**NEW MEXICO ASSOCIATION OF COUNTIES**

**SAMPLE SEXUAL MISCONDUCT POLICY FOR JUVENILE FACILITIES**

**(1/14)**

1. **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)

1. **PURPOSE:**

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

1. **POLICY STATEMENT:**

[*Insert*] County has zero tolerance for sexual misconduct involving juveniles. It is the policy of *[Insert]* County to provide a safe, humane, and secure environment, free from sexual abuse, 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, and juveniles and juveniles, regardless of consensual status is prohibited and subject to administrative discipline and/or criminal sanctions.

1. **DEFINITIONS:**
2. **Aggressor:** Any person committing sexual misconduct against another. The aggressor may be the same or different gender as the victim.
3. **Gender Nonconforming:** A person whose appearance or manner does not conform to traditional societal gender expectations.
4. **Intersex:** A person who’s sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.
5. **Investigator(s):** Individual(s) designated by the Detention Administrator to conduct internal investigations into alleged sexual misconduct.
6. **Juvenile:** An individual who is in the custody of the *[Insert]* County juvenile detention facility.
7. **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.
8. **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.
9. **Questioning:** A person who is unsure of their gender, sexual identity, sexual orientation or all three.
10. **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.

1. **Sexual Abuse:** Any of the following acts by staff, contractors, or volunteers, with or without consent of a juvenile:
2. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
3. Contact between the mouth and the penis, vulva, or anus;
4. Contact between the mouth and any body part;
5. Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties;
6. 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;
7. Any display of uncovered genitalia, buttocks, or breasts in the presence of a juvenile;
8. Voyeurism, which is an invasion of a juvenile’s privacy by staff for reasons that do not involve the performance of official duties, such as peering at a juvenile who is using a toilet or changing in his or her room, except when staff are required to maintain constant visual supervision of a juvenile pursuant to facility policy; and
9. Any attempt or threat to engage in the activities described above.

Any of the following acts by juveniles, if a juvenile 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 non-sexual horseplay or a physical altercation such as a kick in the groin or touching someone’s breasts while pushing the person away.
5. **Sexual Harassment:**
   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 juvenile directed toward another; and
   2. Repeated verbal comments or gestures of a sexual nature to a juvenile 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.
6. **Sexual Misconduct**: Sexual Abuse or Sexual Harassment.

Examples of sexual misconduct include:

1. Requests for sexual favors, sexual acts or sexual contact;
2. 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;
3. Promise of protection in exchange for sexual favors;
4. Statements, comments or innuendo made directly or indirectly concerning the sexual orientation or perceived sexual orientation of any person;
5. Staff having intimate or close relationships with a juvenile defined as any relationship beyond the boundaries of a professional relationship;
6. Staff engaging in intimate conversation or correspondence with a juvenile;
7. Staff exchanging personal information with juveniles such as letters, pictures, phone numbers, home addresses, social media and email addresses;
8. Viewing an unclothed juvenile or watching a juvenile perform bodily functions for reasons unrelated to official duties.
9. Any verbal, non-verbal or physical conduct which is sexual in nature or sexually suggestive.
10. 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.
11. 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.
12. Rape, sexual assault, sexual intercourse, oral sex, anal sex, vaginal sex.
13. Sex or penetration with any object or body part.
14. **Transgender:** A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person’s assigned sex at birth.
15. **Victim:** Any person who has been the object of sexual misconduct.
16. **Victim Support Person**: A qualified community based individual or rape crisis organization designated by the Detention Center Administrator who has been specially trained to support a victim during investigation of alleged sexual abuse and who is available to accompany and support the victim through forensic medical examinations and investigatory interviews and who shall provide emotional support, crisis intervention, information and referrals.
17. **PROCEDURAL GUIDELINES:**

1. **Training**:
2. Training for Employees. All facility employees, including medical and mental health staff who are employees of the facility, shall receive instruction related to this policy and the following critical subjects:
   * 1. The facility’s zero-tolerance policy for sexual abuse and sexual harassment;
     2. How employees should fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
     3. Juveniles’ right to be free from sexual abuse and sexual harassment;
     4. The right of juveniles and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
     5. The dynamics of sexual abuse and sexual harassment in confinement;
     6. The common reactions of sexual abuse and sexual harassment victims;
     7. How to detect and respond to signs of threatened and actual sexual abuse;
     8. How to avoid inappropriate relationships with juveniles;
     9. How to communicate effectively and professionally with juveniles, including lesbian, gay, bisexual, transgender, questioning, intersex, or gender nonconforming youth; and
     10. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
     11. Relevant laws regarding the applicable age of consent.

