

	<b>San Juan County Juvenile Services Center</b>	<b>Title: Juvenile Services: PREA/Sexual Misconduct</b>	<b>Policy &amp; Proc.#: J-51</b>
			<b>Effective Date: March 19, 2013</b>
		<b>Juvenile Detention Facility ACA Standards: 3-JDF-06-02 through 3-JDF-06-10, Prison Rape Elimination Act of 2003, National PREA Standards 28 C. F. R. part 115, NCCHC Standards, and NMSA 1978 § 30-9-11.E (2)</b>	<b>Page: 1 of 16</b>

**I. REFERENCES:**

Juvenile Detention Facility ACA Standards: 3-JDF-06-02 through 3-JDF-06-10, Prison Rape Elimination Act of 2003, National PREA Standards 28 C. F. R. part 115, NCCHC Standards, and NMSA 1978 § 30-9-11.E (2)

**II. PURPOSE:**

The purpose of this policy is to provide guidelines and procedures to protect juveniles and staff from sexual violence, misconduct and harassment.

**III. POLICY STATEMENT:**

San Juan County Juvenile Services has zero tolerance for sexual misconduct involving juveniles. It is the policy of San Juan County Juvenile Services to provide a safe, humane, and secure environment, free from sexual violence, misconduct, harassment, or retaliation, by establishing definitions of prohibited conduct and maintaining a program of prevention, detection, investigation, response and tracking of all alleged and substantiated sexual misconduct.

Sexual misconduct between staff and juveniles, volunteers or contract personnel and juveniles, juveniles and juveniles, regardless of consensual status is prohibited and subject to administrative discipline and/or criminal sanctions.

**IV. DEFINITIONS:**

- A. **Aggressor**: Any person committing sexual misconduct against another. The aggressor may be the same or different gender as the victim.
- B. **Investigator**: Individual(s) designated by the Detention Administrator to conduct internal investigations into alleged sexual misconduct in order to assess the truth of the allegations.
- C. **Juvenile**: An individual who has been properly booked into and is housed in the custody of the San Juan County juvenile detention facility

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- D. **Non-Juvenile:** Any volunteer, contractor, therapist, juvenile probation and parole officer, officer of the court or other non-staff individual who interacts with juveniles who are in the custody of the juvenile detention facility.
  
- E. **PREA Coordinator:** Individual designated by the Detention Administrator who is responsible for developing, implementing and overseeing facility compliance with PREA standards and coordinating the facility’s response to allegations of sexual misconduct.
  
- F. **Sexual Acts:** Any contact between the sex organ of one person and the sex organ, mouth or anus of another person, or any intrusion of any part of the body of one person, or any object into the sex organ, mouth, or anus of another person.
  
- G. **Sexual Contact:** Intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of a person other than by staff for medical purposes or for purposes of performing legitimate policy authorized searches.
  
- H. **Sexual Harassment:** For purposes of this policy sexual harassment includes comments of a sexual nature; demeaning references to gender; lewd remarks about clothing, body or appearance; profane or obscene language or gestures; and displaying sexually oriented images.
  
- I. **Sexual Misconduct:** All forms of sexual behavior prohibited by this policy, including sexual harassment, sexual acts and sexual contact regardless of whether it is consensual.

Examples of sexual misconduct include:

- a. Requests for sexual favors, sexual acts or sexual contact.
- b. Influencing, promising or threatening a juvenile’s safety, custody or security level, including recommendations for court actions, privacy, housing, privileges, work detail or program status in exchanges for sexual favors.
- c. Promise of protection in exchange for sexual favors.
- d. Statements, comments or innuendo made directly or indirectly concerning the sexual orientation or perceived sexual orientation of any person.

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- e. Intimate or close relationships with a juvenile defined as any relationship beyond the boundaries of a professional relationship.
- f. Intimate conversation or correspondence with a juvenile.
- g. Exchanging letters, pictures, phone numbers, addresses, email addresses or other personal information with juveniles.
- h. Unreasonable invasion of a juvenile’s privacy such as inappropriate viewing of any juvenile.
- i. Any verbal, non-verbal or physical conduct which is sexual in nature or sexually suggestive.
- j. Creating an intimidating, hostile or offensive environment by engaging in or permitting sexually offensive behavior or language that is directed at or observable by juveniles or others.
- k. Kissing, hugging fondling or other touching of an individual’s breast, genital, anal or other intimate area either directly or through clothing for sexual arousal, gratification, abuse or assault of either party.
- l. Rape, sexual assault, sexual intercourse, oral sex, anal sex, vaginal sex.
- m. Sex or penetration with any object or body part.

