detect, and Respond to Prison Rape under the Prison Rape Elimination Act (PREA): The Juvenile Detention Center, The Transitional Living Program, The Boys Probation House, The Shelter Care Program, and The Foundations Program.

This agreement establishes the role of the FCPD Major Crimes Division in conducting criminal investigations related to allegations of sexual abuse thereby ensuring that the FJDRDC residential programs are in compliance with the below listed PREA Juvenile Regulations:

- § 115.321 Evidence protocol and forensic medical examinations.
- § 115.322 Policies to ensure referrals of allegations for investigations.
- § 115.353 Resident access to outside support services and legal representation.
- § 115.354 Third-party reporting.
- § 115.371 Criminal and administrative agency investigations.
- § 115.373 Reporting to residents.

Details of the PREA Juvenile Regulations represented in Appendix A of this memorandum.

## **General Agreement**

1. The FJDRDC programs shall identify qualified persons to respond to and conduct initial investigations into all allegations of sexual harassment or sexual abuse to determine if the issue is to be handled administratively, or referred to FCPD Major Crimes Division as a criminal matter.
2. FCPD Major Crimes Division (MCD) will be responsible for conducting criminal investigations into any allegations of a sexual assault that occurs at, or is reported from, any of the five residential programs located in the confines of Fairfax County.
  - a. The Juvenile Detention Center
  - b. The Transitional Living Program
  - c. The Boys Probation House
  - d. The Shelter Care Program
  - e. The Foundation Program
3. Upon the request of the FCPD, the FJDRDC will provide MCD detectives unrestricted access to any physical area under their control at any of the five residential programs in order to conduct their criminal investigation.
4. A resident of any of the five residential programs can obtain access to outside victim advocates for emotional support services related to sexual abuse by calling the FCPD Victim Services Section 24/7 phone line at 703-246-2141.
5. Upon conclusion of the criminal investigation, the FCPD will provide a copy of the case file to the FJDRDC for its administrative investigation. Law enforcement records concerning juveniles are confidential pursuant to Va. Code Ann. 16.1-301, and are not to be open to inspection or disclosed except as provided in Va. Code Ann. 16.1-301.

## **Release of Public Information**

1. The FCPD will be responsible for the release of any information to the public concerning the criminal investigation.
2. The FJDRDC will be responsible for the release of any information to the public concerning its administrative investigation.
3. Law enforcement records concerning juveniles are confidential pursuant to Va. Code Ann. 16.1-301, and are not to be open to inspection or disclosed except as provided in Va. Code Ann. 16.1-301. With the exception of criminal incident information related to felony offenses, criminal investigative files, including but not limited to police reports, are exempt from mandatory disclosure under the Virginia Freedom of Information Act (VFOIA), Va. Code Ann. § 2.2-3706(A)(2)(a). The FJDRDC will refer any VFOIA requests for criminal investigation information and materials to the FCPD, Internal Affairs Bureau.
  - FCPD FOIA information can be found at:  
<http://www.fairfaxcounty.gov/police/crime/vfoia.htm>.The FJDRDC will not share or disseminate any information or materials provided to it by the FCPD.

**Notification Procedures**

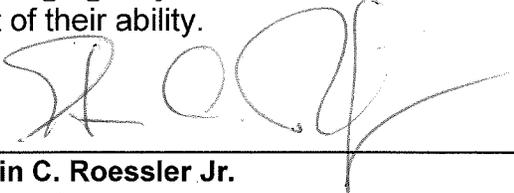
1. The FJDRDC shall immediately notify the Department of Public Safety Communications (DPSC) when an allegation of a sexual assault has been reported at any of the residential programs and a referral determination has been made.
2. Upon being notified of an incident by the FJDRDC, DPSC will dispatch patrol officers to identify the scene, identify witnesses, preserve evidence to be collected, and contact the FCPD MCD on-call supervisor. During normal business hours, the FJDRDC may directly notify the FCPD MCD on-call supervisor via the Police Liaison Commander at 703-887-3877.
3. The lead detective assigned to the case will be responsible for notifying the Victim Service Section (VSS) of the Fairfax County Police Department to have a VSS Specialist accompany the victim during the investigative process.

**Termination**

This MOU may be terminated by either the FCPD or the FJDRDC by giving thirty (30) days written notice to the other agency.