All employeeswill 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.

All employees shall receive refresher training on these subjects every year as part of their annual in-service training.

All employees who may be called upon to conduct searches of individuals in the facility shall also receive training in how to conduct cross-gender pat-down searches and searches of transgender and intersex juveniles in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

1. Specialized Training for PREA Coordinator, Investigator and Victim Support Personnel. Specialized training is provided for the PREA Coordinator, investigators, victim support persons and other personnel 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.
2. Training for Volunteers, Contractors and other Non-Juveniles who have contact with Juveniles. Non-juveniles who have contact with juveniles, including contracted medical and mental health staff, 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.
3. Specialized Training for Medical and Mental Healthcare Personnel. All medical and mental healthcare practitioners who work regularly in the facility, regardless of their status as employees of the facility or contractors, shall be trained in:
   1. How to detect and assess signs of sexual abuse and sexual harassment;
   2. How to preserve physical evidence of sexual abuse;
   3. How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
   4. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.
4. 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.
5. Documentation. The facility maintains documentation that employees and other non-juveniles received and understood the training required by this policy.
6. **Juvenile Orientation and Education:**
7. All juveniles booked into the facility receive age appropriate verbal and written information about the county’s zero tolerance policy regarding sexual misconduct and how to report it during their orientation. Within ten days, juveniles shall receive more detailed age-appropriate education regarding their right to be free from sexual misconduct, their right to be free from retaliation for reporting incidents of sexual misconduct, and facility policies and procedures for responding to such incidents. This information shall address:
8. The Detention Center’s zero tolerance for sexual misconduct.
9. What constitutes sexual misconduct
10. The Detention Center’s program for prevention of sexual misconduct
11. Methods of self–protection
12. How to report sexual misconduct and retaliation
13. Protection from retaliation
14. Treatment and counseling
15. 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. *[make specific to your facility]*
16. 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. The facility shall not rely on juveniles to interpret, read or assist except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the juvenile’s safety, the performance of first response duties, or the investigation of the juvenile’s allegations.
17. The facility will maintain documentation that juveniles received the information described in this section in their custody files.
18. **Screening/Assessing Juveniles at Intake**
19. All juveniles 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.
20. 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 specialized housing within the general population housing unit or other appropriate setting where they are housed in a single cell without the possibility to be housed with a cell mate such as booking or medical. All youth shall have daily large-muscle exercise and any legally required educational programming or special education services regardless of their housing location or status. Any juvenile in specialized housing will also be provided opportunities to participate in all programing available to general population juveniles.
21. **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 referred to medical by the intake officer and assessed by a mental health or otherqualified healthprofessional within 14 days. Such juveniles will also be monitored by mental health services and counseled.

If at any time a juvenile is identified as a potential sexual aggressor or as a victim/potential victim, the juvenile shall be re-evaluated for appropriate housing, available programs, monitoring and counseling within 14 days.

1. **Referrals for Special Housing Placement**:
   1. Any employee may make a referral for reclassification 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 by contacting the shift supervisor.