**J. Retaliation:** Any act of vengeance, covert or overt action or threat of action taken against an individual in response to their claim of sexual misconduct, sexual contact or sexual abuse or cooperation in the reporting or investigation of sexual misconduct, regardless of the disposition of the complaint.

Examples of retaliation include:

- a. Unnecessary discipline
- b. Verbal or physical intimidation or threats
- c. Unnecessary changes in housing classification
- d. Unnecessary changes in work or program assignments
- e. Unjustified denials of privileges or services
- f. Any action to compromise the victim or witness’s safety including refusal or failure to protect

**K. Victim:** Any person who has been the object of sexual misconduct.

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- L. **Victim Support Person**: An individual designated by the Detention Center Administrator who has been specially trained to support a victim during investigation of alleged sexual acts or contact.

**PROCEDURAL GUIDELINES:**

**A. Training:**

1. **Training for Employees.** All facility employees shall receive instruction related to this policy and the following critical subjects:
  - i. The facility’s zero-tolerance policy for sexual abuse and sexual harassment;
  - ii. How employees should fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
  - iii. Juveniles’ right to be free from sexual abuse and sexual harassment;
  - iv. The right of juveniles and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
  - v. The dynamics of sexual abuse and sexual harassment in confinement;
  - vi. The common reactions of sexual abuse and sexual harassment victims;
  - vii. How to detect and respond to signs of threatened and actual sexual abuse;
  - viii. How to avoid inappropriate relationships with juveniles;
  - ix. How to communicate effectively and professionally with juveniles, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming youth; and
  - x. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
  
- a. All employees will receive this training as part of their pre-service or initial orientation to the Detention Center. Current employees will receive this training within one year of implementation of this policy.

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- b.** All employees shall receive refresher training on these subjects every year as part of their annual in-service training.
  
- 2.** Specialized Training for PREA Coordinator, Investigator and Victim Support Personnel. Specialized training is provided for employees who respond to incidents of sexual misconduct. This training includes facility policy, crime scene management, elimination of contamination, evidence collection protocol for confinement settings, techniques for interviewing sexual abuse victims, proper use of *Miranda* and *Garrity* warnings, and crisis intervention.
  
- 3.** Training for Volunteer, Contractor and other Non-Juveniles who have contact with Juveniles. Non-juveniles who have contact with juveniles shall receive instruction regarding facility policy, prohibited conduct, prevention, detection, response, and reporting of sexual misconduct prior to assuming responsibilities that include contact with juveniles. Training for non-juveniles may be tailored to reflect the extent of time they are in the facility and their access to juveniles.
  
- 4.** Specialized Training for Medical and Mental Healthcare Personnel. In addition to the training for non-juvenile personnel described above, all medical and mental healthcare practitioners who work regularly in the facility shall be trained in:

  - a. How to detect and assess signs of sexual abuse and sexual harassment;
  - b. How to preserve physical evidence of sexual abuse;
  - c. How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
  - d. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.
  
- 5.** Lesson Plans and Materials. All lesson plans or materials utilized for training on sexual assault and abuse shall be approved by the Health Services Director and Detention Center Administrator.
  
- 6.** Documentation. Documentation confirming training for all employees and non-employees is maintained by the facility.

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**B. Inmate Orientation and Education:**

1. All individuals booked into the facility shall receive verbal and written information about sexual misconduct during their orientation. This information shall address:
  - a. The Detention Center’s zero tolerance for sexual misconduct.
  - b. What constitutes sexual misconduct
  - c. The Detention Center’s program for prevention of sexual misconduct
  - d. Methods of self–protection
  - e. How to report sexual misconduct and retaliation
  - f. Protection from retaliation
  - g. Treatment and counseling
  
2. Information regarding these topics will be approved by the Detention Center Administrator and included in the juvenile orientation materials, and on information boards and posters in the housing areas.
  
