

San Diego County Probation Department Institutional Services Policies	<p><u>SUBJECT:</u> Records, Reports and Public Information</p> <p><u>SECTION:</u> 4</p> <p><u>AUTHORITY:</u> Sections 1324(f) and 1340-1343, Title 15; Section 1560(c), Evidence Code; Sections 6252, 6254, 12525 and 68097, Government Code; Sections 502, 1203, 1326, 11075, 11142, 11165, 13200, 13300, 13302-13303, 13305 and 13320-13321, Penal Code, Section 827, Welfare and Institutions Code; Sections 1306.5 and 1410, Probation Department Administrative Manual</p>
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4.0 Records, Reports and Public Information

OVERVIEW

This manual section covers the confidentiality of Institutional Services (IS) reports and records, and policy for writing reports, and the storage and eventual destruction of those records.

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San Diego County Probation Department Institutional Services Policies	<u>SUBJECT:</u> Required Reports <u>SECTION:</u> 4.1 <u>AUTHORITY:</u> Article 4, Sections 1340-1343, Title 15; Section 12525, Government Code
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4.1 Required Reports

4.1.1 OVERVIEW

This section contains information on all reports that are mandated by higher authority, and the conditions that trigger the requirements.

4.1.2 REPORTING OF LEGAL ACTION TO BOARD OF STATE AND COMMUNITY CORRECTIONS

The Facility Division Chief shall submit to the Board of State and Community Corrections (BSCC) a letter of notification on each legal action, pertaining to conditions of confinement, filed against persons or legal entities responsible for juvenile facility operations.

4.1.3 DEATH AND SERIOUS ILLNESS OR INJURY OF A YOUTH WHILE DETAINED

In any case where a youth dies while in a juvenile facility, Title 15 requires that the Division Chief provide to the Board of State and Community Corrections (BSCC) a copy of the report submitted to the State Attorney General under Government Code 12525 (Title 15, Section 1341(a)). A copy of the report shall be provided to the BSCC within 10 calendar days after the death. See Manual Section 8.12 and Sections 4.4.13 - 4.4.13.3 for more detailed information on procedures required for reporting the death and/or serious illness or injury of a youth while detained.

4.1.4 POPULATION ACCOUNTING TO BOARD OF STATE AND COMMUNITY CORRECTIONS

The Division Chief shall submit required population and profile survey reports to the BSCC within 10 working days of the end of each reporting period, in a format to be provided by the BSCC.

4.1.5 OVERCROWDING REPORT TO BOARD OF STATE AND COMMUNITY CORRECTIONS

The Facility Division Chief shall monitor the youth population. When the number of youth detained in a living unit/cottage exceeds its BSCC established maximum capacity for more than 15 calendar days in a month, the Division Chief or Supervisor shall provide to the Board of State and Community Corrections a crowding report in a format provided by BSCC. This report shall detail what efforts are being made to mitigate the impact of overcrowding on the youth.

4.1.6 REPORTS TO JUVENILE JUSTICE COMMISSION

In order to meet the responsibilities of the Juvenile Justice Commission (“Commission”) under the Welfare and Institutions Code, the following procedures shall be followed by the Chief Probation Officer for bringing to the Commission’s attention serious incidents or conditions affecting the youth who come within the jurisdiction of the Juvenile Court.

For youth confined in juvenile facilities or supervised on probation, the Commission Chairperson or Commission Administrative Officer shall be notified within 24 hours of the incident, excluding weekends or holidays, of any of the following circumstances:

1. Death of a youth
2. Suicide attempt which results in a youth’s hospitalization;
3. Any incident where a youth who is in a facility which is under the oversight jurisdiction of the Commission has allegedly violated one or more of the following Penal Code Sections: 261.5 (unlawful sexual intercourse); 286 (sodomy); 288 (lewd and lascivious acts); and 288(a) (oral copulation);
4. Any incident which has been referred for investigation because any staff member, or any person providing care for a youth, has allegedly committed a criminal act which involves the welfare of a youth or relates to the youth directly;
5. Any condition of a facility in which youth under the jurisdiction of the Juvenile Court are placed which requires evacuation or relocation of such youth, or otherwise affects their safety or welfare; or
6. Any other incident of which the Chief Probation Officer determines the Commission should be notified because it relates to the health or welfare of youth under their supervision (e.g., escapes, staff job action, breaches of security, etc.).

The need for written incident or progress reports will be determined by the Chairperson or by the full Commission. Any records that are kept by the Chief Probation Officer shall be made available to members of the Commission upon receipt of form “Request to Review Records and Order Thereon.”

San Diego County Probation Department Institutional Services Policies	<p><u>SUBJECT:</u> Confidentiality of Juvenile Court Records and Reports</p> <p><u>SECTION:</u> 4.2</p> <p><u>AUTHORITY:</u> Article 4, Sections 1340-1343, Title 15; Penal Code, Section 502, 1203, 11075-11081, 11142, 13302-13303; Welfare and Institutions (WIC) Code, Section 827; Probation Department Admin Manual, Section 1410</p>
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4.2 Confidentiality of Juvenile Court Records and Reports

4.2.1 RECORDS ARE ALL CONFIDENTIAL

Section 827 of the Welfare and Institutions Code (WIC) mandates confidentiality of all Juvenile Court Records and limits access to those with a need to know and a right to know as defined by statute or Court Order. By extension, all Institutional Services (IS) records and reports written or provided by facility staff are confidential and are subject to limitations regarding right to inspect as they are used in completing the Probation Officer's report.

Under Section WIC 827, specific authorization to review and inspect Juvenile Court records and reports is granted only to court personnel, the youth who is the subject of the court proceedings, the youth's parents or legal guardians, the attorneys of record for both parties, and other persons as designated by court order of a Juvenile Court Judge upon the filing of a petition.

4.2.2 SAN DIEGO COUNTY PROBATION DEPARTMENT CONFIDENTIALITY POLICY

All documents, reports and information, whether written or stored in computer files, pertaining to Juvenile Court proceedings, detained youth, Juvenile Probation casework, District Attorney actions and/or law enforcement activities shall not be released to persons outside the Probation Department unless the interests of justice would be served, and the person to whom the information is released has a legitimate need and right to know the information. What constitutes a valid need and right to know depends upon the nature and source of the information, as well as the identity and/or status of the person seeking release of the information. (Also see Manual Section 8.2 for information regarding Confidentiality of Medical Records.)

4.2.2.1 RESOLUTION OF DISPUTES

The Facility Division Chief shall resolve all disputes with regard to whether or not documents or information shall or shall not be released.

4.2.3 JUVENILE COURT RELEASE OF INFORMATION POLICY

4.2.3.1 WHO CAN HAVE ACCESS

The Welfare and Institutions Code, Section 827, sets forth the policy regarding confidentiality of juvenile case files.

- A. Court personnel.
- B. The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.
- C. The minor who is the subject of the proceeding.
- D. The minor's parents or guardian.
- E. The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.
- F. The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action.
- G. The superintendent or designee of the school district where the minor is enrolled or attending school.
- H. Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.
- I. The State Department of Social Services, to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12, of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements, Section 10850.4, and paragraph (2).
- J. Authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject.
- K. Members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor.
- L. A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation or assessment pursuant to Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing them as the minor's counsel.
- M. A court-appointed investigator who is actively participating in a guardianship case involving a minor pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting within the scope of their duties in that case.
- N. A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.
- O. Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.
- P. Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

All such information received by an authorized recipient as listed above must be kept confidential by that recipient, and must not be further released except to one or more of the authorized recipients.

Requests by any law enforcement agency to disseminate any information in its files to any person or agency not listed above will be considered by the Juvenile Court on an individual basis, in accordance with the standards set forth in *T.N.G. v. Superior Court*; 4 Cal.3d 767 (1971).

This order does not prohibit release of information by law enforcement agencies about crimes or the contents of arrest reports, except as they disclose the identity of the juvenile. This order does not apply prior to the taking into custody or detention of a juvenile, and it is not intended to apply to coroner's reports.

4.2.3.2 IS RECORDS RELEASE

Facility records and reports shall not be directly released to any outside person or agency. Requests for such information shall be directed to the appropriate casework Probation Officer or the Watch Commander/Supervisor. In case of an emergency, all requests for information shall be directed to IS DCPO, the Facility Division Chief, or Facility POSM.

4.2.3.3 NO STILL PHOTOS/ MOVIES

No still or motion pictures may be taken for any purpose, including television or for personal use of youth, without the permission of the Presiding Judge of the Juvenile Court and/or the Division Chief. No voice recordings may be made of youth who are in court ordered placements or a juvenile facility.

4.2.3.4 MEDIA REQUEST

No youth who is the subject of Juvenile Court proceedings may be interviewed or photographed by any member of the news media without the express authorization of the Presiding Judge of the Juvenile Court. If the youth has a pending case before the court, the attorney of record must be consulted before authorization will be given. Requests for information made by the news media for information (i.e., newspapers, TV, radio, etc.) are to be referred to the Facility Division Chief.

4.2.3.5 JUVENILE WAIVER AND CONSENT FORM

Prior to the release of any information to the media, a youth, and their parent or legal guardian must sign a waiver and consent form. This form must then be submitted and approved by a Judge of the San Diego Juvenile Court.

4.2.3.6 GRADUATION PICTURES

The Juvenile Court Presiding Judge has authorized the taking of a graduation photograph for a youth who graduates from a Juvenile Court School. The following guidelines apply:

- No more than five (5) pictures shall be taken
- Pictures are only to be taken by school personnel, or probation staff
- No pictures of other youth shall be taken

4.2.3.7 REQUEST FOR INFO BY PARENTS OR GUARDIANS

Certain information may be released by IS staff to parents and legal guardians. Information which may be directly divulged to parents and legal guardians includes:

1. Whether or not the youth is detained;
2. The criminal charge for which the youth is being detained;
3. The name, phone number and office location of the youth's casework Probation Officer;
4. The name and agency of the arresting officer(s) (i.e., SDPD, SDSO, CHP, etc.);
5. A general statement concerning the youth's behavior and physical condition.

4.2.3.8 VERIFY ID

Prior to divulging such information, IS staff are required to verify the identity of the person(s) requesting the information, and their relationship to the youth. Other persons requesting information on a youth shall be respectfully referred to the casework Probation Officer.

4.2.3.9 ATTORNEY'S REQUEST FOR INFORMATION

Attorneys appointed by the Court or retained by the youth for representation in Juvenile Court proceedings are entitled to receive the same information as that provided to parents and legal guardians. Requests for information beyond that which is routinely provided (i.e., prior probation casework information, prior criminal record, arrest reports, etc.) are to be referred to the appropriate casework Probation Officer.

4.2.3.10 RELEASE OF INFORMATION PROCEDURES

All requests for release of information regarding IS operating procedures, directives, manuals, and non-youth institutional related reports from attorneys, youth, parents and/or members of the public, are to be referred to the Division Chief. All requests for release of information regarding security practices and/or safety procedures are to remain confidential. Exceptions to this policy extend only to law enforcement agencies and/or other Probation Departments within California. Requests from these agencies shall be forwarded to the Division Chief, Facility Division Chief, or Facility POSM, and will be handled on a need to know case-by-case, basis.

