

# YOUTH SERVICES POLICY

<b>Title:</b> Sexual Harassment	<b>Type:</b> A. Administrative <b>Sub Type:</b> 2. Personnel <b>Number:</b> A.2.8
<b>Page 1 of 10</b>	
<b>References:</b> Title VII of the 1964 Civil Rights Act, Equal Employment Opportunities Commission Guidelines; Prison Rape Elimination Act of 2003; LA RS 42:341-345; Senate Concurrent Resolution No. 107 of the 2012 Regular Session of the Legislature, and Louisiana State Civil Service General Circular Number 2012-022 "Preventing Sexual Harassment"; U.S. DOJ PREA Standard 115.311 (a); ACA Standards 2-CO-1C-11 (Administration of Correctional Agencies), 4-JCF-6D-06 (Juvenile Correctional Facilities); YS Policies A.1.4 "Investigative Services", A.1.14 "Unusual Occurrence Reports", A.2.1 "Employee Manual", A.2.24 "Staff Development and Training Plan", A.2.38 "Ethics for Public Employees: Nepotism, Prohibited Relations, Gifts, Ethics Opinions", A.2.46 "Employee Grievance Procedure", A.2.47 "Equal Employment Opportunity", and C.2.11 "Prison Rape Elimination Act (PREA)"	
<b>STATUS: Approved</b>	
<b>Approved By:</b> <i>James Bueche, Ph.D., Deputy Secretary</i>	<b>Date of Approval:</b> 01/15/2019

**I. AUTHORITY:**

Deputy Secretary of Youth Services (YS) as contained in La. R.S. 36:405. Deviation from this policy must be approved by the Deputy Secretary.

**II. PURPOSE:**

To establish a formal policy regarding sexual harassment. It is the Deputy Secretary's intent to maintain a workplace free of sexual harassment from any source, and inappropriate work relationships, to discourage such conduct, to quickly address violations of this policy, responding with investigation and disciplinary action when appropriate, and to provide in-service education and training to Youth Services (YS), Office of Juvenile Justice (OJJ) employees in accordance with state law.

**III. APPLICABILITY:**

This policy applies to all applicants, candidates, employee units, visitors, and vendors of YS.

This policy applies not only to the customary workplace and work locations where YS employees may be assigned, but also prohibits such behavior while traveling to a work

location, at conferences, workshops, trainings, business trips, and business-related social events.

Each Unit Head is responsible for ensuring that all necessary procedures are in place to comply with the provisions of this policy.

#### IV. DEFINITIONS:

***Louisiana Employees Online (LEO)*** - Statewide management system which includes the Comprehensive Public Training Program (CPTP) providing online courses accessible to all state employees and which can be accessed at: <http://www.civilservice.louisiana.gov/Divisions/Training/Default.aspx>.

***Prison Rape Elimination Act (PREA)*** - An Act signed into law by President George W. Bush in September 2003. This legislation requires the Bureau of Justice Statistics (BJS) to initiate new national data collections on the incidence and prevalence of sexual violence within correctional facilities. PREA defines four categories of sexual abuse for purposes of data collection: abusive sexual contacts, nonconsensual sexual acts, staff sexual harassment and staff sexual misconduct.

***Sexual Harassment*** - Sexual harassment constitutes discrimination and is illegal under federal, state, and local laws. For the purpose of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when, for example:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. For illustrative purposes only, these behaviors may include, but are not limited to: unwelcomed sexual flirtations, advances, propositions, or demands; unwelcomed sexual jokes, teasing, pranks, inquiries and innuendo; unwelcomed repeated requests for dates or social engagement; verbal abuse of a sexual nature; commentary about an individual's body, derogatory or stereotypical remarks/comments concerning sexual prowess or sexual deficiencies; lustful looks, staring, leering and catcalls; unwelcomed physical contact including touching, hugging, massaging, rubbing, fondling, groping, tickling and pinching; invading another's space by leaning over, purposefully cornering, or blocking passage; threatening, intimidating, insulting or obscene comments or gestures; repeatedly referring to an individual as "honey", "babe", "sugar", etc.; display or circulation in the workplace of sexually

suggestive objects, pictures, or notes including, but not limited to, memoranda, letters, or e-mail; and other physical, verbal or visual conduct of a sexual nature. (Refer to the above definition of PREA for additional information about sexual harassment and sexual conduct.)

**Staff Development Director** - A Central Office employee charged with overseeing the Agency's Staff Development and Training Program, and who serves as the clearinghouse for training opportunities for agency personnel.