3. Appropriate provisions shall be made as necessary for juveniles not fluent in English, and juveniles with disabilities (including, for example, juveniles who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities) so that all juveniles have an equal opportunity to participate in or benefit from all aspects of the facility’s efforts to prevent, detect, and respond to sexual abuse and harassment,.
  
4. The facility will maintain documentation of juvenile receipt of this information.

**C. Screening/Assessing Juveniles at Intake**

1. All individuals booked into the facility are screened for potential vulnerabilities or tendency to act out with sexually aggressive behavior within 24 hours of arrival at the facility.

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2. Juveniles identified as potential or confirmed victims of sexual assault or as having a tendency to act out with sexually aggressive behavior shall be considered for protective custody placement or placement in a special custody unit or other appropriate setting where they are housed in a single cell without the possibility to be housed with a cell mate.

**D. Additional Screening/Assessing:**

Juveniles identified as high risk with a history of sexually assaultive behavior or who have been identified as at risk for sexual victimization will be assessed by a mental health or other qualified health professional. Such juveniles will also be monitored by mental health services and counseled.

If at any time a juvenile is identified as a sexual predator or as a victim/potential victim, the juvenile shall be re-evaluated for appropriate housing, available programs, monitoring and counseling.

**E. Referrals for Special Housing Placement:**

1. Any employee may make a referral based on their observation of the juvenile’s behavior or at the juvenile’s request, based on concerns that a juvenile may be at significant risk of sexual victimization.
2. This referral shall be documented.

**F. Sexual Misconduct Between Juveniles and Non-juveniles:**

1. San Juan County Juvenile Services has zero tolerance for sexual misconduct between juveniles and non-juveniles. Sexual misconduct perpetrated by non-juveniles is contrary to the policies of this facility and professional ethical principles that all employees are bound to uphold. Any such conduct is cause for disciplinary action up to and including termination.
2. There is no consensual sex in a custodial or supervisory relationship as a matter of law. A sexual act with a juvenile by a person in a position of authority over the juvenile is a felony subject to criminal prosecution. NMSA 1978 § 30-9-11.E (2).
3. Retaliation against a juvenile who refuses to submit to sexual activity, or retaliation against individuals (including witnesses) because of their

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involvement in the reporting or investigation of sexual misconduct is also prohibited and possible grounds for disciplinary action including termination and criminal prosecution.

4. Failure of employees to report incidents of sexual misconduct is cause for disciplinary action up to and including termination.
5. Cases involving sexual misconduct may be referred to the District Attorney for prosecution.
6. Juveniles who knowingly make false allegations of sexual misconduct are subject to discipline.

**G. Sexual Misconduct Between Juveniles**

1. Sexual contact, sexual acts, and other sexual misconduct between juveniles are prohibited by this policy regardless of whether it is alleged to be consensual.
2. Juvenile aggressors are subject to discipline.
3. Juveniles who report sexual misconduct are protected from retaliation.
4. Juveniles who engage in retaliation are subject to discipline.
5. Juveniles who knowingly make false allegations of sexual misconduct are subject to discipline

**H. Supervision and Monitoring**

Supervisors will conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Staff members are prohibited from alerting other staff members that such supervisory rounds are occurring unless such announcement is related to the legitimate operational functions of the facility.

**I. Reporting and Investigation**

All staff members and non-juveniles have an affirmative duty to immediately report to the PREA Coordinator any knowledge, suspicion, or information

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regarding sexual misconduct involving a juvenile and/or any retaliation or neglect in violation of this policy.

1. First Responder Instructions—All Alleged Sexual Misconduct:

- a. A juvenile may report sexual misconduct or threats of sexual misconduct to any staff member or non-juvenile. Any staff member or non-juvenile, who receives a report of sexual misconduct, whether verbally or in writing, shall immediately notify the shift supervisor and complete an incident report. The shift supervisor shall immediately notify the Detention Administrator and PREA Coordinator. The PREA Coordinator shall ensure that the alleged victim and aggressor are physically separated, either through the placement of one or both in the special management unit or some other effective means.
- b. The PREA Coordinator shall direct the facility’s response to all allegations of sexual misconduct including prompt assignment of a Victim Support Person, Investigator, and/or referral to medical/mental health services when warranted.
- c. In every case where the alleged aggressor is an employee, there will be no contact between the alleged aggressor and the alleged victim without the approval of the Detention Center Administrator.
- d. Allegations of sexual misconduct shall be treated with discretion and, to the extent permitted by law, confidentiality. Individuals who fail to keep allegations of sexual misconduct confidential are subject to discipline.