2. This referral shall be documented\_\_\_\_\_\_ *[Insert appropriate form]*.

1. **Sexual Misconduct Perpetrated by Staff and Non-juveniles**:
2. *[Insert]* County has zero tolerance for sexual misconduct between juveniles and staff or other 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 of employment, contractual relationship or services.
3. 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).
4. 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 of employment or contractual relationship or services and criminal prosecution.
5. Failure of employees and non-juveniles to report incidents of sexual misconduct or retaliation is cause for disciplinary action up to and including termination of employment or termination of contractual relationship or services.
6. Cases involving sexual misconduct may be referred to the District Attorney for prosecution.
7. Juveniles who knowingly make false allegations of sexual misconduct are subject to discipline.
8. **Sexual Misconduct By Juveniles**
   1. Sexual misconduct between juveniles is prohibited by this policy regardless of whether it is alleged to be consensual.
   2. For purposes of this policy, sexual abuse does not include sexual contact between two equally willing juveniles. Although such behavior is prohibited by facility rules and subjects the juveniles to discipline, such conduct shall not be treated as sexual abuse under this policy.
   3. Juvenile perpetrators of sexual misconduct are subject to discipline.
   4. Juveniles who report sexual misconduct are protected from retaliation.
   5. Juveniles may not be disciplined for activity with staff unless the staff member did not consent.
   6. Juveniles who engage in retaliation are subject to discipline.
   7. Juveniles who knowingly make false allegations of sexual misconduct are subject to discipline
9. **Supervision and Monitoring**

Supervisors *[or insert titles of which intermediate or higher level supervisors will perform these rounds in your facility]* shall conduct and document unannounced rounds on all shifts to identify and deter staff sexual abuse and sexual harassment. Staff 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.

1. **Reporting and Investigation**

All staff members and non-juveniles have an affirmative duty to immediately report to the shift supervisor any knowledge, suspicion, or information regarding sexual misconduct involving a juvenile and/or any retaliation or other violation of this policy.

1. First Responder Instructions—All Alleged Sexual Misconduct:
2. A juvenile may report sexual misconductor 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 specialized housing or some other effective means.
3. 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.
4. 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.
5. 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.
6. First Responder Instructions--Allegations Involving Sexual Abuse:
   1. If the alleged abuse occurred within five days advise the alleged victim not to take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.
   2. Secure the scene and preserve evidence of the alleged assault if feasible and secure any video coverage of the alleged incident.
   3. 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 misconduct that constitutes criminal conduct under New Mexico law will be reported to law enforcement.
   4. In all cases of alleged sexual abuse, 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.
7. Additional Staff and Agency Reporting Duties:
   1. Staff must comply with mandatory child abuse reporting laws. All incidents of sexual abuse and situations in which staff knew or should have known of sexual abuse and failed to take reasonable steps to prevent it 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 are 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.
   2. Medical and mental health practitioners are also required to report sexual abuse at the facility to the Detention Administrator, PREA Coordinator, and CYFD.
   3. Medical and mental health practitioners shall report information about sexual abuse that occurred outside the facility to facility staff for the purposes of making classification, housing, and programming decisions, limiting the scope of that report to those who need to know to make those decisions. Medical and mental health practitioners shall also report this information to CYFD. Such practitioners shall be required to inform residents at the initiation of services of their duty to report and the limitations of confidentiality.
   4. 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.
   5. 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.
   6. 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:

1. 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.
2. 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.
3. 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.
4. 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:

1. 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.
2. Alleged victims of vaginal penetration while incarcerated shall be offered pregnancy tests.
3. 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.
4. Alleged victims of sexual abuse shall be offered tests for sexually transmitted infections as medically appropriate.
5. 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. *[Note this would require treatment for anyone even if they were assaulted outside of the facility. Only facilities that charge for treatment need to include this language but others may.]*
6. 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:

1. 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 or the appropriate investigating agency if the facility is not located in New Mexico.
2. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
3. The Detention Administrator shall document that he or she has provided such notification.

6. Investigations:

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

1. The juveniles who are named in the allegation are in custody or not;
2. Staff members named in the allegation are currently employed or not;
3. The report of the allegation was made in a timely manner or not;
4. The juvenile reporting the allegation is known to have made past false allegations;
5. The source of the allegation recants the allegation; and
6. 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 \_\_\_\_\_\_\_\_\_ [*Facilities with separate investigation policies should refer to it here and include paragraphs a-j below]*. The investigator shall:

1. 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.
2. Assess the credibility of an alleged victim, suspect, or witness on an individual basis and not on the basis of a person’s status as a juvenile or staff.
3. Impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.
4. Not require a juvenile who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of an allegation.
5. Investigate whether staff actions or failures to act contributed to the abuse.
6. Document investigations in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
7. Refer substantiated allegations of conduct that appear to be criminal for prosecution.
8. Conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle to criminal prosecution when the quality of evidence appears to support criminal prosecution
9. Retain all written reports of investigations into alleged sexual abuse for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.
10. Cooperate with outside investigations.
11. Victim Support Person:

When the victim alleges that sexual abuse occurred, a designated victim support person shall be immediately. This person will consult with the investigator on the case and offer assistance to the alleged victim as is appropriate based on the individual’s 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:

1. 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.
2. If the allegation involved a staff member, the PREA Coordinator shall inform the juvenile whenever:
3. The staff member is no longer posted within the juvenile’s unit;
4. The staff member is no longer employed at the facility;
5. The staff member has been indicted on a charge related to sexual abuse within the facility; or,
6. The staff member has been convicted on a charge related to sexual abuse within the facility.
7. 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.

1. **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 abuse, the Detention Administrator shall conduct an incident review, within 30 days of the conclusion of the investigation unless the allegations were determined to be unfounded.

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 shall also:

1. Examine the area in the facility where the incident

allegedly occurred to assess whether physical barriers in the

area may enable abuse;

1. Assess the adequacy of staffing levels in that area during

different shifts;

1. Assess whether monitoring technology should be deployed

or augmented to supplement supervision by staff; and,

e. The review team shall 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.

1. **Prosecutions:** The Detention Administrator or designee shall work with the local District Attorney’s Office to facilitate prosecution of acts in violation of criminal law.
2. **Discipline of Employees:**  The Detention Administrator will take any action necessary to enforce this policy. Violation of this policy is cause for discipline up to and including termination. Termination is the presumptive sanction for sexual abuse. All terminations or resignations by staff who would have been terminated if not for their resignation shall be reported to law enforcement and any relevant licensing bodies responsible for licenses that are required for the employee’s position.
3. **Termination of Contractors and Volunteers:** Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with juveniles under the agency’s supervision and shall be reported to law enforcement and to relevant licensing bodies. The facility shall take appropriate remedial measures in response to other violations of this policy including termination of contracts and clearances.
4. **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 juveniles. 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.

1. **Tracking:** The PREA Coordinator shall maintain a tracking system that records all allegations of sexual misconduct and their disposition. The PREA Coordinator shall maintain, review, and collect data as needed from all available incident-based documents, documents including reports, investigation files and sexual abuse incident reviews. The incident-based data collected shall be aggregated at least annually and shall include, at a minimum, the data the necessary to answer all questions from the most recent survey of the Survey of Sexual Violence conducted by the Department of Justice.
2. **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.

1. **Reporting to an Entity Outside of the Facility:**

In addition to filing a grievance or otherwise reporting internally as provided by this policy, juveniles may report allegations of sexual misconduct to an outside entity not affiliated with the detention facility by calling \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The outside entity forwards reports of sexual misconduct to the Detention Administrator and allows the juvenile to remain anonymous upon request.

1. **Third Party Reporting:**

Third parties, including fellow juveniles, staff members, family members, attorneys, and outside advocates are permitted to assist juveniles in filing grievances related to allegations of sexual abuse and are also permitted to file such requests on behalf of juveniles. Staff shall accept reports made from third parties and shall promptly document any verbal reports.

THIS SAMPLE POLICY IS BEING PROVIDED TO ASSIST YOU WITH DEVELOPING

YOUR FACILITY POLICY. IT IS NOT LEGAL ADVICE. YOU ARE ADVISED TO HAVE YOUR COUNTY ATTORNEY REVIEW THE PREA STANDARDS AND APPROVE YOUR SEXUAL MISCONDUCT POLICY BEFORE IT IS IMPLEMENTED

POLICY IMPLEMENTATION GUIDANCE

This policy may modify existing facility policies and other documents. Prior to adopting this policy the facility should review its Code of Ethics, Investigations policy, Inmate Handbook, Training Curricula, Intake Screening forms, and other related policies and documentation and modify as necessary to insure that they are consistent with this policy.