**Staff Development Training Specialist** - A full time secure care trainer position at the unit level, who has completed a specialized 40-hour training-for-trainers curriculum through the agency or other qualified source, [i.e., American Correctional Association, National Institute of Corrections, Federal Bureau of Investigation Instructor Development Course (FBI-IDC) etc.], responsible for the development, documentation, and delivery of the agency's approved training.

**Training Records Entry Completed (TREC)** - The database used to track training hours of all agency employees.

**Unit Training Officer** - A regional office employee who by job description or assignment oversees the development, documentation and delivery of agency approved training.

**Unit Head** - For the purposes of this policy: Deputy Secretary, Facility Directors and Regional Managers.

**Unusual Occurrence Report (UOR)** - A form/document that must be completed by staff to report incidents or observations of events that may have an impact on any aspect of the agency. UOR forms shall be made available to all employees, working in all areas at all times. Employees must complete and submit a UOR prior to the end of their tour of duty on the day the incident was observed or comes to the employee's attention in any way. (Refer to YS Policy No. A.1.14)

**YS Central Office (CO)** - Offices of the Deputy Secretary, Assistant Secretary, Undersecretary, Deputy Undersecretary, Chief of Operations, Executive Management Advisor, General Counsel, Regional Directors, and their support staff.

**YS Employee** - For the purposes of this policy, a YS Employee includes employees, contract providers, visitors, volunteers or interns.

## V. POLICY:

YS strives to maintain a workplace that fosters mutual respect and promotes harmonious, productive working relationships. To accomplish this, the Deputy Secretary and YS prohibit and shall not tolerate sexual harassment or any behavior of a sexual nature that intimidates, exploits, insults, demeans, disrespects, or embarrasses any employee or other individual. Conduct prohibited by this policy is unacceptable in the workplace and

in any work-related setting outside the workplace, such as during business trips, business meetings, and business-related social events. **(More detailed information on prohibited conduct is included in Section VIII of this policy.)**

**VI. Purpose:**

Through this policy and mandatory training, YS seeks to:

1. State its intolerance for inappropriate behavior
2. Identify the broad scope of such prohibited behavior
3. Establish an effective, uniform reporting process
4. Establish an effective, uniform investigative process
5. Ensure resolution that imposes appropriate corrective action
6. Protect complainants from and individuals involved in the investigative process from harassment, reprisal, or retaliation
7. Respect confidentiality and the privacy rights of employees

This policy establishes a procedure to administratively report and address complaints of sexually inappropriate behavior. It is not in any way intended to replace or supersede the statutory or regulatory rights regarding sexual harassment available to employees under federal and state law.

**VII. YS DESIGNEES:**

**Pursuant to SCR 107 of the 2012 Regular Louisiana Legislative Session** the Staff Development Director, Staff Development Training Specialist, and the Unit Training Officers are the designated staff who shall ensure that all YS employees are trained in the contents of this policy.

Attorneys designated by the General Counsel shall be the staff members who shall provide information and instruction on sexual harassment.

The current name and contact information of each designee shall be posted and maintained in a convenient and conspicuous location making the information easily accessible to all YS employees (refer to YS Policy No. A.2.24).

**VIII. PROHIBITED CONDUCT:**

Sexual harassment, a form of prohibited discrimination, is defined by the Equal Employment Opportunity Commission (EEOC) as unsolicited and unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature wherein:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. For illustrative purposes only, these behaviors may include, but are not limited to: unwelcomed sexual flirtations, advances, propositions, or demands; unwelcomed sexual jokes, teasing, pranks, inquiries and innuendo; unwelcomed repeated requests for dates or social engagement; verbal abuse of a sexual nature; commentary about an individual's body, derogatory or stereotypical remarks/comments concerning sexual prowess or sexual deficiencies; lustful looks, staring, leering and catcalls; unwelcomed physical contact including touching, hugging, massaging, rubbing, fondling, groping, tickling and pinching; invading another's space by leaning over, purposefully cornering, or blocking passage; threatening, intimidating, insulting or obscene comments or gestures; repeatedly referring to an individual as "honey", "babe", "sugar", etc.; display or circulation in the workplace of sexually suggestive objects, pictures, or notes including, but not limited to, memoranda, letters, or e-mail; and other physical, verbal or visual conduct of a sexual nature.