2. First Responder Instructions--Allegations Involving Abuse, Assault or other Sexual Acts or Contact:

- a. Advise the victim not to shower or otherwise clean themselves, or if the assault was oral, not to eat, drink, brush their teeth, chew gum or otherwise take any action that could damage or destroy evidence.

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- b. Secure the scene of the alleged assault if feasible and secure any video coverage of the alleged incident.
- c. Notify the PREA Coordinator who will assume responsibility for handling the sexual misconduct allegations and who will, in consultation with the Detention Administrator, decide whether to notify law enforcement. Cases involving alleged sexual acts will be reported to law enforcement.
- d. In all cases of alleged abuse, assault or other sexual acts or contact, arrangements shall be promptly made to have the alleged victim transported and examined at a local hospital by a Sexual Assault Nurse Examiner (SANE) or other qualified medical practitioner.

3. Additional Staff and Agency Reporting Duties:

Staff must comply with mandatory child abuse reporting laws. All incidents of sexual assault, contact or abuse must be reported to the New Mexico Children Youth and Families Department. Confidentiality must also be preserved. Apart from reporting to the detention administrator, the PREA Coordinator, and CYFD, staff is prohibited from revealing any information related to a sexual abuse report to anyone other than to the extent necessary to make treatment, investigation, and other security and management decisions.

Medical and mental health practitioners are also required to report sexual abuse to the Detention Administrator, PREA Coordinator, and CYFD. Such practitioners shall be required to inform residents at the initiation of services of their duty to report and the limitations of confidentiality.

Upon receiving any allegation of sexual abuse, the Detention Administrator or PREA Coordinator shall promptly report the allegation to CYFD and to the alleged victim’s parents or legal guardians, unless the facility has official documentation showing the parents or legal guardians should not be notified.

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If the alleged victim is under the guardianship CYFD, the report shall be made to the alleged victim’s caseworker instead of the parents or legal guardians.

If a juvenile court retains jurisdiction over the alleged victim, the Detention Administrator or PREA Coordinator shall also report the allegation to the juvenile’s attorney or other legal representative of record within 14 days of receiving the allegation.

**4. Access to Emergency Medical and Mental Health Services:**

- a. Alleged victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are to be determined by medical and mental health practitioners.
- b. If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, the PREA Coordinator shall take preliminary steps to protect the victim from harm and shall immediately notify the appropriate medical and mental health practitioners.
- c. Alleged victims of sexual abuse shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis where medically appropriate.
- d. Treatment services are to be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

**5. On-going Medical and Mental Health Care for Sexual Abuse Victims and Abusers:**

- a. The facility offers medical and mental health evaluation and, as appropriate, treatment to all juveniles who have been victimized by sexual abuse. If necessary, the evaluation and treatment of such victims shall include follow-up services, treatment plans, and referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.
- b. Alleged victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

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- c. If pregnancy results from conduct specified in above paragraph b, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.
- d. Alleged victims of sexual abuse shall be offered tests for sexually transmitted infections as medically appropriate.
- e. Treatment services will be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.
- f. The facility shall attempt to conduct a mental health evaluation of all known resident-on-resident abusers within 60 days of learning of such abuse history, and offer treatment when deemed appropriate by mental health practitioners.

5. Reporting to Other Confinement Facilities:

- a. Upon receiving an allegation that a juvenile was sexually abused while confined at another facility, the Detention Administrator shall notify the administrator of the facility where the alleged abuse occurred and shall also notify CYFD.
- b. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
- c. The facility shall document that it has provided such notification.

6. Investigations:

All reports of sexual misconduct, sexual contact or sexual abuse must be considered credible and promptly investigated criminally and/or administratively without regard to whether:

- a. The juveniles who are named in the allegation are in custody or not.
- b. Staff members named in the allegation are currently employed or not
- c. The report of the allegation was made in a timely manner or not.
- d. The juvenile reporting the allegation is known to have made past false allegations.
- e. The source of the allegation recants the allegation.