4.2.4 STAFF DISSEMINATION OF INFORMATION

IS officers are an integral part of the casework process and system and often have significant data to impart to the casework Probation Officer. This policy is designed to aid staff, by designating the framework in which such information can be shared.

4.2.4.1 DISCUSSION WITH PARENTS

IS officers may briefly discuss with parents/legal guardians, the youth's general behavior or attitude while detained. / Questions or concerns about casework/placement issues should be referred to the casework Probation Officer.

4.2.4.2 REFER HEALTH QUESTIONS TO CLINIC

If parents/legal guardians inquire about the youth's health or medication, they should be referred to the Facility Medical Clinic.

4.2.4.3 REFERENCES

All requests by attorneys, parents, relatives and other interested parties to IS officers to write letters of reference, appear in court, or to make statements on behalf of a youth, must be respectfully referred to the youth's casework Probation Officer, unless an official Subpoena has been received. The Probation Officer's name and work number should be given to the individual requesting such information.

4.2.4.4 SPECIAL BEHAVIOR REPORT

If officers feel that the youth's behavior or attitude, either positive or negative, may be important, they are to provide that information in an e-mail via the Supervisor to the casework PO. The casework Probation Officer is in the best position to decide how much emphasis the youth's behavior should influence a casework decision.

4.2.4.5 ILL-INFORMED COMMENTS CAN BE HARMFUL

Officers shall not make statements to youth relative to where the youth is to be or should be placed. Such information may be ill-informed and might upset them greatly, and could even lead to the failure of a particular placement. Counseling should be directed toward improving a youth's behavior and toward getting them to accept a particular placement if this issue has been decided by the Court.

4.2.5 RELEASE OF JUVENILE RECORD DATA POLICY

Juvenile offender record data consists of police reports, arrest records, District Attorney files, Probation records, CII/FBI rap sheets, offender warrants and other related law enforcement agency records and files. All persons having access to Juvenile offender record data are required by law and statute (California Penal Code sections 11075-11081, 1203.05, 1203.10) to protect and carefully control the dissemination of information obtained or generated. Consequently, dissemination of any information contained in Probation Department databases must be carefully controlled and may not be routinely given out.

Information obtained on a youth's' criminal history may be given only to specified criminal justice and/or correctional agencies. When a request for criminal record data is received from any authorized agency, staff must ascertain the purpose of the request and provide only that information which is clearly necessary for the agency to carry out its law enforcement functions.

Requests from persons and agencies not specifically authorized (i.e., youth, parents, attorneys, etc.) to receive criminal record information, are to be denied and/or referred to the youth's casework Probation Officer.

4.2.6 DESTRUCTION OF FACILITY RECORDS

All facility records shall be kept/stored for five years. Each facility shall establish a procedure for record retention based upon the design and storage space of the particular building.

4.2.6.1 PROBATION OPERATIONS SUPPORT MANAGER

The Probation Operations Support Manager shall be responsible for ensuring all facility records, documents, statistics, files and forms are maintained and then destroyed after a period of five (5) years in storage.

4.2.6.2 APPLICATION TO COUNTY

When it is determined that records should be destroyed, the Probation Operations Support Manager shall apply to the County Principal Accountant for permission to destroy the records. When permission is granted, the records may be destroyed.

4.2.6.3 SHREDDING PROCESS

The destruction of records shall be accomplished by shredding; and this process shall be conducted at the facility or at an agency contracted by San Diego County.

4.2.6.4 EXCEPTION FOR HISTORICAL RECORDS

Records, documents, statistics or reports that are deemed to be of historical significance may be exempted from the destruction process outlined above. The Division Chief or the Probation Operations Support Manager may designate records as historically significant and retain such records indefinitely.

4.2.7 COMPUTER AUTHORIZATION AND SECURITY

Access to Probation Department computer system information is restricted to authorized IS staff. Only authorized persons who have been assigned log-on codes are permitted to operate computer terminals. Log-on codes are to be obtained from Facility administration via the employee's Supervisor. All staff is required to sign the confidentiality form (Probation Form 3094, "Restrictions on the Use of Criminal Justice Information") pursuant to Probation Department Administrative Manual, Section 1410.

4.2.7.1 COMPUTER SECURITY

Security of Probation Department computer databases is the responsibility of all IS staff, as well as the individual operators. Proper security measures require staff to be personally responsible for the security of their individual log-on code. Authorized personnel shall not allow others to have access to their log-on code for any purpose. Authorized personnel are further responsible for logging off the terminal following completion of their use.

4.2.7.2 OFFICIAL USE ONLY

All information entered or retrieved from Probation Department computer systems is subject to the laws regarding confidentiality of juvenile records. Information obtained from these systems is intended for official use only and may be disseminated only to authorized persons within the department or to authorized law enforcement and/or correctional agencies. Failure to maintain the confidentiality of the computer systems is a serious dereliction of duty and shall result in disciplinary action.

4.2.7.3 PENALTIES

Penalties for Unauthorized Furnishing of Criminal Record Data: Sections 502, 11142, 13302 and 13303 of the California Penal Code prescribes criminal sanctions for persons who "knowingly" furnish records, data, access and/or information to unauthorized persons.

Penal Code Sections 11142 and 13303 specifically state:

"Any person authorized by law to receive a record or information obtained from a record, who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor."

4.2.7.4 FELONY TO RELEASE UNAUTHORIZED RECORDS OR INFORMATION

Section 502(c)(2)-502(d)(1) of the California Penal Code states, in pertinent part:

"Any person who...knowingly accesses and without permission takes, copies or makes use of any data from a computer, computer system or computer network is punishable by a fine not exceeding ten thousand (\$10,000) or by imprisonment in the state prison for 16 months, two or three years, or by both that fine and imprisonment...."

4.2.7.5 DEPARTMENT DISCIPLINE

In addition to the penalties provided by law, any staff member who knowingly accesses a record not authorized in the course of their duties (i.e., themselves, friends, family members, etc.) or provides criminal record information to a person not authorized to receive such information, shall be subject to Departmental disciplinary action and/or termination of employment. (Also see Manual Section 2.5.17 for additional information on computer use policy).

4.2.8 EXCEPTIONS TO CONFIDENTIALITY POLICY

4.2.8.1 PROBATION OFFICERS MUST WARN ANY POTENTIAL VICTIMS

Legal Duty to Warn: As Probation Officers in IS, we have a legal duty to warn potential victims, and disclose confidential information when their public safety is jeopardized. This duty is derived from the “Tarasoff Doctrine”, which comes from the California case, *Tarasoff v. Regents of the University of California*; 17 Cal.3d 425 (1976).

If a youth threatens to injure or kill an identifiable person(s), and such threats are communicated to the line staff and deemed credible, the Watch Commander or Supervisor must be notified immediately and an Incident Report will be forwarded to the Casework P.O. The Supervisor will also telephonically notify the Casework P.O. as soon as possible.

Most commonly, this issue arises due to the nature of the youth’s offense, accomplices still at large, their threats, or conduct which make them a special risk to a teacher, employer, caretaker, foster-parent, or other citizen.

4.2.8.2 NO LEGAL DUTY TO WARN BUT PUBLIC SAFETY DICTATES

Nondisclosure and Public Danger: Situations may arise wherein a legal duty to warn/disclose does not exist, but the public is endangered by nondisclosure. In this instance, the officer shall consult with their Supervisor and the Division Chief to determine if the peril to the public from nondisclosure outweighs the need for confidentiality. If the public endangerment is greater than the need for confidentiality, then the warning/disclosure of information to the youth’s potential victim(s) should be made.

4.2.8.3 COURT MUST GIVE PERMISSION FOR DISCLOSURE

A decision whether to disclose should involve a careful review of the pertinent facts in a case, to determine the necessity for disclosure. If it is an emergency situation, the officer should consult with their Supervisor and Division Chief. The Supervisor should contact the Court directly, either via telephone or in person, for permission to release the information pursuant to Penal Code Section 1203.05 (b).

San Diego County Probation Department Institutional Services Policies	<u>SUBJECT:</u> Subpoenas <u>SECTION:</u> 4.3 <u>AUTHORITY:</u> Section 1560(c), Evidence Code; Section 6252, 6254 and 68097, Government Code; Sections 1326, 13200, 13300, 13305, 13320 and 13321, Penal Code; Section 1410, Probation Department Administrative Manual
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4.3 Subpoenas

4.3.1 OVERVIEW

The term "subpoena" refers to a written legal order directing a person to appear in court (for example: to give testimony, or act as a juror). This may occur in a civil or criminal proceeding. The term "subpoena duces tecum" refers to a written legal order to produce and bring to court, specified records, documents, books and reports (for example: JPCF files, or unit log books).
(Penal Code, Section 1326)

4.3.2 GENERAL POLICY

The following policy regarding the service of subpoenas, applies to all County officers, employees, Boards and/or Commissions relating to matters within the scope of their duties and employment.

4.3.2.1 DOES NOT APPLY TO PERSONAL BUSINESS

This policy does not apply to circumstances where an employee is served with a subpoena regarding matters that do not arise out of their employment. In those circumstances, the employee must seek their own counsel and respond as they deem appropriate.

4.3.2.2 INFORM SUPERVISOR AND OR WATCH COMMANDER

Any Institutional Services (IS) staff member who receives a subpoena (State, Federal, civil or criminal) shall immediately inform their Supervisor and/or the Watch Commander. The Supervisor or Watch Commander shall inform the chain of command of the subpoena so that County Counsel receives notification. Additionally, the employee shall immediately provide a copy of the subpoena to the Scheduling Supervisor so that the schedule can be adjusted to accommodate the Court appearance.

4.3.2.3 OVERTIME

Any IS staff member who is subpoenaed to appear in court (other than for jury duty) for a job-related incident or case, on a day that they would not normally be working, is entitled to overtime pay based on the Memorandum of Agreement (MOA) between the County of San Diego and the San Diego County Probation Officers Association and the San Diego County Probation Supervisors Association, However, the Scheduling Supervisor may change your work schedule, when in the best interest of the department, to minimize overtime liability. If possible, employees will be provided a schedule change with at least 14 days advance notice. If the 14 day advance notice is not provided, the employee will be compensated per the MOA. (See Manual Section 2.5.9 -2.5.9.2 for more information regarding Court Leave and Jury Duty.)

4.3.3 CIVIL SUBPOENAS - DEMAND FEES

An officer who is served with a subpoena for a civil proceeding for a job-related incident or case shall, immediately upon receipt, inform the process server that the Department demands witness fees pursuant to Section 68097.2 of the Government Code. The party issuing the subpoena shall reimburse the public entity (i.e., the County) for the full cost incurred in paying the Peace Officer their salary and traveling expenses.