Whether or not the conduct between two employees rises to the level of sexual harassment, no YS employee acting in a supervisory capacity shall engage in conduct that compromises their integrity by creating a conflict of interest with subordinate staff in the chain of command. Relationships between those acting in a supervisory capacity and subordinates in their chain of command, whether direct or indirect, that go beyond the normal and common type of work friendship and include sexual activity may give the appearance of impropriety and favoritism and are therefore prohibited. Supervisors shall avoid any such relationship, as it creates a conflict of interest and is therefore a violation of this policy, regardless of any consent by the parties involved. This includes sexual activity that may occur on or off the worksite or that which takes place during or after the work schedule.

## **IX. CONFRONTING THE ACCUSED:**

Individuals who believe they are being subjected to sexually harassing conduct are encouraged to promptly advise the harassing individual that the behavior is unwelcome and request that it be discontinued. Doing so may be sufficient to prevent recurrence.

OJJ recognizes that confronting the accused can be discomforting, especially in those situations in which the accused is within the employee's supervisory chain of command. Therefore, OJJ does not require employees to do so. Failure to have this dialogue does not in any way prevent or hamper the employee from making a verbal or written complaint to a supervisor. If the request to discontinue the harassing conduct does not

end the harassment, the employee should report the matter to the supervisor or may file a complaint in accordance with the YS/OJJ complaint procedure, set forth in Section XI below.

**X. RETALIATION IS PROHIBITED:**

Retaliation consists of any negative conduct in response to an employee's complaint of harassment or participation in a harassment investigation. Retaliation can include adverse employment actions, such as demotions, transfers, or firings. Co-workers can also engage in retaliation by ostracizing, teasing, threatening, withholding information from, or engaging in physical actions against another employee.

YS/OJJ prohibits retaliation against any individual who reports sexual harassment and/or participates in an investigation of such reports. Retaliation against an individual for reporting harassment or for participating in an investigation of a claim of harassment is a serious violation of this policy and, like harassment itself, shall be subject to disciplinary action (refer to YS Policy No. A.2.1).

**XI. REPORTING AN INCIDENT OF SEXUAL HARASSMENT OR RETALIATION:**

Early reporting and intervention have proven to be the most effective methods of resolving actual or perceived incidents of sexual harassment. Therefore, while no fixed reporting period has been established, YS/OJJ encourages employees-witnesses to report complaints or concerns promptly so that rapid and constructive action can be taken.

The report can be made by filing a statement or Unusual Occurrence Report (UOR) and/or a written complaint or UOR with the Unit Head/designee and sending a copy to the Public Safety Services Human Resources Office and to OJJ Legal Services. The information may also be submitted by email to the Unit Head/designee with copies sent as stated above.

If the complaint involves the Unit Head/designee, the report can be made directly to the General Counsel or by utilizing the OJJ hotline listed below.

Sexual harassment may also be reported verbally. A verbal report of sexual harassment is as valid as a written complaint.

Another outlet for reporting sexual harassment is by utilizing the toll free hotline created for staff to bring their concerns to management while maintaining strict confidentiality. The number for the OJJ hotline is 1-800-626-1430.

If an employee makes a verbal complaint to a supervisor, the supervisor is required immediately inform the Unit Head/designee by preparing a UOR or statement, and

forwarding it to the Unit Head. If a supervisor hears a second-or third-hand report of sexual harassment, the supervisor shall respond in the same manner as if the complaint was directly reported to him.

Persons who have witnessed sexual harassment conduct that is contrary to this policy or who have concerns about matters involving possible sexual harassment must make the situation known so that management can address the matter.

Employee-witnesses are also encouraged to file a statement or Unusual Occurrence Report (UOR) and/or a written complaint or UOR with the Unit Head/designee and send a copy to the Public Safety Services Human Resources Office and to OJJ Legal Services.

## **XII. INVESTIGATION OF COMPLAINTS:**

- A. All reports and complaints of sexually inappropriate behavior or retaliation will be directed to the Director of Investigative Services (IS).
- B. Any reported allegations of harassment or retaliation shall be investigated immediately and thoroughly by a designated team, led by an IS investigator, CO Human Resources designee, and OJJ Legal Department representative to determine the pertinent facts of the complaint. This team approach permits the investigators to evaluate the information gathered from different perspectives, enhance objectivity, and ensure thoroughness.
- C. Pending the investigation, the Unit Head may temporarily reassign the alleged harasser so that there is no further contact between the complainant and the alleged harasser. Additionally, in certain cases the Unit Head may place the alleged harasser on enforced annual leave or invoke the suspension pending investigation provisions consistent with YS Policy A.2.17.
- D. The investigation may include individual interviews with the parties involved and with individuals who may have observed the alleged conduct or may have other relevant knowledge.
- E. All individuals called upon to participate in the investigation are required to fully cooperate and provide truthful responses. Employees, including the accused, do not have the option of remaining silent or declining to get involved.
- F. To the extent allowed by law, confidentiality shall be maintained throughout the investigatory process. Information regarding a sexual harassment incident and investigation is confidential and may only be shared and discussed among personnel necessary to the investigation. Employees are prohibited from obstructing or interfering with the investigation, which includes questioning or confronting any individuals participating in the investigation.

