

	San Juan County Juvenile Services Center	Title: Juvenile Services: PREA/Sexual Misconduct	Policy & Proc.#: J-50
	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)		Revised Date: May 13, 2022
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I. REFERENCES:

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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 Facility Administrator to conduct internal investigations into alleged sexual misconduct 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 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.
- 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.

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

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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 Juvenile Facility. Current employees will receive this training within one year of implementation of this policy.
 - b. All employees shall receive refresher training on these subjects every year as part of their annual in-service training.

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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 Facility Administrator.
6. Documentation. Documentation confirming training for all employees and non-employees is maintained by the facility.

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B. Resident 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 Juvenile Facility 's zero tolerance for sexual misconduct.
 - b. What constitutes sexual misconduct
 - c. The Juvenile Facility '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 Facility 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.

When Staff is made aware that a Juvenile is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the resident.

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.

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2. There is no consensual sex in a custodial or Sergeant 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 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

Juvenile Sergeants will conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Staff members are prohibited from

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alerting other staff members that juvenile Sergeant rounds are occurring unless such announcement is related to the legitimate operational functions of the facility.

1. Preponderance of Evidence

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

J. 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 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) Upon learning of an allegation that a resident was sexually abused, the first staff member to respond to the report shall be required to:

- (1) Separate the alleged victim and abuser.
- (2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence.
- (3) If the abuse occurred within a time that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
- (4) If the abuse occurred within a time that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

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(b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

2. 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 Facility 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 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 Facility 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.

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 Facility 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.

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4. Evidentiary standard for administrative investigations:

Juvenile Services shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

5. 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.

6. 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.

7. Medical and mental health screenings; history of sexual abuse:

- (a) If the Victimization screening indicates that a Juvenile has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the resident is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.
- (b) If the Aggressive Behavior screening indicates that a resident has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the Juvenile is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.
- (c) (Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.
- (d) Medical and mental health practitioners shall obtain informed consent from Juvenile before reporting information about prior sexual victimization that

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did not occur in an institutional setting unless the resident is under the age of 18.

8. Reporting to Other Confinement Facilities:

- a. Upon receiving an allegation that a juvenile was sexually abused while confined at another facility, the Facility 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.

9. 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.
- 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.

- 10. 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

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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.

11. 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.
- c. 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.
- d. All such notifications or attempted notifications shall be documented.

K. Debriefing and Incident Review:

1. **Debriefing:** The Facility 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.

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2. **Incident Review:**

- a. **For incidents involving allegations of sexual acts or contact, the Facility** 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 Sergeants, 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,
- 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 Facility Administrator and PREA Coordinator who is authorized to implement the recommendations for improvement or shall document reasons for not doing so.

L. Prosecutions: The Facility 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.

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M. Discipline/Corrective Action: Violation of this policy is cause for termination. The Facility 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.

N. Employee/Applicant Background Checks and References: The County contacts all prior correctional or detention employers to determine whether the prospective employee has any history of substantiated allegations of sexual abuse or resignation during a pending investigation of an allegation of sexual abuse. The Juvenile Facility 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 residents. 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.

O. 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.

P. Data Collection: San Juan County Juvenile Services shall: collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions. Aggregate the incident-based sexual abuse data at least annually. Incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice. Juvenile Services shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews. The Facility also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its residents. When requested, Juvenile Services provide all such data from the previous calendar year to the Department of Justice no later than June 30.

Q. Data Storage, publication, and destruction:

1. Data Storage: San Juan Juvenile Services shall ensure that data collected pursuant to § 115.387 of the PREA standards are securely retained.

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2. **Data publication:** Aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public annually through its website or, if it does not have one, through other means. Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.
3. **Data destruction:** Juvenile services shall maintain sexual abuse data collected pursuant to § 115.387 of the PREA standards for at least 10 years after the date of its initial collection unless Federal, State, or local law requires otherwise.

R. Classification Notification:

The Juvenile Sergeant 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.

S. Exhaustion of Administrative Remedies:

Although regular statute of limitations defenses applies 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.