4.3.4 CRIMINAL SUBPOENAS

4.3.4.1 NO FEE FOR SAN DIEGO COUNTY

When served with a subpoena for a criminal proceeding in San Diego County, the officer should not request witness fees. If a court appearance is required of the officer, then we appear without special compensation as a courtesy to the Criminal Court. (See Manual Section 2.5.9 for additional information on paid Court Leave.)

4.3.4.2 OUTSIDE SAN DIEGO COUNTY

When served with a subpoena for a criminal proceeding outside San Diego County, the officer should request witness fees to help offset travel expenses.

4.3.5 SUBPOENA DUCES TECUM

4.3.5.1 DISCLOSURE DECISION

If served with a subpoena duces tecum, the decision to disclose the subpoenaed information will usually depend upon the identity/status of the person requesting the information and whether that person states a legitimate need for the data, which exceeds the interest for maintaining the privacy of the material.

4.3.5.2 USED TO OBTAIN RECORDS

A subpoena duces tecum is usually necessary to obtain documents and records which are not public records. (Note: A public entity must normally produce the record unless it can claim a privilege against disclosure.) The officer served with the subpoena duces tecum will be required to produce the subpoenaed information, unless the subpoena duces tecum is “quashed” (the legal term for setting aside a subpoena).

The two main reasons for which a subpoena duces tecum will be quashed is if the subpoena duces tecum is overbroad and represents an impermissible fishing expedition, and/or the information sought is privileged and confidential. In some cases, it will be necessary for the officer, via the Division Chief, to seek the assistance of County Counsel to prevent disclosure.

Also see Probation Department Admin Manual, Section 1410 for more information on subpoenas and proper responses.

4.3.5.3 YOUTH (DEFENDANT) HAS SUBPOENAED THEIR OWN CASE FILE INFORMATION

A youth will be able to obtain original records and files, which pertain to them if a records subpoena duces tecum is served. However, pursuant to Sections 13200 et seq., 13300, 13305, 13320 and 13321 of the California Penal Code, an agency is required to provide reasonable access to these files, and therefore a subpoena is typically not required. Thus, a youth may obtain access to their own files which include notes, reports, logs, incident reports, accident reports, rule violations, etc., so long as the information is not confidential and privileged. If a youth requests access to the file, it will be necessary to review the file and remove the confidential/ privileged information prior to releasing the data. This practice should be done on a case-by-case basis. It should be noted that the possibility exists that the information may have to be produced for an “in-camera” hearing (where only the judge sees the data) if the court determines the youth’s due process rights outweigh the necessity for confidentiality.

4.3.5.4 A YOUTH REQUESTS INFORMATION CONCERNING ANOTHER YOUTH

If a youth requests files or information concerning another youth, IS actions will be different depending on what type of subpoena is served, as follows:

- **Civil Subpoena:**
No information or materials should be disclosed. The Probation Officer and their Supervisor, via the Division Chief, shall contact County Counsel and request assistance in disposing of the subpoena. If a hearing is held, the officer shall follow the directives of County Counsel and the Court regarding disclosures of data. If the department is unable to have a civil subpoena duces tecum quashed, and is compelled to produce copies of materials in its files, such material shall be duplicated and then forwarded along with a form to be provided by Administrative Services to the Accounting Division at the Probation Administration Center (PAC) at which time the cost of locating, copying and making the records available will be computed and the party requesting the material would obtain it upon payment of costs to the Accounting Division Cashier.
- **Criminal subpoena:**
Probation must send the records under seal directly to the designated Court. Records sent under seal are initially provided only to the Court and not to the Defense or Prosecution Attorneys. California Evidence Code section 1560(c) sets forth the procedures under which records are provided under seal to the Court. Records shall be “separately enclosed in an inner envelope or wrapper, sealed with the title and number of the action, name of witness, and date of subpoena clearly inscribed thereon, the sealed envelope or wrapper,[and] sealed...” The records are then delivered to the Court. Subpoenas in civil matters and subpoenas from Federal Court are to be handled as follows: Only information from Court orders, routine handwritten running history entries (to the extent they include non-confidential matter) legal history entries, reports of substance abuse testing, etc., shall be disclosed by the Probation Officer in response to a subpoena issued in a criminal case. (With no charge for photocopying). However, if the subpoena is not explicit regarding the items sought, the officer shall contact the attorney and ask them for clarification before making a decision to withhold disclosure of the information. If the attorney is after the entire case file or confidential materials (i.e. rap sheets, probation reports, psychological reports, data/information received in confidence from victims, witnesses, law enforcement, neighbors of the youth, etc.) the officer and their Supervisors, via the Division Chief, must respond to the subpoena by contacting County Counsel immediately for assistance.
- **County Counsel advice:**
The officer should follow the direction of County Counsel regarding any disclosure of confidential information or documents pertaining to another youth.

4.3.5.5 A SUBPOENA DUCES TECUM IS NECESSARY TO OBTAIN DOCUMENTS AND RECORDS WHICH ARE NOT PUBLIC RECORDS

Section 6252 of the Government Code, gives a broad definition to public records. However, Section 6252(a) restricts access. The pertinent exception is found in Section 6254(f) of the Government Code which provides:

"Records of complaints to or investigations conducted by, or records of intelligence information or security procedures of ... any other state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes, except that state and local law enforcement agencies shall disclose the names and address of persons involved in, or witnesses other than confidential informants to, the incident...."

Operational manuals sought by a subpoena duces tecum will be classified as "public records" for which there is no exception available unless it contains security procedures. The subpoena duces tecum may be quashed for failure to state the specific information sought (i.e., it represents a fishing expedition), it is unreasonable, or it seeks to obtain access to other information in which the need to maintain confidentiality such as with security procedures, outweighs the necessity for disclosure.

4.3.5.6 PROCEDURE FOR COMPLYING WITH A SUBPOENA DUCES TECUM

1. Make a true, legible and durable copy of the records/documents requested.
2. Seal the documents in an envelope with the following information written clearly on the outside of the envelope:
 - a. Title of the case;
 - b. Case number;
 - c. Your name, as the custodian of records for “facility name;”
 - d. Date of subpoena
3. Prepare a declaration stating:
 - a. You are the duly authorized custodian of the records;
 - b. You have authority to certify the records;
 - c. The enclosed copy is a true copy of all the records requested;
 - d. The records were prepared by Departmental (or County) personnel in the ordinary course of business, at or near the time of the act, condition, or event;
 - e. If all of the requested information is not enclosed, explain why (i.e., not available, can't locate, confidential, etc.).
4. Sign and date the declaration following your statement of, "I declare under penalty of perjury of the laws of the State of California, that the foregoing is true and correct."
5. Place the declaration and the sealed envelope in another envelope;
6. Seal and mail, or hand deliver to the Clerk of the County Court (or as otherwise directed), the envelope within five (5) days of receipt of the subpoena.

4.3.6 SERVICE OF SUBPOENA/TEMPORARY RESTRAINING ORDER ON A YOUTH

4.3.6.1 SUPERVISOR RESPONSIBILITIES

When a subpoena/Temporary Restraining Order (TRO) is issued for a person detained, it will be routed to the Watch Commander's Office and placed on a clipboard entitled Juvenile Court Orders.

Upon arrival of the subpoena/TRO the Watch Commander shall complete the following steps:

1. Verify that the individual subpoenaed is actually in custody at the facility. If the individual is not being detained, the subpoena/TRO should not be accepted.
2. Xerox a copy of the subpoena/TRO for office records.
3. Make contact with the San Diego Sheriff's Officer for service of the subpoena.
4. If a criminal case, instruct the person serving the subpoena/TRO that transportation arrangements are not the responsibility of the facility, and those arrangements for transportation and the Order to Release must be made.
5. If a civil case, notify the youth's casework Probation Officer that transportation must be provided, and provide details about the subpoena/TRO (i.e., the name of the Court, the date and time of appearance, the youth's name and the name of the parties involved).

4.3.6.2 FACILITY RESPONSIBILITIES

Each facility will develop its own protocol regarding the serving of youth subpoenas/TRO's.

San Diego County Probation Department Institutional Services Policies	<u>SUBJECT:</u> Facility Records and Reports <u>SECTION:</u> 4.4 <u>AUTHORITY:</u> Article 4, Sections 1324, 1341, and 1362, Title 15; Section 12525, Government Code; Section 871, Welfare and Institutions Code; Section 1306.5, Probation Department Administrative Manual
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4.4 Facility Records and Reports

4.4.1 INTRODUCTION

This section outlines the principal records and reports used and written by Institutional Services (IS) staff.

4.4.2 OVERVIEW

The Probation Department is responsible for ensuring that IS operates in an efficient and professional manner. Toward that end, any form, report, record, log or file not listed in this Manual, that is necessary for the effective operation of the facility may be created, customized, modified or deleted at the discretion of the facility Division Chiefs. (Forms or reports mandated by the Board of State and Community Corrections.)

4.4.3 INCIDENT REPORT

4.4.3.1 OVERVIEW

This section provides a general guide for correctly writing an Incident Report.

4.4.3.2 INCIDENT REPORT

An Institutional Services Incident Report is the Services primary written report; documenting special incidents and recording observations that occur within the facility. These reports are to be documented in PCMS under the youth involved. Staff are expected to be knowledgeable in the report procedures for completing the form. This section focuses on the individual responsibilities for writing/reviewing an Incident Report, as well as the requirements for uniformity of content, style and format.

4.4.3.3 FALSE INFORMATION

In accord with Administrative Policies and Procedures Manual Section 1306.5.N, employees shall not knowingly or willingly enter or cause to be entered in any department books, records, or reports any inaccurate, false, or improper information.

4.4.3.4 RESPONSIBILITY

It is the responsibility of all IS officers to be familiar with the provisions for preparing an Incident Report. Training in report writing is extended to all new permanent employees through STC Core training classes and on-the-job training. Supervisors and Senior P.O.'s shall also provide on-going training and guidance to officers for the writing of reports.

4.4.4 WHEN TO WRITE AN INCIDENT REPORT

An Incident Report shall be written to document all incidents where the potential for legal liability may exist for youth, IS staff, the Probation Department or for any other County employee. However, the purpose of an Incident Report is not limited to this criteria. Other incidents that require documentation in an Incident Report include, but are not limited, to the following:

1. Escapes (and/or attempts);
2. AWOL's;
3. Assaults on IS staff by youth;
4. Physical fights between two or more youth;
5. Threats of violence (i.e., Chief Counselor, riot, etc.);
6. Bomb threats, fires, explosions;
7. Death of a youth, staff or a member of the public, occurring on facility grounds or in the custody of IS staff;
8. Suicide attempts;
9. Use of OC spray;
10. Use of physical force by staff on a youth;
11. Placement of youth in restraint equipment;
12. Placement of youth in a safety cell or restraint chair;
13. Medical Emergencies;
14. Reports of sexual activity between youth or between staff and youth;
15. Dispensing of incorrect medication by Medical Staff, or failure to dispense medication;
16. Placement of a youth in a special program i.e., Workout, etc.;
17. Staff Injuries;
18. Horseplay between youth which results in physical contact;
19. Injuries not witnessed by staff;
20. For any reason deemed appropriate by officers;
21. Whenever directed to do so by a Supervisor or higher authority.

