

Cherokee County Sheriff's Office
Jail
Policies and Procedures

Subject: Prison Rape Elimination Act (PREA) Staff and/or Inmate Sexual Misconduct	Policy Number: CKJ 315
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Approval Authority: David Groves Sheriff	

This policy statement and the procedures there under are intended for Jail use only. The policies, procedures and regulations are for internal Cherokee County Sheriff's Office administration purposes and are not intended to create any higher legal standard of care or liability in an evidentiary sense than is created by law. Violations of internal Cherokee County Sheriff's Office policies, procedures, regulations or rules form the basis for disciplinary action by the Cherokee County Sheriff's Office. Violations of law form the basis for civil and/or criminal sanctions to be determined in a proper judicial setting, not through the administrative procedures of the Cherokee County Sheriff's Office.

POLICY:

The Cherokee County Sheriff's Office is committed to the safety of any individual confined within its Jail facility. The Cherokee County Sheriff's Office has a **Zero-Tolerance** standard for sexual abuse involving inmate-on inmate behaviors and staff-on inmate behaviors. Inmates in the custody of the Jail are never regarded as being able to consent to any kind of relationship. No matter who initiates the contact or how "consensual" the relationship is, it is considered a rule violation by inmates and an abuse of power by staff. The Jail will respond to all reports of sexualized behavior or abuse as nonconsensual, regardless of perception, rumor, appearance, or participant disclosure.

DEFINITIONS:

Arrestee: A person committed to the Jail by the court or other authorized person or agency, who is confined in the Jail until he/she is sentenced or released.

Chain of Custody: A process to control and document security and handling of contraband and criminal physical evidence.

Consent: Words or actions by a person indicating a voluntary agreement to engage in a sexual act.

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Sheriff's Office / Jail Staff: For the purpose of this policy; staff includes all Cherokee County Sheriff's Office employees, volunteers, and contracted personnel working within the physical building or directly with an inmate/offender in any kind of official capacity.

False Allegation: Through the investigative process, evidence proves that an assertion of sexual abuse is not true.

Identifier Designation: A term, either confirmed or potential "vulnerable" or "predatory", given to an inmate after asking them questions designed to determine if they may be vulnerable to sexual abuse or be a possible perpetrator of sexual abuse while incarcerated.

Incapacitated: When a person; as a result of his or her use of alcohol and/or other drugs, is in a state of intoxication, or mental confusion resulting from withdrawal, such that the person:

- a) Appears to need medical care or supervision by approved substance abuse treatment personnel, as defined in statute, to ensure his or her safety; or
- b) Appears to present a direct active or passive threat to the safety of others.

Inmate: An individual in physical custody in a confinement facility; an incarcerated person including arrestees and sentenced arrestees.

Intersex: A person who's sexual or reproductive anatomy and chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sexual development.

Investigative Outcome: When an investigation is concluded, it will be labeled one of the following:

- a) *Substantiated*- An allegation that was investigated and determined to have occurred.
- b) *Unsubstantiated* – An allegation that was investigated and the investigation produced insufficient evidence as to whether or not the event occurred.
- c) *Unfounded* – An allegation that was investigated and determined NOT to have occurred.

Medical Confidentiality: The ethical principle or legal right that a physician or other health professional will protect all information relating to a patient. The exception to medical confidentiality is if an inmate reports that they have engaged in sexual activity or sexually abusive contact, health care professionals are mandated to follow proper reporting standards.

Multidisciplinary Team: For the purpose of this policy, team consisting at a minimum of security, administrative, and mental health staff that are responsible for reviewing and determining a facility plan.

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Need-to Know: A criterion for limiting access of certain sensitive information to individuals who require the information to make decisions or take action with regard to an inmate/offender's safety or treatment, or to the investigative process.

Perpetrator: For the purpose of this policy, an individual committing any form of sexual abuse.

Post-exposure Prophylaxis (PEP): Any prophylactic treatment administered by medical personnel started immediately after exposure to a pathogen (such as a disease-causing virus), in order to prevent infection by the pathogen and the development of disease.