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- f. The employee receiving the complaint believes or does not believe the allegations.

The Investigator is responsible for conducting and fully documenting the investigation in accordance with facility policy.

7. Victim Support Person: When the victim alleges that a sexual act occurred, a designated victim support person shall be notified as soon as possible, but no later than the next business day. This person will consult with the investigator on the case and offer assistance to the alleged victim as is appropriate based on their training. The victim support person may sit in on administrative interviews of the victim but may not in any manner, obstruct or interfere with the course of the investigation.

8. Reporting to Juveniles:

Juveniles who are currently in the custody of the facility are entitled to know the outcome of investigation into their allegation as follows:

- a. Following an investigation into a juvenile’s allegation of sexual abuse in the facility, the PREA Coordinator shall inform the juvenile whether the allegation was determined to be substantiated, unsubstantiated, or unfounded.
- b. If the allegation involved a staff member, the PREA Coordinator shall inform the juvenile whenever:
  - 1. The staff member is no longer posted within the juvenile’s unit;
  - 2. The staff member is no longer employed at the facility;
  - 3. The staff member has been indicted on a charge related to sexual abuse within the facility; or,
  - 4. The staff member has been convicted on a charge related to sexual abuse within the facility.
- d. If the allegation involved another juvenile, the PREA Coordinator shall inform the alleged victim when the alleged abuser has been indicted on a charge related to sexual abuse within the facility or 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.

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**J. Debriefing and Incident Review:**

1. **Debriefing:** The Detention Administrator shall conduct a debriefing of all incidents of sexual misconduct in order to assess the environmental factors, relevant issues or problem areas that could have contributed to the incident and shall implement identified improvements to increase juvenile safety.
  
2. **Incident Review:**
  - a. For incidents involving allegations of sexual acts or contact, the Detention Administrator shall conduct an incident review within 30 days of the conclusion of the investigation.
  
  - b. The incident review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
  
  - c. The review team shall consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual misconduct, and whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
  
  - d. The review will also:
    1. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
    2. Assess the adequacy of staffing levels in that area during different shifts;
    3. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and,

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e. The review team will prepare a report of its findings that includes determinations made and any recommendations for improvement and submit such report to the detention administrator and PREA Coordinator who is authorized to implement the recommendations for improvement, or shall document reasons for not doing so.

**K. Prosecutions:** The Detention Center Administrator or designee shall work with the local District Attorney’s Office to facilitate criminal prosecution of acts in violation of this policy or criminal law.

**L. Discipline/Corrective Action:** Violation of this policy is cause for termination. The Detention Administrator will take any action necessary to enforce this policy. Any staff member or non-juvenile who violates this policy shall be prohibited from contact with juveniles and shall be reported to law enforcement and any relevant licensing bodies.

**M. Employee/Applicant Background Checks and References:** The County contacts all prior correctional or detention employers to determine whether the perspective employee has any history of substantiated allegations of sexual abuse or resignation during a pending investigation of an allegation of sexual abuse. The Detention Center considers any incidents of sexual harassment or abuse in determining whether to hire or promote anyone or to enlist the services of any contractor who may have contact with inmates. The County provides information on substantiated allegations of sexual abuse or sexual harassment involving former employees when requested by other detention facilities for which such employee has applied to work.

**N. Tracking:** The PREA Coordinator shall maintain a tracking system that records all allegations of sexual misconduct and their disposition. Tracking records should include investigative reports, disciplinary reports, incident reports, offender information, and case disposition.

**O. Classification Notification:**

The Program Manager shall be notified when a juvenile has been identified as a potential and/or confirmed victim or aggressor and ensure this information is entered into the appropriate juvenile file.

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**P. Exhaustion of Administrative Remedies:**

Although regular statute of limitations defenses apply to claims, the facility does not impose a time limit on when a juvenile may submit a grievance regarding an allegation of sexual abuse. Juveniles are not required to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual misconduct. A juvenile who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and such grievance shall not be referred to a staff member who is the subject of the complaint.