The responsibility for writing an Incident Report rests with all involved officers who have pertinent information regarding the particular incident in question. All officers involved in a use of force shall addenda the original report noting their role, actions and any other relevant information.

4.4.4.1 STUDENT WORKERS

Student Workers ordinarily will not write Incident Reports unless they are the main staff participant in a particular situation. When a Student Worker does write an Incident Report, the Shift Leader shall write an addendum and sign it.

4.4.5 COMPONENTS OF AN INCIDENT REPORT

Officers writing an Incident Report are responsible for including the following components in the document.

1. The report shall be complete, accurate and truthful including:
 - Nature of subject(s) activity and severity of offense(s) clearly articulated;
 - Location of incident and staff positioning;
 - Nature of subject(s) level(s) or resistance classified and clearly articulated;
 - Manner of potential and/or immediate threats to staff, youth or bystander(s) clearly articulated;
 - A thorough explanation, of which techniques, tactics and/or defensive weapons were considered, attempted or deployed;
 - If applicable, the fact that lower level defensive techniques, tactics, and/or weapons were not used because doing so would have increased the risk of injury to staff, youth or others;
 - Explanations whether or not and how tactical (verbal) negotiation or other warnings were issued to the subject(s) prior to the deployment of force, and whether subject(s) were provided with an option to avoid force;
 - Report clearly justifies the use of force within the policies and procedures as established by this department;
 - Report contains the necessary criminal elements sufficient for filing appropriate criminal charges against subject(s) for successful prosecution;
 - Report contains names of all youth and staff involved in the incident;
 - Report includes any preventative measures or techniques taken in an attempt to prevent the incident from occurring.
 - Attach Nurse Addenda if the incident includes physical contact, injury and/or use of O.C. Spray;
 - Attach 5-minute Safety Check sheet if the incident involves a Suicide Watch assignment or O.C. spray (see Manual Section 14.4.9);
 - Attach Constant Visual log if the incident involves Restraint Chair use (see Manual Section 14.4.11) or Safety Room use (see Manual Section 5.12);
 - Attach Property Damage Report if damage is over \$400 (see Manual Section 4.4.9);
 - Attach youth /witness statements and Admonishment Forms (Probation Form #66) if applicable (see Manual Sections 4.6.6.2 and 4.6.6.3)

4.4.5.1 REPORTING GUIDELINES

1. The report shall be submitted by the officer who was most involved in the incident. In cases involving multiple staff members, each involved staff member shall file a separate report or an addenda to the primary report, describing what they saw, heard, and their actions.
2. The youth's statement shall be incorporated in the Incident Report when applicable.
3. Upon receiving the Incident Report, the Watch Commander will review and addenda all reports, prior to submitting them to the facility Division Chief.
4. All incidents reports shall be administratively reviewed regarding the appropriateness of the force, and the need for further staff training,

4.4.5.2 TIMELY SUBMISSION

Documenting incidents is critical for management evaluation and employee credibility. Complete reports and log entries help establish the credibility of involved staff. Reports shall be completed and submitted by the end of the reporting officer's shift during which the incident occurred. With Watch Commander permission, a report may be submitted up to twenty-four (24) hours after the incident has occurred.

Documentation of an incident does not take precedence over the immediate needs of the security of the group, and any injured youth. However, officers shall begin the Incident Report as soon as possible.

4.4.5.3 SPO DUTIES

The Watch Commander review of incident reports shall be completed within 48 hours of receiving the report (absent authorization from the Division Chief) and address the following range of issues:

1. Were policies and procedures followed?
2. Did policies and procedures address the issues of the incident?
3. Was this a situation where established policy and procedures are in need of modification and/or revision;
4. Was this a situation where established policy and procedures are absent and need to be developed and implemented?
5. Was the video of the incident reviewed? Did the review reveal any issues that were previously undetected?
6. What is the youth's side of the incident?
7. Are there other potential witnesses?
8. Have other witness statements been documented?
9. In matters regarding the use of force: Is the use of force by a particular officer a pattern that indicates a need for management action/review?
10. Is the documentation and follow-up adequate and in accordance with Institutional Services policies and procedures?
11. Are there any pending issues or injuries that require further follow-up?

4.4.5.4 SPO REVIEW DISCIPLINE RECOMMENDED

In addition to evaluating the content of all Incident Reports, Supervisors shall review staff recommendations regarding the disciplinary action to be taken or the preventative measures to be initiated. In the absence of staff recommendations regarding the above, Supervisors shall indicate the actions/measures to be taken.

4.4.5.5 DIVISION CHIEF REVIEW

The Facility Division Chief or designee shall review all Incident Reports generated by IS Staff. They shall evaluate the content of an Incident Report based on the same criteria delineated above.

4.4.6 SUBJECT HEADINGS OF AN INCIDENT REPORT

When writing Incident Reports, the Probation Case Management System (PCMS) prompts report authors to select Incident Types and Incident Details/Possible Events. Officers are required to use the proper incident type and Incident Details/Possible Events selection as subject headings. The subject headings are used to document a youth's prior behavior and history as well as to compile facility statistics. As such, subject headings should be specific regarding the action or behavior it describes. Uses of generic headings such as "Special Observation" or "Information" are discouraged due to being too vague. The following examples indicate commonly used subject headings, which appropriately highlights the crux of an incident.

4.4.6.1 ASSAULTS

This Incident Type encompasses a variety of assaultive situations. The usual definition of an assault is an attack where the victim does not fight back (non-mutual combat), or where a youth attacks an employee.

4.4.6.2 ESCAPE

This Incident Type is used when reporting an escape, attempted escape; a youth tampering with locks, or a youth being concealed in a room.

Note: Both escapes and attempted escapes are violations of Welfare and Institutions Code Section 871, and may result in new charges against the youth.

4.4.6.3 INAPPROPRIATE BEHAVIOR

This Incident Type is used when reporting a youth in possession of contraband, youth(s) engaging in horseplay, a youth inciting a disturbance, a youth making improper comments towards staff, or any other topics contained in the Incident Details/Possible events.

4.4.6.4 VIOLENT BEHAVIOR

This Incident Type shall be used to document Mutual Combats (gang related or otherwise), near fights, and unobserved fights.

4.4.6.5 SUICIDAL BEHAVIOR

When writing a report on suicide behavior, the author has the options of selecting suicide attempts in the Incident Details/Possible Events box. A suicide attempt is defined as serious harm to self that could result in death with no intervention. If the incident does not match the aforementioned definition, the author shall select a different option from the Incident Details/Possible Events box. All other acts or words that do not meet the suicide attempts definition would be suicidal gestures, suicidal talk, or other acts of self-harm.

4.4.6.6 SEXUAL ACTIVITY

This Incident Type is appropriate when staff are documenting allegations of sexual activity, sexual harassment or sexual misconduct involving a youth.

4.4.6.7 MULTIPLE HEADINGS

Always complete the Staff Action and Incident Details/Possible Events portion of the report. Because Incident Reports often require more than one subject heading, the PCMS database allows for multiple entries of each node. Example: an incident where a youth physically attacks a staff member, attempts to attack another, and is subdued with O.C., would be indexed with at least two (2) topics under staff action; O.C. Used and Admin Segregation; and indexed with at least two (2) topics under Incident Details/Possible Events: Detainee Assault on Staff and Detainee Attempted Assault on Staff.

4.4.7 CONTENT OF AN INCIDENT REPORT

Describe exactly how the incident happened and all actions of officers. Be specific (e.g. who sprayed OC, who handcuffed, etc.) Do not use speculation (e.g. “The fight appeared to be about...”); ask the youth what the fight was about and put their replies in the report. If the report says the youth was put on the ground due to a fight, describe exactly how they were put on the ground, and by whom, in as much detail as possible. If the youth is Disciplinary Removed or Administrative Removed (see Manual Section 5.11) and removed from the unit/facility, include a comment the disposition of their personal belongings (i.e., bedding sent to DR location by (name of officer), personal items bagged and put in staff closet by (name of officer)

Do not editorialize or make assumptions in an Incident Report. The information in an Incident Report shall be factual and objective.

4.4.7.1 LEGIBILITY

Reports are to be completed in PCMS. However in the event of a power failure or computer interruption reports shall be hand written. They should be legible and dark enough to facilitate reproduction. Errors made on the original which were not erased shall be corrected by drawing a single line through the error, with a notation "error" written above the marked out area. Officers are required to initial any areas which are corrected in this manner.

4.4.7.2 USE OF COMPUTER

Officers are expected to learn the use of the PCMS database to generate the written portion of the Incident Report. Upon completion of the report, officers shall print and sign a hard copy for the Supervisor.

4.4.7.3 ABBREVIATIONS

Officers may use abbreviations when spelled out first, and the abbreviation is spelled out in parentheses after the terminology; (e.g. Unit Confinement (UC)). Some reports may be routed or read by persons unfamiliar with our facility symbols and/or terminology, and careful attention is required so the reports are understandable.

4.4.7.4 REFERENCING YOUTH

When first referring to any youth within the body of the report, always provide the youth's full name (first name, last name, followed by their PCMS Identification Number). Thereafter, only the youth last name need be used. Identify all officers first by their title, thereafter by the title or "Officer" and their last name.

4.4.7.5 ROUTING OF REPORT

Officers are responsible for ensuring that the medical addenda is submitted along with the incident report. If the clinic is unable to complete the addenda within a reasonable time, staff shall take the report to the Watch Commander. The Watch Commander is responsible for ensuring the medical addenda(s) are attached to the report before submitting to the Division Chief.

4.4.8 YOUTH INJURY REPORTS

All injuries incurred by a youth while under the care, custody and control of IS shall be documented. Youth injuries (i.e., sprains, cuts, abrasions etc.) such as those sustained during a recreational activity or an accident that is observed by officers shall be documented via an Injury Report. Although not labeled as such, this report is commonly called an "Observed Injury Report." Non-observed youth injuries shall be reported in an Incident Report.

Reporting officers are required to completely fill out the top portion of an Observed Injury Report Form. It is important to adequately explain what caused the injury and how it happened, so that medical treatment can be complete. It is also required that the name of the officer who observed the injury be included in the report so that clinic staff can contact the officer in case there are questions about the injury.

4.4.8.1 ROUTING

Each Facility Division Chief is responsible for developing written procedures for the routing of Observed Injury Report Forms to the clinic.

Injury to a youth necessitates that the following information be supplied:

- How the injury occurred;
- Location and extent of the injury;
- For injuries occurring to a youth include the time of referral to the Medical Clinic, the actual time of assessment, and any instructions received from the Medical Clinic.

After recording the pertinent information and treating the youth, it shall be the responsibility of the Medical Clinic to forward the injury report to the Watch Commander for review and assessment.

It is the responsibility of the Watch Commander to forward the injury report to the Division Chief or the appointed authority after supplementing it with their review and assessment.

Include the disciplinary action recommended or taken and include any preventative measures needed or implemented to avoid repetition of the incident.