Prison Rape Elimination Act (PREA): The federal law (9/04/2003) which supports the prevention, reduction, and elimination of sexual assault and rape within corrections systems; mandates national data collection efforts; provides funding for program development and research; creates a national commission to develop standards and accountability measures; and applies to all federal, state, and local prisons, jails, police lock-ups, private facilities, and community settings such as residential facilities.

PREA Coordinator: Designated facility staff person responsible for coordinating with the PREA Director regarding PREA incidents at their local site, as well as overseeing the PREA inmate orientation process.

PREA Designation: Using the Sexual Violence Screening Tool, determining whether an inmate may potentially be vulnerable, predatory, both, or neither in relation to sexual abuse. This may include separating inmates involved in a PREA incident for the safe and orderly running of the facility.

PREA Incident: Any incident of inmate sexualized behavior, or staff-on inmate or inmate-on-inmate sexual abuse.

Predatory Inmate: An inmate whose institutional behavior indicates they are prone to victimize other inmates, especially in regard to sexual behavior.

Qualified Health Care Professional (QHCP): Any person who by virtue of their education, credentials, and experience is permitted by law to evaluate and care for patients. This includes, but is not necessarily limited to, physicians, physician's assistant, nurse, nurse practitioners, dentists, and mental health professionals.

Sexual Abuse: The use of debt, threats of physical harm, peer pressure, deceit, personal favors, or positional authority to force or cajole sexual favors from a person, including inmate-on-inmate or staff-on-inmate sexually abusive contacts, sexually abusive penetration, or sexual harassment.

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Inmate –on-Inmate Sexual Abuse: Includes any of the following acts, if the inmate, arrestee or resident does not consent, is coerced into such act by overt or implicit threats of violence or is unable to consent or refuse:

- a) Sexually Abusive Contact: Intentional non=penetrative touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, excluding contact incidental to a physical altercation.
- b) Sexually Abusive Penetration: Contact between the penis and the vulva or the penis and the anus, including penetration, however slight; contact between the mouth and the penis, vulva, or anus; or penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument.
- c) Sexual Harassment: Repeated and unwelcome sexual advances, requests for sexual favors, verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed toward another.

Staff-on-Inmate Sexual Abuse: Includes any of the following acts, with or without consent of an inmate, arrestee or resident.

- a) Sexually Abusive Contact: Any attempt, threat, request, or intentional contact between the mouth and any body part, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or buttocks, that is unrelated to official duties or where the staff member has the intent to abuse, arouse, or gratify sexual desire.
- b) Sexual Abusive Penetration: Any attempt, threat, request, or intentional contact between the penis and the vulva or the penis and the anus, including penetration, however slight; contact between the mouth and the penis, vulva, or anus; or penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument.
- c) Indecent Exposure: The display by a staff member of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate.
- d) Voyeurism: An invasion of privacy of an inmate for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in their cell to perform bodily functions requiring an inmate to expose their buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.
- e) Sexual Harassment: Repeated verbal comments or gestures of a sexual nature to an inmate by a staff member, including demeaning reference to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

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Sexual Assault Nurse Examiner (SANE): A registered nurse (R.N.) who has advanced education and clinical preparation in forensic examination of sexual assault victims. “SANEs offer victims prompt, compassionate care and comprehensive forensic evidence collection. In addition to helping preserve the victim’s dignity and reduce psychological trauma, SANE programs enhance evidence collection for more effective investigations and better prosecutions.

Sexual Exploitation: Any abuse of a position of vulnerability, differential power, or trust for sexual purposes; this includes profiting monetarily, socially, or politically from the sexual exploitation of another. It also includes the solicitation of sexual favors from any person committed to the care and custody of the Cherokee County Sheriff’s Office or from any of its staff.

Sexual Misconduct: Any behavior of a sexual nature committed by staff directed toward an inmate, offender, or arrestee that is prohibited by federal law, Kansas statute, or the Cherokee County Sheriff’s Office Policies.