- G. Upon completion of the investigation, Investigative Services will inform management of the outcome and recommendations for resolution. Until a final decision is made, the investigative team will remain available to receive new information.
- H. Employees must understand that despite the best efforts and thoroughness of the investigative process, not all complaints can be substantiated. This does not indicate, however, that the complaint was made in bad faith or fake.
- I. Records of sexual harassment investigations shall be retained for a minimum of five (5) years.

### **XIII. COMPLAINT RESOLUTION**

Upon completion of the investigation, the complainant and accused will be notified of the outcome. Regardless of the outcome, the complainant has the option of pursuing a claim under state or federal law.

Given the wide range of behaviors prohibited by this policy, the resolution decided upon by executive management will be determined by a number of factors. These factors include the nature, circumstances, frequency, and severity of the behavior, and whether the behavior recurs after having been previously addressed.

After resolution, the CO Human Resources designee will follow-up with the complainant to determine whether there has been a recurrence of the behavior complained of or whether the complainant has suffered any retaliation or adverse consequences for having filed a complaint. Such follow-up will be at periodic intervals and will seek to identify repercussions such as disciplinary action, poor performance evaluation, ostracism, avoidance, non-inclusion, etc.

### **XIV. VIOLATIONS:**

- A. If any employee is found, after investigation, to have engaged in sexual harassment, other inappropriate behavior of a sexual nature, or retaliation, the Unit Head shall take appropriate measures that are reasonably calculated to end the harassment. This may include disciplinary action or appropriate non-disciplinary action including counseling, additional training, reassignment, and Performance Evaluation review actions.
- B. Disciplinary penalties available include, but are not limited to:
  - 1. Reduction in pay;
  - 2. Demotion in rank;
  - 3. Suspension without pay; and
  - 4. Dismissal.

C. Corrective action may also be imposed for:

1. Failure to comply with mandatory training requirements
2. Failure by a supervisor or manager to timely report a complaint of sexually inappropriate behavior
3. Failure to participate or cooperate in the investigative process
4. Withholding or providing false information during questioning
5. Filing a false, malicious, or frivolous complaint

**XV. APPEAL RIGHTS:**

If an employee making a complaint does not agree with the resolution, the employee may file a grievance as outlined in the Youth Services Employee Manual and YS Policy A.2.46.

**XVI. TRAININGS/STAFF DEVELOPMENT:**

New secure care employees shall receive the required one (1) hour of education and training on preventing sexual harassment within 90 days of hire during pre-service/orientation by Legal Services.

New Central Office and Regional Office employees shall receive the required one (1) hour of education and training within 90 days of hire during pre-service/orientation utilizing the YS developed Power Point and/or video, or by completing the State Civil Service course provided through LEO and completing a review of the YS Policy.

All employees shall receive annual in-service training utilizing the YS developed Power Point and/or video, or by completing the State Civil Service course provided through LEO and completing a review of the YS Policy.

Supervisors, managers, any persons designated to accept or investigate complaints of sexual harassment, and those persons who provide information and instruction on sexual harassment are required to receive an additional one (1) hour of education and training on sexual harassment each year. This includes, but is not limited to, supervisors, managers, facility administrators, directors, attorneys, IS investigators, HR staff, training staff, and executive staff.

This additional one (1) hour of training shall be provided live, in person or via video conference, by Legal Services.

All records of compliance shall be tracked through LEO and/or TREC.

Signage promoting a harassment-free workplace and instructions on how to file complaints must be posted in all work areas of YS.

**XVII. AGENCY MANDATORY REPORTS:**

CQIS shall compile an annual report by February 1<sup>st</sup> of each year, containing information from the previous calendar year, regarding YS' compliance with Louisiana Revised Statutes 42:341-345. The report shall include the:

1. Number and percentage of YS employees who have completed the training requirements
2. Number of sexual harassment complaints received by YS
3. Number of complaints which resulted in a finding that sexual harassment occurred
4. Number of complaints in which the finding of sexual harassment resulted in discipline or corrective action
5. Amount of time to resolve each complaint

These reports shall be public record and shall be submitted to the Division of Administration by February 15<sup>th</sup> each year.