4.4.9 PROPERTY DAMAGE REPORTS

Youth and their parents are responsible for the resulting cost of damage to facility property/ equipment when the damage is caused by a youth's intentional act of vandalism. In order to try to recover these costs, staff are required to document the damage via an Incident Report /Damage Report. (see Appendix A, page A-23 for sample blank form.) The projected costs for repairs are to be calculated and the form is then submitted to the Probation Department Accounting Division for collection purposes.

4.4.9.1 REPORTING PROCEDURES

Whenever officers observe a malicious act of vandalism (a malicious or intentional act of destruction) and facility property/equipment is damaged, an Incident Report/Damage Report must be completed which documents the incident. In reporting the property damage, officers shall provide an accurate description of the property/equipment damaged and exactly what the damage was and the estimated cost of repair. Additionally, officers must indicate the nexus between the youth's actions and the resulting damage.

Reporting officers shall complete the Incident Report/Damage Report and forward to the Watch Commander.

4.4.9.2 ROUTING

The Supervisor shall submit the Incident Report/Damage Report to the Revenue and Recovery (Mail Stop D-60.)

4.4.9.3 WHEN DAMAGE OVER \$400

When the total amount of damage caused by the youth exceeds \$400 unit officers are required to write an Incident Report detailing the incident (see Manual Section 4.4.5), and documenting all facts that prove the youth is responsible for the damage. The Damage report shall then be attached to the Incident Report and submitted pursuant to Manual Section 4.4.5.2.

4.4.10 ESCAPE REPORT

In addition to an Incident Report (required in [4.4.4](#)), an Escape Report (Form 7-90; see Appendix A, page A-24 for sample blank form) is required for all youth who successfully escape the confines of the facility. This report is to be completed by the appropriate Supervisor or the Watch Commander. The purpose of this report is to provide immediate notification and information concerning a youth's escape to the Division Chief, the escaped youth's casework Probation Officer (who may forward the report to the District Attorney and ask for new charges to be filed under Welfare and Institutions Code Section 871) and the appropriate Law Enforcement Agency.

This section addresses the procedures for completing an escape report and the process for dissemination to the proper departmental personnel.

4.4.10.1 FORM COMPLETION

The following procedures shall be included when completing the Escape Report. Fill in the Personal Data, Escape Information (including date and exact time it occurred and any co-companions who also successfully escaped), Physical Description of escaped youth, Citizenship, Address and Escape Narrative as indicated on the form. Provide a brief statement highlighting the important facts of the escape, and include the following elements:

- The name and title of the staff member reporting the escape;
- The method of escape;
- Any use of force in the escape attempt;
- Any injuries sustained in the escape attempt;
- Any accomplices aiding the escape or co-companions in the actual escape;
- A summary of the staff actions with regard to the escape.

4.4.10.2 NOTIFICATION

Indicate the date and time the SDPD, the Facility Division Chief, the escapee's Probation Officer and parents/legal guardian were contacted /notified. Under the space labeled "OTHER", indicate any additional persons contacted, and the date and time when contacted. "Others" may include the District Attorney, Defense Attorney, JUDGE Unit, or persons endangered by the youth's escape (i.e., victims, witnesses, etc.).

4.4.10.3 ROUTING

Upon completion of the Escape Report, photocopies shall be made and forwarded to the following:

- Youth's Casework Probation Officer (to forward to District Attorney if necessary);
- Division Chief;
- Deputy Chief of Institutional Services;
- Detention Control Unit;
- SDPD/SDSO (when called to the facility)
- Any other department or person designated by the Watch Commander.

4.4.11 DISCIPLINARY/ROOM CONFINEMENT/RULE VIOLATION REPORTS

The purpose of this report is to provide a facility record of disciplinary action taken against a youth and to ensure that all disciplinary actions which impose a sanction, invoke a restriction, or deny participation in a program normally expected within the facility is subject to due process review.

4.4.11.1 LOSS OF PRIVILEGES

In cases where a youth violates a facility rule(s) and disciplinary consequences result in loss of privileges, or forfeiture of good time, . The Disciplinary/Room Confinement/Rule Violation Report must be completed by the staff member recommending disciplinary action.

4.4.12 DISCIPLINARY REVIEW HEARING DOCUMENTATION

Disciplinary Review Hearings are held at the option of the youth for major rule violations. These hearings afford the youth an opportunity to exercise their right to due process for disciplinary matters. When these hearings are conducted, it is important to generate a written record of the proceedings, and to provide the youth with a copy. (See Manual Section 7.6 for additional information on DRO duties.).

4.4.12.1 DOCUMENT PROCEEDINGS

Documenting the proceedings of a Disciplinary Review Hearing ensures a youth's due process rights, by providing written notification to the youth of the Disciplinary Review Officer's (DRO) and the Administrative Review Officer's findings.

4.4.13 REPORT OF A DEATH OCCURRING IN A JUVENILE FACILITY

Pursuant to Section 1341(a) of Title 15, the Facility Division Chief shall provide to the BSCC a copy of the report submitted to the Attorney General under Government Code Section 12525. A copy of the report shall be submitted to the BSCC within 10 calendar days after the death.

4.4.13.1 REPORT

The Probation Department shall report “all facts...concerning the death.” (Government Code, Section 12525) in writing to the California Attorney General, and forward a copy of that report and all attachments to the Board of State and Community Corrections (BSCC) (Title 15, Section 1341(a)). The report shall be submitted using Inmate Information Form “CJSC 713” and shall include but not necessarily be limited to the following:

- Name;
- Date of Birth;
- Sex;
- Race;
- Date and time of admission;
- Reason for admission;
- Physical description and condition on admission;
- Copy of autopsy report, if any, and/or any incident reports containing facts relating to death, including but not necessarily limited to the following:
 1. Date and time of death;
 2. Cause of death;
 3. Any incidents related to death;
 4. Name of physician in attendance;
- Name and address of parent, guardian, or person standing in-loco-parentis;
- Name and address of the facility;
- Name and title of the employee making the report.

4.4.13.2 DUTIES

Upon receipt of a report of death of a youth while detained in a juvenile facility, the Board of State and Community Corrections (BSCC) may inspect and evaluate the facility within 30 days.

The Division Chief shall forward the above basic information regarding the circumstances of a death occurring in a juvenile facility directly to the Deputy Chief Probation Officer of Institutions as soon as possible after the occurrence of the situation.

The Deputy Chief of Institutions will make the determination as to the manner in which this information will be forwarded to the BSCC.

4.4.13.3 ADDITIONAL REQUIREMENTS

In addition to the above report required by Title 15, several additional reports and notifications are required by those agencies exercising oversight responsibility for the facility and the Probation Department. When the death of a youth occurs, these additional requirements must be reviewed carefully and are outlined in Manual Section 8.12.

4.4.14 ADMINISTRATIVE REVIEW OF DEATH IN CUSTODY

4.4.14.1 PANEL

In addition to the reports required by the Board of State and Community Corrections (BSCC) (Title 15, Section 1341) and California Government Code (Section 12525), in the event of a death, the incident will be reviewed by an administrative panel composed of the DCPO of Institutions, Facility Division Chief, Probation Department Quality Assurance Specialist, Probation Supervisor or Watch Commander, Director of the Department of Health Services and/or designee, Medical Director, Medical Program Manager, Assistant Medical Program Manager, and STAT Team Program Manager. This panel shall review all circumstances related to the death including medical response, coordination with probation staff, need for policy change or additional training.

4.4.14.2 FINDINGS

A copy of the report based on the findings of the panel shall be provided to the Chief Probation Officer and medical administrator. These findings will also be reviewed with all facility staff.

4.4.15 NOTIFICATION TO THE JUVENILE JUSTICE COMMISSION OF SERIOUS INCIDENTS

In accordance with its responsibilities under the Welfare and Institution's Code, the following procedures shall be used by the Chief Probation Officer and the Director of Social Services for bringing to the Juvenile Justice Commission's attention serious incidents or conditions affecting the jurisdiction of the Juvenile Court.

The Presiding Judge of the Juvenile Court or the weekend Duty Judge shall be notified as soon as possible, but no later than 24 hours after the occurrence for the same circumstances listed below. (Also see Manual Section 8.12 for more information on death of a youth in custody.)

For youth confined in juvenile facilities, supervised on Probation, or dependent children under supervision, the Commission Chairperson or Commission Office shall be notified by telephone within 24 hours, excluding weekends or holidays, of any of the following circumstances:

- Death of a youth;
- Suicide attempt which results in a youth's hospitalization;
- An incident where there is an intent to pursue legal action because of an allegation that a youth who is in a facility which is under the jurisdiction of the Juvenile Justice Commission has violated one or more of the following Penal Code Sections: 261.5 (unlawful sexual intercourse); 286 (Sodomy); 288 (lewd and lascivious acts); 288(a) (oral copulation);
- Any incident which has been referred for investigation because a staff member, or any person contracted by San Diego County to provide care for a youth, has allegedly committed a criminal act which involves the welfare of a youth, the youth directly, or affects the operation of the County facility;
- Any environmental or structural condition which requires evacuation or relocation of youth, or otherwise affects their safety or welfare;
- Any other serious condition or incident about which Administration determines the Commission should be made aware (i.e., mass escape, staff strife, serious breach of security).

In any of the circumstances listed above, the need for written incident or progress reports will be determined by the Chairperson or at a subsequent meeting of the Commission.

Records of less serious incidents are kept by the Chief Probation Officer and shall be made available to members of the Commission on request.

4.4.16 CRIMES IN CUSTODY REPORTING

There are times when the Probation Department may want to request that the District Attorney file new charges against a youth during a youth's period of detention. The following process shall be used when a youth is suspected of committing a significant crime during their detention at a San Diego County Juvenile Facility.

Juvenile New Charge Process:

1. Facility Division Chief reviews the incident and determines if new charges should be filed
2. Administrative SPO or designee screens the alleged offense with the casework PO
3. Administrative SPO or designee places a hold on the youth with a new booking reason
4. Administrative SPO or designee prepares the offense packet to include:
 - a. Incident report containing the Division Chief's addenda requesting new charges
 - b. Completed Affidavit
 - c. Statements of witnesses and alleged offender (should be in the Incident Report)
 - d. Medical Addenda
 - e. Admonishments
 - f. Incident video (if applicable)
 - g. Pictures of injuries (if applicable)
5. Offense packet sent to Juvenile Court House and submitted to the DA Intake Office.

Adult new Charge Process:

1. Facility Division Chief reviews incident and determines if new charges should be filed
2. Administrative SPO or designee informs PO of new charges
3. Administrative SPO or designee places a hold on the youth with a new booking
4. Administrative SPO or designee prepares the offense packet to include:
 - a. Incident report containing the Division Chief's addenda requesting new charges
 - b. Completed Statement of Case report
 - c. Statements of witnesses and alleged offender (should be in the Incident Report)
 - d. Medical Addenda
 - e. Admonishments
 - f. Incident video (if applicable)
 - g. Pictures of injuries (if applicable)
5. The offense packet shall be submitted to the District Attorney's office that has jurisdiction over the location of the alleged offense. If the crime is alleged to have occurred at Camp Barrett, the information shall be submitted to the District Attorney's Office in El Cajon; if the alleged crime occurred at the Kearney Mesa Juvenile Facility, the information shall be submitted to the District Attorney's Office at the Hall of Justice. If the alleged crime occurred at the East Mesa Juvenile Facility, the information shall be submitted to the District Attorney's Office in South Bay. Once the DA's Office receives the packet, they will submit an Order to Produce (OTP).
6. If the alleged crime is a staff assault, and the youth is over the age of 18, the youth may be transferred to County Jail with the permission of the Facility Division Chief.