Sexual Behavior: Sexual contact intended or committed by an inmate including, but not limited to, kissing or fondling of another person in a manner which produces or is intended to produce sexual stimulation or gratification where force is not substantiated. Individual behaviors include, but are not limited to massages, indecent exposure, ejaculating on property, and fondling one in the presence of others.

SFI-designated Inmate: An inmate designated by a qualified Mental Health provider to be severely functionally impaired, based on an inmate’s diagnosis and functioning during incarceration.

Survey on Sexual Violence: Annual data of sexual assault within U.S. correctional facilities collected by the federal Bureau of Justice Statistics (BJS) as mandated by the federal PREA.

Incident Report: An official report written by a Jail employee and documented electronically for incidents occurring within the Jail and any of its operations. The Incident Report is utilized to record events (such as a Medical emergency, disturbance, found contraband, etc) violations or alleged violations of federal/state law, an event as required by Cherokee County Sheriff’s Office Policy, or for an incident that might lead to a criminal/internal investigation.

Victim: For the purpose of this policy, an inmate, who is harmed, adversely affected by, and/or exploited into sexualized behavior or abuse.

Vulnerable Inmate: For the purpose of this policy, an inmate who is at high risk to become a victim of sexual abuse by another inmate(s) due to actual or perceived characteristics related to age, physical stature, criminal history, sexual orientation, gender identity, and physical or mental disabilities, or past history of being victimized.

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PROCEDURE:

1. The Cherokee County Sheriff's Office will respond to, investigate, and support the prosecution of sexual abuse within the Cherokee County Jail. Through continual education of staff and inmates, the Sheriff's Office will increase awareness of safe reporting mechanisms and available services to victims, thereby creating an institutional culture that discourages sexual abuse. Through classification and housing assignment, the Cherokee County Jail will identify opportunities to separate and carefully monitor sexually predatory inmates and vulnerable inmates to reduce the incidence of sexual abuse. The Cherokee County Jail will utilize data collection systems to accurately track sexual abuse and sexualized behavior; facilitate identification of the causal factors; and annually incorporate "lessons learned" into improved operations, services and training toward a zero-tolerance standard.
2. The Cherokee County Jail is committed to:
 - a) Protecting inmates from sexual abuse.
 - b) Protecting staff and inmates from retaliation from the perpetrator or others, beginning when the allegation is made until the threat has passed as determined through the investigation process.
 - c) Protecting staff and inmates by ensuring that information obtained through the investigation is only shared with staff members who are involved in the investigation or case management of the involved parties.
 - d) Using the least restrictive level of segregation until the investigation is complete.
 - e) Protecting the victim's regarding incidents of substantiated or unsubstantiated staff-on-inmate sexual misconduct or sexual harassment. Case notes will only list the PREA case ID number.
 - f) Not including any specific information in the Jail Management System regarding staff member(s) who have been identified as alleged perpetrators of staff sexual abuse.
 - g) Working with local law enforcement to pursue criminal charges on behalf of victims of criminal sexualized behavior and sexual abuse.
 - h) Thoroughly investigating staff sexual abuse regardless of whether the alleged perpetrator is terminated or resigns.
3. All Cherokee County Sheriff's Office (Jail) staff members must understand their responsibility in the prevention, detection, and reporting of all incidents of sexual abuse. Professional, trained staff will help prevent incidents of sexual abuse by following the guidelines below during the performance of their duties:

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- a) Know and enforce rules regarding sexual abuse and sexualized behavior.
 - b) Use professional language.
 - c) Treat all allegations seriously and follow appropriate reporting procedures.
 - d) Recognize that incidents can occur virtually anywhere, especially in areas that are not directly supervised at all times.
 - e) Conducting frequent, random area and cell checks, providing direct staff supervision whenever possible.
 - f) Maintain an open line of communication with inmates.
 - g) Recognize that first-time, youthful, elderly, seriously functionally impaired, developmentally disabled, homosexual, transgender, intersex, gender nonconforming, and/or inmates who have committed sexual offenses are at an increased risk for sexual abuse.
 - h) Be aware of possible warning signs that might indicate that an inmate has been sexually abused or is in fear of being sexually abused; (Warning signs include, but are not limited to, isolation, depression, lashing out at others, refusing to shower, suicidal thoughts or actions, seeking protective custody, or refusing to leave segregation.)
 - i) Be aware of potential sexually aggressive behavior. The sexual aggressor may be known by the general population. (Characteristics or warning signs may include a prior history of committing rape, history of institutional violence, use of strong arm tactics (extortion), associating or pairing up with inmates who meet the profile of a potential victim, exhibiting voyeuristic/exhibitionistic behavior, and demonstrated inability to control anger.
4. Inmates are encouraged to report all allegations of sexual abuse and/or sexualized behavior regardless of when the incident occurred. Access to services for the victim of sexual abuse will not be dependent on their willingness to report allegations or provide testimony. Reporting of alleged sexual abuse by inmates is critical to the timely delivery of necessary services to the victim and to holding perpetrators accountable and less likely to reoffend. All such reports will be investigated within the limitations of information provided and the willingness of inmates and/or others to provide testimony. When the victim of a PREA incident can be identified, they will be offered access to necessary services available through the Cherokee County Sheriff's Office and its community partners.

RIGHTS AND RESPONSIBILITIES

1. Inmates whether victim, perpetrator, witness, or reporter have the following rights:

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- a) To serve their incarceration free of sexual abuse.
 - b) To be free from retaliation, beginning when the allegation is made until the threat has passed as determined through the investigation process, to the degree possible within limited resources and applicable laws.
 - c) To access any services regardless of their willingness to disclose information relevant to the investigation.
 - d) To be notified that the information of alleged sexual abuse reported to staff will immediately be reported to a Shift Supervisor or above.
 - e) To be informed by staff of any limits to confidentiality prior to conducting any interview.
 - f) To be assured that information obtained through the investigation is only shared with staff members who are involved in the investigation or case management of the involved parties.
 - g) To medical or mental health confidentiality unless the information is in relation to a PREA incident.
 - h) To have their identity protected if they are victims of substantiated staff-on-inmate sexual abuse, to the degree possible within investigation protocol and applicable laws.
 - i) To documentation of their innocence in all unfounded incidents.
 - j) To the least restrictive level of segregation until the investigation is complete.
2. Cherokee County Staff Members are responsible for the following:
- a) Immediately reporting any allegation of sexual abuse to a Supervisor or above, as mandated by applicable state law and or Cherokee County Sheriff's Office Policies.
 - b) Maintaining appropriate professional boundaries at all times with inmates, offenders, arrestees, visitors, and staff.
 - c) Conduct them in a manner which fosters a safe and secure workplace.
 - d) Maintaining medical and mental health confidentiality during a PREA investigation by sharing only relevant information with necessary staff.
 - e) Informing inmates of any limits to confidentiality prior to conducting any interview.
 - f) Documenting all unfounded incidents against alleged perpetrators in the Jail Management System as relevant.
 - g) Holding inmates accountable through all means available to the Cherokee County Sheriff's Office, for any substantiated incident of sexual abuse.
 - h) Holding inmates accountable through all means available who allege sexual abuse, and whose allegations are proven by investigators to be false.