**XVIII. FILING CHARGES WITH THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)**

- A. An aggrieved employee may file charges of sexual harassment with the EEOC even if they have not utilized the complaint procedure (Section XI). However, the employee may choose to wait until the conclusion of OJJ's investigation before filing a charge.
- B. The deadline for filing an EEOC charge is 180 days after the last date of alleged harassment. In the state of Louisiana, in some cases this deadline is extended to 300 days. This deadline is *not* extended because of an employer's internal investigation of the complaint.
- C. Employees wishing to file a complaint may obtain further information at: [www.eeoc.gov](http://www.eeoc.gov) or by calling the New Orleans EEOC office at 1-800-669-4000.

**Previous Regulation/Policy Number:** A.2.8

**Previous Effective Date:** 4/25/2018

**Attachments/References:** Senate Concurrent Resolution No. 107.pdf



1 and training on sexual harassment during each year of his public employment or term  
2 of office, as the case may be.

3 C. The education and training required pursuant to this Section may be  
4 provided and received either in person or via the Internet.

5 D.(1) Each agency head of a state agency shall designate at least one person  
6 who shall provide all public servants of that agency information and instruction on  
7 sexual harassment. On and after July 1, 2013, no agency head shall designate a  
8 person to provide information and instruction on sexual harassment pursuant to this  
9 Resolution unless the person has received a minimum of two hours of education and  
10 training on sexual harassment. In addition, on and after July 1, 2014, each designee  
11 shall have at least two hours of education and training on sexual harassment  
12 annually.

13 (2) Each agency head of a state agency shall ensure that each public servant  
14 in the agency is notified of the current name and contact information of each  
15 designee and that the current name and contact information of each designee is  
16 posted and maintained in a convenient and conspicuous manner which makes the  
17 information easily accessible to each public servant in the agency.

18 E. Each state agency shall keep records of compliance with the requirements  
19 of this Resolution by each public servant of the agency.

20 BE IT FURTHER RESOLVED that a copy of this Resolution shall be transmitted  
21 to the office of state register in the division of administration and published in the State  
22 Register.

23 BE IT FURTHER RESOLVED that a copy of this Resolution shall be included on  
24 the website of Louisiana government and on the website of each department, division, office,  
25 section, board, commission, and other agency of state government which maintains a web  
26 site.

27 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the  
28 governor, the commissioner of administration, and the chief justice of the supreme court.

29 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the  
30 Louisiana Municipal Association, the Police Jury Association of Louisiana, the Louisiana

1 School Boards Association, the Louisiana District Attorney Association, the Louisiana  
 2 Assessors' Association, the Louisiana Sheriffs' Association, and the Louisiana Clerks of  
 3 Court Association, the Louisiana State Coroner's Association, the Justice of the Peace  
 4 Association, and the Louisiana City Marshals and City Constables Association, and that each  
 5 such association disseminate the Resolution to its membership.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Jerry J. Guillot.

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### DIGEST

Erdey

SCR No. 107

Proposed resolution, relative to education and training on sexual harassment to public officials and employees, provides that except as otherwise specifically provided in proposed resolution, or unless the context clearly indicates otherwise, the terms in proposed resolution have the meaning provided in R.S. 42:1102 (Code of Governmental Ethics).

Proposed resolution requires commencing January 1, 2013, each public servant receive a minimum of one hour of education and training on sexual harassment during each year of his public employment or term of office, as the case may be.

Provides that the required education and training may be received either in person or via the Internet.

Requires that each agency head of a state agency designate at least one person who shall, with the assistance of the board, provide all public servants of that agency information and instruction on sexual harassment. Provides that on and after July 1, 2013, no agency head shall designate a person to provide the required information and instruction unless the person has received a minimum of two hours of education and training on sexual harassment. In addition, on and after July 1, 2014, each designee shall be required to have at least two hours of education and training on sexual harassment annually.

Requires that each agency head of a state agency ensure that each public servant in the agency is notified of the current name and contact information of each designee and that the current name and contact information of each designee is posted and maintained in a convenient and conspicuous manner which makes the information easily accessible to each public servant in the agency.

Requires that the agency head of each department in the executive branch select at least one person licensed to practice law in this state to be a designee.

Requires that each state agency keep records of the compliance with proposed resolution for each public servant of the agency.