<p>San Diego County Probation Department Institutional Services Policies</p>	<p><u>SUBJECT:</u> Unit/Cottage Logs, Records, Files and Forms</p> <p><u>SECTION:</u> 4.5</p> <p><u>AUTHORITY:</u> Article 4, Sections 1340-1343, Title 15</p>
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4.5 Unit/Cottage Logs, Records, Files and Forms

4.5.1 INTRODUCTION

This section focuses on the various logs, records, files and forms required to be maintained in each unit/cottage and work site.

All logs are considered official documents and are not to be used as a means of communicating non-official information. They are to be legible and professional.

4.5.2 UNIT/COTTAGE POPULATION LOGS

Each individual unit/cottage is required to establish and maintain a daily population log, which contains the official running count of youth assigned to the unit/cottage. At any given time, the population log shall accurately reflect the unit/cottage population, denoting the date and time of all unit entries, releases, and transfers. Additionally, all group and individual movements, which affect the in-unit/cottage population count, shall be recorded in the population log. Through this documentation the population log shall continuously reflect not only the official unit/cottage count, but also the number of youth who are currently in and out of the unit/cottage. Each staff making a log entry shall place their initials next to the entry.

4.5.2.1 SHIFT LEADER RESPONSIBILITY

When movement occurs which affects the unit/cottage count, officers shall ensure that such actions are promptly recorded in the log. Although any officer may make entries, it is the ultimate responsibility of the Shift Leader to maintain the accuracy of the log.

4.5.2.2 SAMPLE ENTRY

The following are sample entries for the population log:

Time	Entry	In	Out	Tot.	Init.
8:00AM	12 "A" school group youth > classroom 2400	28	12	40	SL
8:03AM	13 "B" school group youth > classroom Trailer B	15	25	40	SL
8:54AM	Youth <u>Jones, A.</u> < School group "B"	16	24	40	SL
8:59AM	Youth <u>Jones, A.</u> > Released to YDC	15	24	39	SL

4.5.2.3 COLUMN EXPLANATIONS

The following explanations apply for the above column entries:

Time: Refers to the time of the event (based on the facility's radio controlled clock).

Entry: Refers to what happened (e.g. the type of movement and how many youth involved). Note that youth's names are always underlined in red.

In: Refers to the number of youth actually in the facility (less those accounted for on Movement Sheet as discussed below).

Out: Refers to the number of youth out of the facility

Total: Refers to the total number of youth assigned to the facility. Note that whenever this total changes (either up or down) this number must be circled in red to indicate and highlight the change. The number in the 'In' column plus the number in the 'Out' column must always equal this number.

Initial: The initials of the person making the entry must be put in this block.

4.5.2.4 UNIT/COTTAGE MOVEMENT

In-facility movements (i.e. MIC, Clinic, Interviews etc.) are accounted for in the count log. (See sample form in Appendix A, page A-32).

4.5.3 DAILY MESSAGE LOG "ALERT LOG"

A Daily Message Log (sometimes called the "Alert Log") is required to be maintained in each unit/cottage. The purpose of this log is to establish a venue for staff to exchange (or pass down) information that is pertinent to the operation of the unit/cottage from one shift to the next. Topics typically addressed in this log include the daily schedule of programs and activities and any future events that will involve the unit/cottage or personnel. All entries in the message log shall be signed or initialed by the officer making the entry.

Another major aspect of the message log lies in its function for disseminating information, which impacts unit/cottage security. Youth conflicts, peer problems, gang activity, group tensions and disciplinary actions reported by staff are to be recorded in this log.

The message log also serves to monitor the behavior of youth who have been assigned a special security or watch status. The names of all youth placed on Suicide Watch, Close Watch, Unit Confinement (except the Unit Confinement units) and in the Workout Program, shall be recorded in the log, along with a brief statement summarizing the youth's behavior for the shift and/or day. Changes as they occur in a youth's security or watch status shall also be documented in this log along with the person initiating the change (i.e., youth Smith taken off CW status by Dr. Jones, etc.).

Additional information appropriate for inclusion in this log includes directives received from the Supervisor/Watch Commander regarding unit/cottage operations, the scheduling of unit/cottage meetings and any changes made in unit/cottage policy and procedures.

Staff responsibility is to review and initial the daily entries in the message log at the beginning of an assigned shift. Questions regarding the information recorded in this log should be addressed to the departing staff team for clarification and additional detail.

4.5.4 UNIT/BUNK ROSTERS/MEDICAL INFORMATION

Daily Unit/Bunk Rosters are updated daily for each unit/cottage, identifying the names of all youth housed in that unit/cottage. Each roster shall indicate all medical restrictions (e.g. SW, CW, non-sport, etc.) and security restrictions (e.g. UC, single room, etc.) placed on a youth which may limit their ability to participate in the unit/cottage program.

4.5.5 SECURITY INFORMATION

Each facility Division Chief is responsible for developing written procedures for the tracking of unit/cottage security information. The purpose of this log is to document unit/cottage security practices as they are performed in the unit/cottage.

4.5.5.1 DOCUMENT

Recording requirements include entering the date and time of the security procedure, the security practice performed (i.e., area search in the dayroom) and the name of the staff member conducting or supervising the security procedure. All room searches, area searches, and unit/cottage shakedowns shall be documented. Staff are additionally required to monitor the log to ensure that procedures are routinely performed at varied times.

4.5.5.2 DAILY SHIFT REPORT/DAILY SAFETY CHECK SHEET

Each unit/cottage shall use a Daily Shift Report/Daily Safety Check Sheet. Officers shall log every Safety Check that is completed throughout the day (see Manual Section 5.6 for more complete information on Counts and Safety Checks). Officers shall also log all recreation times, perimeter checks and other activities identified on this form.

- Staff initials beside each entry are verification that the staff actually performed the identified task.
- Each shift is responsible for filling out their section of the form.
- The Watch Commander, or their authorized designee, must conduct an audit of this form for every unit/cottage, to ensure it is being filled out properly. The audit shall be conducted at least once per shift per unit/cottage and documented on the form with the SPO's initials and the time of the audit.

4.5.5.3 COMPLETED SHIFT REPORTS

A new Daily Shift Report/Daily Safety Check form shall be started by the AM Shift Leader every day. All completed forms shall be retained in the unit/cottage files pursuant to Manual Section 4.2.6.

4.5.6 UNIT/COTTAGE GRADING RECORDS

Each unit shall establish a unit/cottage Grading File for maintaining a record of the grades issued by staff, documenting a youth's behavior, work performance, recreational performance and room/bunk cleanliness. The purpose of this file is to provide youth with a record of their weekly performance and accumulated grade points, which will determine their accessibility to various privileges. Each staff shall be responsible for posting youth grades in a timely fashion.

4.5.7 FACILITY CASEWORK REPORTS (JPCF FILES)

These documents are used to assess a youth's treatment needs, formulate an appropriate case plan containing specific objectives, review and document the youth's behavior/adjustment and progress toward objectives.

These reports are initiated in Juvenile Hall and follow the youth through all Probation facilities. See Manual Section 5.9 for a more complete discussion of JPCF.

4.5.7.1 JPCF FILE

When a youth enters KMJDF/EMJDF the JPCF Assistant shall create a file in PCMS for unit officers to document the youth's behavior and progress. If the youth is returning to KMJDF/EMJDF and a file already exists, the JPCF Assistant shall create a new file in PCMS for the staff to complete. The file shall have a blank "Contact Log" on the left side of the file and a "Casework Report" form on the right side. The Casework Report form contains sections for the Initial Service Plan, the Behavior Summary and the Exit Summary, which are discussed in the paragraphs below.

4.5.7.2 INITIAL SERVICE PLAN

An Initial Service Plan is required on all youth ten days after their booking date. No report is required if the youth is released prior to or at the detention hearing. (See Manual Section 5.9.)

4.5.7.3 BEHAVIOR SUMMARY

A second report, Behavior Summary, is to be completed no later than thirty days after their booking date if the youth is still in custody. (See Manual Section 5.9.)

4.5.7.4 STAFF EXPECTATION

Each youth shall be interviewed/counseled by an officer who utilizes IBIS skills to engage with the youth when discussing their progress and performance in the facility. The contacts are to occur at least once each week to ensure an uncomplicated adjustment. Every interview or counseling session shall be documented in the Contact Log section of PCMS. Staff will counsel youth on a daily basis, and whenever necessary, and note significant contact with the youth on the Contact section. (All programming efforts, notation of psychological referrals, rule violation and room confinement reports are to be included within the file). All contacts and interviews (e.g. Church attendance, etc.) with youth shall be documented on a “Contact Log” JPCF Institutional Services Casework Report in PCMS “documents.”

The Supervisor/Senior P.O. will assign each case to a line staff member for counseling and completion of both Initial Service Plan and Behavior Summary.

4.5.7.5 EXIT SUMMARY

These documents will be retained in a “JPCF Institutional Services Casework Report” in PCMS “documents” file for future reference. When a youth is released officers shall fill out the “Exit Summary” portion of the Casework Report in PCMS.

4.5.7.6 EXIT AUDIT

The JPCF file shall be reviewed by the designated staff to ensure the Exit Summary is completed.

4.5.8 GANG LOG

All facilities shall maintain a comprehensive list of all gang members, categorized by gang affiliation. The purpose of this file is to promote awareness of gang affiliations which will assist staff in making responsible decisions regarding housing and dining arrangements. Gang affiliations shall be determined from the youth’s booking information, self-proclamation, gang activity as observed by staff, or on the basis of information received from any law enforcement agency.

4.5.9 E-MAIL

It is the staff’s responsibility to open and read their County e-mail and mailboxes at each shift.

4.5.10 WORK ORDER

4.5.10.1 EMERGENCY REPAIRS

In case of an emergency (i.e., broken water lines, gas leaks, power failures, incidents which create an immediate physical, health or security hazard to youth or staff, may cause additional damage if not immediately corrected, etc.), the reporting staff shall immediately contact the Watch Commander. The Watch Commander shall evaluate the emergency situation and contact the facility's Maintenance Department, as necessary. During off-duty hours (weekends and after 5:00 PM Monday through Friday) the Watch Commander is authorized to summon maintenance personnel to complete emergency repairs.

4.5.10.2 ROUTINE REPAIRS

Routine repairs are completed during regular duty hours and involve equipment and/or property damage that do not create an immediate physical, health or security hazard to unit staff and/or youth. Such repairs (i.e., burned out lights, clogged drains, small water leaks, etc.) are to be requested via e-mail to the staff designated by the facility.