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3. Cherokee County Staff Members have the following rights:
 - a) To be free from retaliation, beginning when the allegation is made until the threat has passed as determined through the investigation process.
 - b) To be assured that information obtained through the investigation is only shared with staff members who are involved in the investigation or case management of the involved parties.
 - c) To have their identity protected if they are victims of unfounded allegations of staff-on-inmates sexual misconduct or sexual harassment.
 - d) To documentation of their innocence as an alleged perpetrator in all unfounded incidents.
4. The PREA Coordinator Will:
 - a) Coordinate between the facility, law enforcement, local advocates, Personnel Victims Services, and the County Attorneys throughout the investigative process as necessary following incident response protocol.
 - b) Collaborate with and supervise information distribution to and from the facility, law enforcement, and the County Attorney's office regarding ongoing criminal allegations.
 - c) Coordinate with the Administrator and Sheriff to ensure that annual audits include inspections of areas and situations where sexual abuse may be likely to occur, and recommend mitigation for those areas and situation.
 - d) Collect and compile data of PREA incidents to be distributed quarterly to the Administrator and Sheriff.
 - e) Produce an annual summary for the Administrator on the frequency and severity of PREA incidents within the facility including trends during the year and comparisons to previous years.
 - f) Facilitate an annual "lessons learned" staff training or in-service to examine all documentation associated with sexual abuse within the facility.
 - g) Develop training standards in response to policy/directive concerning PREA incidents.
 - h) Coordinate with the Administrator in the development and implementation of lesson plans for new employee orientation and staff in-service training.
 - i) Coordinate with facility staff to compile information collection directly from the inmate population by means of various survey methods, which relate to the prevalence of sexual abuse and/or sexual activity within the facility, in order to provide insight into potential strategies for its reduction or elimination.

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Inmate Orientation

1. During each facility orientation and as inmates are transferred between facilities, all inmates will receive information about sexual abuse and sexual harassment within 72 hours of their arrival to the facility. Designated staff will communicate the information verbally and in writing, in a manner that is clearly understood by the inmate. Information provided will include, but is not limited to:
 - a) The Cherokee County Sheriff's Office's zero tolerance policy toward sexual abuse and sexual harassment.
 - b) Inmate's right to be free from sexual abuse and/or harassment.
 - c) Inmate's right to be free from retaliation.
 - d) How to safely report incidents of abuse, neglect, and sexual abuse and/or harassment, including the options to report the incident to a staff member, or confidentially in writing to the PREA Coordinator.
 - e) The risks and potential disciplinary actions, including criminal prosecution, for engaging in any type of abuse and/or sexual activity or making false allegations while incarcerated in this facility.
 - f) Review the facility's *Sexual Assault and Custodial Sexual Misconduct* brochure informing inmates their rights and how to prevent and report sexual misconduct and offer the inmate a copy if requested.
 - g) A video presentation of *PREA: What You Need to Know*.
2. The Inmate PREA Orientation Form will determine whether the inmate meets specific criteria indicating either vulnerability to sexual abuse or a history of sexual abusive behavior. Inmates may not be disciplined for refusing to answer, or for failing to disclose information in regards to the assessment questions. Inmates will be evaluated at intake to specifically determine their vulnerability to sexual abuse as indicated by the following risk factors:
 - a) Age of the inmate;
 - b) Physical build of the inmate;
 - c) Whether the inmate has a mental, physical, or developmental disability;
 - d) Whether the inmate has been previously incarcerated;
 - e) Whether the inmate's criminal history is exclusively nonviolent;
 - f) Whether the inmate has prior convictions for sex offenses against an adult or child;
 - g) Whether the inmate is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
 - h) Whether the inmate has previously experienced sexual victimization;
 - i) The inmate's own perception of vulnerability;

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- j) Whether the inmate is detained solely for civil immigration purposes;
- 3. Staff will document verification of inmate's orientation and education on PREA by completing the Inmate PREA Orientation Form. Staff will maintain the original signed acknowledgment in the inmate's main file. Inmate's risk of victimization or abusiveness will be reassessed within 30 days from their arrival to the facility based upon any additional, relevant information received by the facility since the intake screening or when warranted due to a referral, request, incident of sexual abuse, or receipt of additional, relevant information received by the facility since the intake screening. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials of the Department of Homeland Security.
- 4. If indicated the inmate has experienced prior sexual victimization, or has previously perpetrated sexual abuse, whether in an institutional setting or in the community, staff shall ensure the inmate is offered a follow up meeting with a medical or mental health practitioner within 14 days. Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental 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. Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.