**Participating Agencies**

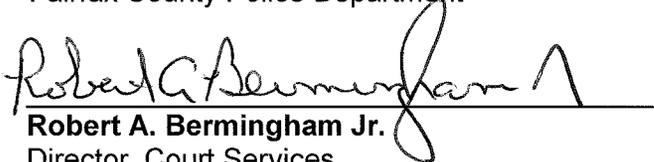
The Commander - FCPD MCD, representing the investigating authority of the FCPD as stipulated in **Purpose**, shall ensure that all applicable requirements of the PREA Juvenile Regulations presented in Appendix A of this memorandum are satisfied. By signing this MOU, the FCPD agrees to follow the PREA Juvenile Regulations set forth above under "Background" to the extent that such regulations are applicable to the agency responsible for criminal investigations regarding allegations of sexual abuse. Signatures contained on this MOU acknowledge the participation by the agency represented and affirmation that the participating agency and all members of that agency will adhere to this MOU to the best of their ability.



**Edwin C. Roessler Jr.**  
Chief of Police  
Fairfax County Police Department

*March 16, 2016*

Date



**Robert A. Bermingham Jr.**  
Director, Court Services  
Juvenile and Domestic Relations District Court

*3/15/16*

Date

## Appendix A

### § 115.6 Definitions related to sexual abuse.

For purposes of this part, the term -

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

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.

#### **§ 115.321 Evidence protocol and forensic medical examinations.**

- (a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
- (b) The protocol shall be developmentally appropriate for youth and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011.
- (c) The agency shall offer all residents who experience sexual abuse access to forensic medical examinations whether on-site or at an outside facility, without financial cost, where evidentiary or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.
- (d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides

intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.

(e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.

(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.

(g) The requirements of paragraphs (a) through (f) of this section shall also apply to:

(1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in juvenile facilities; and

(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in juvenile facilities.

(h) For the purposes of this standard, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

#### **§ 115.322 Policies to ensure referrals of allegations for investigations.**

(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.

(b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its website or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.

(c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.

(d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in juvenile facilities shall have in place a policy governing the conduct of such investigations.

(e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in juvenile facilities shall have in place a policy governing the conduct of such investigations.

**§ 115.353 Resident access to outside support services and legal representation.**

(a) The facility shall provide residents with access to outside victim advocates for emotional support services related to sexual abuse, by providing, posting, or otherwise making accessible mailing addresses and telephone numbers, including toll free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between residents and these organizations and agencies, in as confidential a manner as possible.

(b) The facility shall inform residents, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

(c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide residents with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

(d) The facility shall also provide residents with reasonable and confidential access to their attorneys or other legal representation and reasonable access to parents or legal guardians.

**§ 115.354 Third-party reporting.**

The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of a resident.

**§ 115.371 Criminal and administrative agency investigations.**

(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations involving juvenile victims pursuant to § 115.334.

(c) Investigators shall 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.

- (d) The agency shall not terminate an investigation solely because the source of the allegation recants the allegation.
- (e) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- (f) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as resident or staff. No agency shall require a resident who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
- (g) Administrative investigations:
- (1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and
  - (2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
- (h) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.
- (i) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.
- (j) The agency shall retain all written reports referenced in paragraphs (g) and (h) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years, unless the abuse was committed by a juvenile resident and applicable law requires a shorter period of retention.
- (k) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.
- (l) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.
- (m) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

### **§ 115.373 Reporting to residents.**

- (a) Following an investigation into a resident's allegation of sexual abuse suffered in an agency facility, the agency shall inform the resident as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
- (b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the resident.

**(c)** Following a resident's allegation that a staff member has committed sexual abuse against the resident, the agency shall subsequently inform the resident (unless the agency has determined that the allegation is unfounded) whenever:

- (1)** The staff member is no longer posted within the resident's unit;
- (2)** The staff member is no longer employed at the facility;
- (3)** The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
- (4)** The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

**(d)** Following a resident's allegation that he or she has been sexually abused by another resident, the agency shall subsequently inform the alleged victim whenever:

- (1)** The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
- (2)** The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

**(e)** All such notifications or attempted notifications shall be documented.

**(f)** An agency's obligation to report under this standard shall terminate if the resident is released from the agency's custody.