4.5.11 SUPPLY REQUISITION FORMS

Unit/Cottage supplies shall be requested via a Requisition for Supplies or Facility Order Sheet. These requests are to be completed by a designated staff member in charge of supply requisitions. Requisition forms are to be completed two days prior to the supply issue day. The supplies that are requested are for items not part of the unit/dorm's automatic issue and should be in a quantity sufficient to last one week. Items requested must consist of only those supplies listed in the Master Supply List.

4.5.11.1 PROCEDURE

When ordering supplies, staff shall date the requisition form and indicate their unit/cottage. Upon receipt of the supplies, the Shift Leader shall designate a staff member to verify the supplies received, with the requisition form. Any discrepancies shall be reported to the Facility Storekeeper.

4.5.12 SUPERVISOR'S LOG

A Supervisor's Log shall be maintained in the Watch Commander's office. Each shift, the Watch Commander shall be responsible for recording all security issues, personnel issues (except confidential matters), unusual transportation arrangements, and any other similar or unusual information in the Supervisor's Log. Each shift "Watch Commander" (and Back-Up Watch Commander if assigned) shall be responsible for reviewing the Supervisor's Log to maintain current knowledge of facility activities and issues.

San Diego County Probation Department Institutional Services Policies	<u>SUBJECT:</u> Child Abuse Reporting Policy <u>SECTION:</u> 4.6 <u>AUTHORITY:</u> Article 4, Sections 1340-1343, Title 15; Penal Code, Sections 11165.7
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4.6 Child Abuse Reporting Policy

4.6.1 INTRODUCTION

This section addresses the Institutional Services (IS) policies and procedures for reporting and investigating suspected child abuse.

4.6.2 MANDATORY REPORTING REQUIREMENTS

4.6.2.1 REQUIREMENTS AND PENALTIES

All employees of IS, who in their professional capacity, discover known or suspected child abuse, are required to report it, pursuant to Penal Code, Section 11165.7.

- There is no civil or criminal liability to Probation employees who, in good faith, report suspected child abuse.
- There may be civil and/or criminal liability for Probation staff who knowingly fail to report any instance of child abuse.

4.6.2.2 SUMMARY OF REPORTING REQUIREMENTS

Staff reporting suspected child abuse shall notify the Watch Commander and then shall telephone the Children's Services Hotline of the Health and Human Services Agency at (800) 344-6000 or (858) 560-2191 immediately.

- Staff shall complete the Suspected Child Abuse "FAX" Report (HHSA Form 04-184) in writing by the end of the shift and route to the Watch Commander. The Watch Commander shall FAX the completed form to the Children's Services Division of the Health and Human Services Agency within 12 hours. This Report shall be sent via facsimile transmission ("fax" it to the number on the form).
- If discovered in a Probation Department operated facility, or if the suspected abuser is an on-duty staff, the Chief Probation Officer must be notified immediately via the chain of command. The Chief Probation Officer or their designee shall then request the District Attorney to conduct an independent criminal investigation.
- If the suspected abuser is on-duty staff, act to ensure the victim's immediate safety by removing the youth or the suspect from the unit/cottage.

4.6.2.3 SUMMARY OF INVESTIGATING PROCEDURES

The Watch Commander shall initiate an internal investigation of suspected child abuse whenever the incident(s) are believed to have occurred within the facility or while the victim was in the custody and care of IS staff.

4.6.3 PROCEDURES FOR COMPLETING A SUSPECTED CHILD ABUSE “FAX” REPORT

4.6.3.1 WHEN TO REPORT SUSPECTED CHILD ABUSE

All IS staff must be aware of the circumstances that require them to make a report of suspected child abuse. The following are examples of the most frequent causes of child abuse that will require a report. These examples are not all-inclusive and staff must use their common sense when making a determination. When in doubt, call the Watch Commander for advice.

If the victim is less than 18 years of age and the perpetrator is a juvenile or an adult:

1. And a sexual assault has occurred pursuant to:
 - PC261 (Rape)
 - PC264.1 (Rape in concert)
 - PC285 (Incest)
 - PC286 (Sodomy)
 - PC288 (a) or (b) (Lewd and lascivious acts upon a child under the age of 14)
 - PC288a (Oral copulation)
 - PC288.5 (Continuous sexual abuse of a child)
 - PC289 (Forcible penetration of a genital or anal opening by a foreign object)
 - PC647.6 (child molest)

2. And/Or there is:
 - Neglect: Negligent treatment of a child by the person responsible for the child's welfare resulting in harm or threatened harm; medical care, or proper supervision;
 - Neglect: Failure by that person to protect the child from severe malnutrition or medically diagnosed non-organic failure to thrive;
 - Neglect: Intentionally or negligently permitting a situation to develop which endangers a child's health, including lack of adequate food, clothing, shelter;
 - Cruelty: PC 273a (willful cruelty or unjustifiable punishment of a child);
 - Cruelty: Child abuse also includes willful or unjustifiable punishment of a child by any person who causes or permits any child to suffer, or inflicts on the child unjustifiable physical pain or mental suffering whether or not the person has responsibility for the care and custody of that child;
 - Punishment: PC 273d (corporal punishment or injury). Corporal punishment, willfully or cruelly inflicted or resulting in traumatic injury, is child abuse.

Notes:

1. If other circumstances appear to be borderline as to whether or not they should be reported as child abuse, the judgment should be made to report rather than not to report.
2. Even incidents of abuse that have happened in the past that do not appear to impose a present danger to the child and could not result in present prosecution shall be reported.

4.6.3.2 HOW TO COMPLETE A "SUSPECTED CHILD ABUSE "FAX" REPORT"

1. Get a copy of the form.
2. Fill out the form by typing or neatly printing all sections with a ballpoint pen.
3. Names of victims, siblings, parents, and alleged abusers must be filled out with first, middle, and last names, and dates of birth. "S" or "same" causes confusion.
4. If the printing on the copies is indistinct, photocopy the original for distribution. (This is necessary to enable the Department of Justice to properly encode all information.)
5. Fill in Facility's address.
6. Report must be submitted even if it proves to be unfounded during preliminary investigation, so the Department of Justice can reconcile all concurrent reports submitted by all other mandatory reporters. (See Section on the form regarding unfounded reports.)
7. Photocopy original and send the copy to the casework PO.
8. Retain a copy of the report for records (including copy to be attached to Incident Report); FAX the original to the number on the top of the form.

Note: Reporting is a personal responsibility and is to be completed by the individual discovering the abuse. Although supervisory assistance may be sought to ensure proper reporting and completion of the report form, no supervisory approval is required for a report to be submitted.

4.6.4 INVESTIGATIVE PROCEDURES FOR CHILD ABUSE

When an incident of suspected child abuse is reported to an IS staff member, the staff member receiving the report shall be required to notify either the Supervisor or the Watch Commander as soon as possible. Upon notification of an incident of suspected child abuse, the Supervisor or Watch Commander shall report the incident to the Division Chief who will designate a Supervisor to be in charge of the investigation. The Supervisor in charge shall initiate an investigation of the alleged child abuse, adopting the following procedures.

4.6.4.1 SOURCES OF INFORMATION

Any and all sources of information may be used to investigate the allegation of child abuse.

4.6.4.2 INCIDENT REPORT

The Supervisor in charge of the investigation shall have the reporting officer document the suspected child abuse report via an Incident Report (see Manual Section 4.4.5 for information on filling out Report). In preparing the report, the reporting officer or designated staff member shall conduct an interview with the victim, the suspect, (if another youth) and witnesses, for the purpose of recording the facts and circumstances constituting the alleged act of child abuse. Prior to questioning any suspect, the investigating officer shall admonish the person(s) of their constitutional Miranda Rights (via Admonishment Form, see Manual Section 4.6.6.2 below), prior to obtaining statements.

4.6.4.3 WRITTEN STATEMENTS

Written statements concerning the incident in question shall be obtained from all involved parties (i.e., victim, suspect, witnesses, etc.) and forwarded to the Supervisor in charge of the investigation attached to the Incident Report.

4.6.4.4 MEDICAL EVALUATIONS

The Supervisor in charge of the investigation shall ensure that the alleged victim and suspect report to the Facility Medical Clinic for a physical examination. Results of the medical assessment shall be documented in the Incident Report or via medical addendum to the Report if the information is confidential in nature.

4.6.4.5 AUTHORITY NOTIFICATION

Upon completion of the above referenced steps, the supervisor in charge of the child abuse investigation shall perform one of the following functions (if not already completed):

1. **Call Child Abuse Hotline:** When the suspected child abuse is an event from the youth's past and does not directly involve the facility or IS staff, the Child Abuse Hotline shall be notified by FAX on Mondays through Fridays, excluding holidays, and by phone at other times.
 - The current number for Children's Services Hotline (part of the Health and Human Services Agency) is (800) 344-6000 or (858) 560-2191.
 - Fill out Suspected Child Abuse "Fax" Report (In Forms Bin) and fax it to the number on the form. Either call and make a report or fax a report, do not do both.
2. **Notify Police:** When the alleged child abuse has occurred in a juvenile facility and the suspect is another youth or an IS staff member. The Watch Commander shall immediately notify the San Diego Police Department Child Abuse Unit at (619) 531-2260 or the San Diego Sheriff's Child Abuse Unit at (858) 565-5200.

4.6.4.6 LOCAL LAW ENFORCEMENT INTERVENTION

The Supervisor in charge of the investigation shall provide the responding investigating officer(s) with one copy of all documents.

4.6.4.7 RECORD IN DAILY LOG

The Supervisor in charge shall record in the Supervisor's Daily Log, the investigating police officer's name, identification number and provide assistance to the officer as necessary.

4.6.4.8 MEDICAL/ PSYCHOLOGICAL RECORDS

The Supervisor in charge of the investigation shall ensure the alleged victims and suspect(s) have been placed on the Doctor's list for a full examination and/or have been referred to a psychologist for evaluation. The Supervisor in charge shall also complete a County Mental Health Crisis referral or instruct another staff member to do so.

4.6.4.9 CHILDREN'S SERVICES

A copy of all information collected shall be forwarded to the Children's Services Division of the Health and Human Services Agency, via county mail. The Mail Stop number is W-94; address 6950 Levant St., San Diego, CA, 92111

4.6.5 PROTOCOL FOR REPORTING SEXUAL ABUSE/ACTIVITY

In adherence to the Prison Rape Elimination Act of 2003 [PREA], correctional staff shall receive sufficient training to ensure that they understand the significance of rape and the necessity of its eradication. Staff shall read and have good understanding of Administrative Policy Section 1334, Prison Rape Elimination Act (PREA) Standards.

In the event a staff member is suspected of, or accused of rape and/or the sexual assault of a youth, the investigation shall be timely and comprehensive; ensuring the confidentiality of the complaint; thereby creating a system for reporting incidents of sexual assault that will protect the complainants from retaliation, and assure the impartial resolution of sexual assault allegations.