Reporting of Sexual Misconduct and Retaliation

- 1. Reporting by inmates, third parties, and outside entities:
 - a) An inmate may report allegations of sexual abuse, sexual harassment, or retaliation by other inmates or staff verbally or in writing. In addition, inmates may report staff neglect or violations of responsibilities that may have contributed to incidents of sexual abuse or harassment. Allegations may be reported to any staff member.
 - b) Inmates may also report allegations to an outside entity that is not part of the Cherokee County Sheriff's Office by using the address and/or phone number provided. This outside entity shall then report the allegations to the PREA Coordinator or designee. Inmates shall be given the opportunity to remain anonymous upon request to the outside entity.

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- c) The PREA Coordinator/designee shall establish an e-mail link on the Department's official internet site that allows for third party reports of sexual abuse or sexual harassment on behalf of an inmate. Notification of the purpose and use of this e-mail account shall be posted in the inmate visiting areas and entry buildings.
 - d) There shall be no time limit on when an inmate may report sexual abuse or harassment.
- 2. Staff Reporting:
 - a) Staff shall report immediately any knowledge, suspicion, or information regarding an incident of sexual abuse, harassment, or misconduct that occurred in a facility, whether or not it is part of the Department. Staff shall also report retaliation against inmates or staff who report such incidents and any staff neglect or violation of responsibilities that may be contributed to an incident or retaliation. Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to this section and to inform inmates of the practitioner's duty report and the limitations of confidentiality at the initiation of services.
 - b) Staff may privately report sexual abuse, harassment, or misconduct by completing an incident report marked confidential and submitting it directly to the Agency PREA Coordinator. The PREA Coordinator shall ensure the allegation is investigated in accordance with this policy while maintaining the anonymity of the reporting staff. The PREA Coordinator shall maintain a confidential file of the privately reported allegations.
 - c) Any staff member that observes incidents or behaviors that cause a reasonable concern that an inmate may be at significant risk of sexual victimization shall document this incident or observation on an incident report marked confidential, consistent with Department Policy 504, Report Writing. A copy of this report shall immediately be forwarded to the Shift Commander, Jail Administrator, PREA Coordinator, and Investigator.
 - d) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse and to inform the inmate at the initiation of services of the practitioner's duty to report, and the limitations of confidentiality.
 - e) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local services agency, under applicable mandatory reporting laws.

3. Routing of reports:

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- a) All reports of allegations of sexual abuse, sexual harassment, sexual misconduct, and retaliation, including third party and anonymous reports, shall be reported to the Institutional Investigator.
- b) 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 required by law. Staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary.
- c) Any employee that receives a verbal or written report from an inmate, an anonymous source, or a third party of sexual abuse, sexual harassment, sexual misconduct or retaliation shall immediately notify the shift commander and complete an incident report marked confidential, with a copy to the PREA Coordinator and Investigator. If it is a report of sexual abuse, staff shall request that the alleged victim not take any actions that could destroy physical evidence.

Disciplinary Actions

- 1. Sheriff's Office / Jail Staff disciplinary actions will be handled in accordance with policy CKJ 216 Sexual Misconduct Investigations, CKJ 304 Rules of Conduct, and CKJ 311 Internal Affairs.
- 2. Inmate disciplinary actions will be handled in accordance with policy CKJ 216 Sexual Misconduct Investigations and CKJ 506 Disciplinary Procedures

References:

PREA 115.11(a)115.21(a)115.33(a)(b)(c)(d)(e)115.41(a)(b)(d)(f)(g)(h)(i)115.42(a)115.51(a)(b)(d)115.61(a)(b)(c)(d)(e)115.62(a)115.63(d)115.64(a)(b)115.65(a)115.67(a)(b)(c)(d)(e)(f)115.68(a) 115.76(a)(b)(c)(d)115.77(a)(b)115.78(a)(b)(e)(g)115.81(a)(b)(c)(d)(e)

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