Definitions

RAPE.-The term "rape" means: the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person, forcibly or against that person's will; the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person not forcibly or against the person's will, where the victim is incapable of giving consent because of their youth or their temporary or permanent mental or physical incapacity; or the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person achieved through the exploitation of the fear or threat of physical violence or bodily injury.

CARNAL KNOWLEDGE.-The term "carnal knowledge" means contact between the penis and the vulva or the penis and the anus, including penetration of any sort, however slight.

SEXUAL ASSAULT WITH AN OBJECT.-The term "sexual assault with an object" means the use of any hand, finger, object, or other instrument to penetrate, however slightly, the genital or anal opening of the body of another person.

SEXUAL FONDLING.-The term "sexual fondling" means the touching of the private body parts of another person (including the genitalia, anus, groin, breast, inner thigh, or buttocks) for the purpose of sexual gratification.

EXCLUSIONS:-The terms and conditions described in the paragraphs above shall not apply to:

(A) custodial or medical personnel gathering physical evidence, or engaged in other legitimate medical treatment, in the course of investigating the rape; (B) the use of a health care provider's hands or fingers or the use of medical devices in the course of appropriate medical treatment unrelated to the rape; or (C) the use of a health care provider's hands or fingers and the use of instruments to perform body cavity searches in order to maintain security and safety within the juvenile facility, provided that the search is conducted in a manner consistent with constitutional requirements.

The following sets out the steps for the investigation of complaints of sexual abuse or sexual activity of detained youth. This protocol has been developed in cooperation with the Prison Rape Elimination Act of 2003 [PREA], San Diego Police Department, the Child Abuse Hotline, the District Attorney, and the Juvenile Justice Commission, Center for Child Protection, Department of Health and Human Services, Children's Hospital and the Facility Clinic.

1. Whenever a youth is found to have been sexually abused or involved in sexual activity, staff shall notify the Watch Commander and/or Supervisor immediately and complete an Incident Report on the incident.
2. If a youth has been involved in a sexual assault or in consensual sexual behavior they must be placed on Single Room Status and not removed from that status unless approved by the casework PO and the Division Chief. Note: Camp youth will be Administratively Removed to a juvenile facility.
3. If there is physical evidence, immediately move youth from the room and preserve the crime scene (see paragraph below for more details).
If a sexual assault is suspected: It is important to ensure the preservation of physical and testimonial evidence for use in an investigation of the circumstances relating to the sexual assault.
4. Watch Commander shall call SDPD/SDSO to report a youth has been sexually abused or involved in sexual activity whether mutually consensual or not.
5. Watch Commander shall notify the Department's Ombudsman/PREA coordinator, Division Chief and Deputy Chief of Institutions.
6. The local law enforcement agency with jurisdiction of the facility will dispatch a Patrol Officer to the facility to start an investigation.
7. Patrol Officer will make an initial investigation and call the Child Abuse Officer who is on call 24 hours a day.
8. Child Abuse Officer will decide if the youth will get an immediate medical exam or if it can wait until the next day.
9. The Patrol Officer will take custody of the youth, transport the youth to Children's Hospital and wait until the exam is completed and then return the youth to the facility.

10. If the exam is to take place the next day, the Child Abuse Officer will take custody of the youth and transport to Children's Hospital and wait until the exam is completed and then return the youth to the facility.
11. The local law enforcement agency will be responsible for filing all police reports with the District Attorney as if the youth was not in custody.
12. The local law enforcement agency will pay for the medical exam, the same as for any such exam if the youth was not in custody.
13. Child Abuse Hotline Reporting procedures will be completed as set forth in Manual Section 4.6.3 – 4.6.3.2 above.

4.6.5.1 PRESERVE CRIME SCENE

When youth are found committing a crime of a sexual nature, the following steps shall be followed to preserve the crime scene and chain of evidence.

1. Remove youth from the room/cottage in which the crime occurred and separate the Victim(s) and the Suspect(s) into isolated rooms/dorms to await police/sheriffs. Disturb as little as possible in the room/cottage where the crime occurred and have as little contact with the youth as possible.
2. Lock the room/cottage where the crime occurred and do not let anyone enter in order to preserve the crime scene. If it is necessary for some reason to have staff enter the room/cottage, list their name, time of entry and exit, and the purpose of entering the room in the message log. Also list any items removed from the room.
3. The room where the crime took place is not to be released for regular use until released by the police.
4. Victim(s) and Suspect(s) should be discouraged from using the bathroom, washing their hands, changing their clothing or drinking water until after an interview by police.
5. Keep Victim(s) and Suspect(s) isolated from all other staff and youth until interviewed by police.
6. Juvenile Hall staff shall maintain 5-minute hall checks on both the Victim(s) and the Suspect(s), (in accordance with Manual Section 5.6).
7. Any injury shall be referred to the clinic and the nurse shall respond to the location of the injured youth.
8. Victim(s) and Suspect(s) shall be referred to the clinic for a psychological evaluation as soon as released by police. The clinic shall be made aware of the nature of the psychological referral and it shall take place as soon as possible after release by police.

When the crime is revealed/discovered in an untimely fashion, preservation of the crime scene is not necessary. Follow the reporting procedures and assist the investigating police officer. Watch Commanders shall use the checklist for SPOs-Alleged Acts of Sexual Abuse checklist, which is maintained at each facility.

VICTIM:

Pursuant to the recommendations established by the Prison Rape Elimination Act of 2003, the victim of a rape shall receive acute-term trauma care for rape victims, including standards relating to-

- (i) The manner and extent of physical examination and treatment to be provided to any rape victim; and
- (ii) the manner and extent of any psychological examination, psychiatric care, medication, and mental health counseling to be provided to any rape victim; referrals for long-term continuity of care for rape victims; educational and medical testing measures for reducing the incidence of HIV transmission due to prison rape;
- (iii) Post-rape prophylactic medical measures for reducing the incidence of transmission of sexual diseases.

4.6.6 SPECIAL INCIDENT REFERRALS TO LOCAL LAW ENFORCEMENT AGENCIES

It is the preference of the San Diego District Attorney's Office that certain felony criminal offenses which occur within a juvenile facility be reported to the local law enforcement agency which has jurisdiction over the specific facility (either the San Diego Police Department (SDPD) or the San Diego Sheriff's Office (SDSO)) for formal investigation. This section addresses the types of offenses referred to the local law enforcement agency and the procedures associated with the referring process. Child abuse reporting requirements (see Manual Section 4.6.2.2 above) should also be considered when referring to these offenses.

This list of offenses below is only intended as a guide. The circumstances of any offense must be considered on a case-by-case basis and the final decision to refer an offense to the Police for investigation rests with the Division Chief.

4.6.6.1 TYPES OF OFFENSES

The following list of alleged criminal offenses requires referral to the District Attorney's Office for the filing of a new petition or the local law enforcement agency for investigation. Typical offenses to be reported include, but are not limited to:

- Sexual assaults committed on a youth by a youth.
- Sexual misconduct or assaults involving a youth and an IS staff member.
- Serious physical assaults upon staff by a youth(s) that cause serious injury or involve the use of a weapon.
- Alleged unprovoked assaults on a youth by another youth, which causes serious physical injury or involves the use of a weapon.
- Any offense or action that results in serious injury to a youth or staff member.
- Any other felony offense designated by the Division Chief to be investigated and/or reported to the local law enforcement agency.

4.6.6.2 ADMONISHMENT OF MIRANDA RIGHTS

All officers directed to question and/or obtain statements from a suspect shall admonish the persons of their Constitutional Rights prior to questioning via Probation Form #66 and have the person acknowledge understanding their rights and express willingness to speak with the investigating officer by signing the form. The person must sign Form #66 acknowledging admonishment of their rights and the investigating officer must witness the acknowledgement, providing their signature as indicated.

Failure to properly admonish an individual or to obtain their signature on the form prior to questioning may negate all information obtained and preclude the admission of testimony in a court proceeding.

4.6.6.3 FORM #66

See Appendix A, page A-55. Note: This form is also available in Spanish: Form #66S.

4.6.6.4 PROCEDURES

Regardless of whether or not the offense is one of the “Types of Offenses” listed above, the Watch Commander, or other designated Supervisor, shall conduct a preliminary investigation of the incident and report to the Division Chief as soon as possible. The following procedures apply:

1. The Watch Commander or a designated Supervisor will be responsible for conducting all preliminary investigations of special incidents which occur in the facility or while a youth is in the custody of IS staff. They must ensure documentation of the incident has been completed in a timely manner by all staff involved in the incident or who have information pertinent to the incident.
2. Required documentation shall consist of recording facts and obtaining statements (verbal and written) from the suspect, the victim, and witnesses to the incident. Additionally, documentation shall be obtained detailing the observations of support staff (i.e., medical, etc.) who become involved in the special incident. All documentation shall be prepared via an Incident Report in accordance with the guidelines as set forth in Manual Section 4.4.
3. The Supervisor may appoint a staff member not a party to the action to conduct interviews of alleged victims, perpetrators, witnesses or staff.
4. The Supervisor shall conduct a thorough review of all submitted documentation reviewing for completeness, probability of criminal conduct/charges, and for areas where further investigation may be needed. All documentation shall be reviewed for inappropriateness of staff action, compliance with existing policies and procedures, and areas of potential liability. If it appears staff training is inadequate, or further training is needed, the Supervisor shall note and document such conclusions.
5. The Supervisor shall screen the matter with the facility Division Chief to determine whether the information collected supports an allegation of criminal misconduct and is serious enough to warrant referral of the incident to the local law enforcement agency. If the incident occurs during non-regular business hours, contact with the Division Chief shall be made via telephone.
6. If a determination is made on the basis of the information that an investigation by the local law enforcement agency is warranted, then the Supervisor will contact the local law enforcement Dispatcher/Communications. A request will be made for an officer to come to the facility to take a crime report. The Supervisor or their designee will meet with the officer and brief them on the incident and provide photocopies of all pertinent reports.
7. The Supervisor conducting the investigation of a special incident shall be responsible for contacting the casework Probation Officer(s) for the youth involved in the incident(s), (i.e., all suspects and victims) and briefing them on the details of the incident. This shall be done during regular business hours (8:00 AM - 5:00 PM), at the earliest reasonable opportunity.

4.6.6.4 DIVISION CHIEF RESPONSIBILITIES

The Division Chief or their designee shall assume the following responsibilities for all special incident investigations which occur in the facility:

1. Ensure that the incident has been properly and completely investigated.
2. Ensure that all documents are complete, in order and ready for referral to the local law enforcement agency.
3. Ensure that all materials are routed to the investigating Supervisor or CIU/Liaison Officer for referral to the local law enforcement agency.
4. Ensure that all alleged suspects, victims, witnesses and IS staff members are available for the investigation, if needed.
5. Promptly notify the Chief Probation Officer and the Deputy Chief Probation Officer of Institutions of the special incident referral and the possibility/potential for liability, if any.
6. Ensure temporary reassignment of staff who have been involved in serious allegations of misconduct (especially sexual misconduct). Such reassignments shall be made at the discretion of the Division Chief.