

115.61

Staff and agency reporting duties

Standard in Focus

Staff and agency reporting duties

§115.61

- a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
- b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.
- c) Unless otherwise precluded by federal, state, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.
- d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a state or local vulnerable persons statute, the agency shall report the allegation to the designated state or local services agency under applicable mandatory reporting laws.
- e) The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.

Purpose

- To establish a strong, effective reporting culture among staff and ensure that the agency and facility receive timely information about sexual abuse, sexual harassment, retaliation, and staff neglect, or violations of responsibilities that may have contributed to an incident or retaliation. The standard requires the agency to ensure that facility staff report all allegations while also taking steps to protect the confidentiality of sexual abuse information by sharing internally with only those who need to know.
- To build confidence and trust in the reporting system and help minimize a victim's fear of reporting and possible retaliation by requiring that inmates be informed up front about the limits of confidentiality when receiving medical and mental health services. Robust reporting requirements and a system that values and protects confidentiality help create healthy, open, and safe environments that enhance protections for victims.

Implementation

Internal reporting

- The **agency** must have a **policy** to:
 - Require all staff members, including medical and mental health practitioners, to immediately report any knowledge, suspicion, or information of any incident in any facility, even in a facility that is not a part of the agency, regarding:
 - Sexual abuse or sexual harassment.
 - Retaliation against an inmate or staff who reported an incident of sexual abuse or sexual harassment.
 - Staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
 - Require medical and mental health practitioners to inform inmates of their duty to report incidents and any limitations of confidentiality at the beginning of the medical or mental health services (unless otherwise precluded by federal, state, or local law). This requirement should also be included in contractual agreements if the medical and/or mental health staff provide services to the agency or facility per a contract.
 - Identify those individuals with a need to know who may receive information related to sexual abuse reports to allow decisions to be made about treatment, investigations, and other security and management issues.
 - Prohibit staff from revealing information related to a sexual abuse report to anyone other than individuals specified in the agency reporting policy.
- The **facility** must ensure that all allegations of sexual abuse and sexual harassment, including third-party and anonymous allegations, are reported to the facility's designated investigators.

External Reporting

- The **agency** must comply with applicable state or local mandatory reporting laws and report any sexual abuse allegations concerning any victim under the age of 18, or any victim considered a vulnerable adult, to the designated state or local services agency as required by state or local law.

Challenges

- Overcoming any potential staff "code of silence" or fear of retaliation, especially when allegations or suspicions concern the conduct of other staff.
- Fostering a culture where staff value their own personal integrity above loyalty to any code of silence and creating an environment where staff are engaged and willing to report red flags they have observed and suspicions they may have regarding those with whom they work, including those within the chain of command.
- Educating staff that they cannot judge the validity or merit of any allegation, and that they must report every allegation, even if it is based on "hearsay" or "rumor."
- Establishing clear reporting protocols and clearly identifying the chain of reporting.

- Identifying the individuals who need to know certain information relating to a sexual abuse report and ensuring that those individuals receive no more information than is strictly necessary to make treatment, investigation, and other security and management decisions.
- Ensuring that authorized staff who are privy to information regarding sexual abuse allegations maintain and protect the confidentiality of the information.
- Identifying any applicable state or local reporting laws, determining which staff are considered mandatory reporters, and training these staff on their specific roles and responsibilities as mandatory reporters.

Best Practices

- Agency **policy** on staff reporting duties should clearly explain, at a minimum, the following:
 - **Who is required** to report under the policy:
 - All employees and contract staff. This includes medical and mental health practitioners, specifically including practitioners who work directly for the agency or facility, and practitioners who work pursuant to a contractual agreement with the agency or facility.
 - **Note:** Reporting requirements for medical and mental health practitioners should also be included in relevant medical and mental health policies, which should be cross-referenced in the staff reporting policy.
 - **What type of incident** must be reported:
 - Any incident of either sexual abuse or sexual harassment that may have happened *in any correctional facility, including:*
 - In the facility where the staff member works.
 - In another facility within the agency.
 - In a facility outside the agency entirely.
 - Retaliation against *inmates or staff* who reported such an incident.
 - Any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
 - **What level of awareness** must be reported:
 - The standards require the reporting of any *knowledge, suspicion, or information* regarding an incident of sexual abuse or sexual harassment. These terms are discussed below:
 - **Knowledge of an incident** is when a staff member knows for certain that something happened, based on firsthand knowledge (i.e., the staff person saw and/or heard the incident); or the staff person is told about an incident by someone who witnessed it firsthand.
 - **Suspicion that an incident may have occurred** is when a staff person thinks, but is not totally certain, that something may have happened or is happening. Suspicion may be based on “red flags,”¹ or hearing others

talk about possible sexual abuse or sexual harassment.

- **Information regarding an incident** is when a staff person has been told something or receives a note or “kite” from an inmate about an incident. The information may be second-hand and not based on the reporter’s personal knowledge or firsthand observations.

Important notes on reporting knowledge, suspicion, and information

“Hearsay” or “rumors” are types of information from other people that one cannot adequately substantiate or prove. Staff members are required to report all information they have about instances of sexual abuse and sexual harassment, **including rumors and hearsay**.

It is important to emphasize in policy that staff members must report knowledge, suspicion, and information, regardless of whether staff personally believe the information to be true or reliable.

Staff must also report knowledge, suspicion, and information regardless of whether an incident is under investigation, or even if an investigation about the incident has already been completed.

- **Who receives reports:**
 - Policies should clearly explain to whom staff members must report sexual abuse and sexual harassment, for all types and levels of staff members:
 - Non-uniform or civilian staff members typically are required to report directly to their immediate supervisor.
 - Uniform staff typically are required to report according to the established chain of command. However, some facilities require all reports of sexual abuse and sexual harassment to be made to the facility head or warden.
 - Uniform and civilian supervisory staff should be required to report to higher levels, including to the facility head/warden.
 - The PREA Compliance Manager, PREA Coordinator, and facility head should receive all reports and the policy should specify exactly how

¹ A few common examples of “red flags” that may indicate that sexual abuse or sexual harassment by another inmate or staff member is or may be occurring **include, but are not limited to:**

- Changes in an inmate’s behavior for no apparent reason; inmates in unauthorized areas or repeatedly out of their assigned place; horse-play, sexualized interaction between staff and inmates;
- Staff granting special requests, showing favoritism, or spending unexplainable amounts of time with an inmate; staff being overly concerned about an inmate or over-identifying with the inmate or their issues.
- Inmate refuses to take showers or, undress in shower, or seeks to be alone or isolated from a particular inmate;
- Conversations between staff and inmate are sexualized in nature; staff take inmates out of cell at unusual times; staff have excessive knowledge about inmate and his/her family situation; staff work in secluded areas with inmate(s); staff defend an inmate; staff in facility during “off hours”;
- Inmate knows personal information about staff; inmate has letters or photos of staff; and
- Inmate appears to have more personal items or food than others; inmate improving his/her appearance, dress, make-up, hair.

they must receive the reports.

- The policy must specify who in a facility is required to report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.
 - The policy must specifically identify any other individuals to whom staff may or must reveal information related to a report of sexual abuse or sexual harassment.
- **When to report:**
 - Staff members must report immediately and according to agency policy. This requirement allows for immediate verbal notification and for written reports pursuant to policy, which may provide additional time. Policies and training should educate staff on the specific meaning of the term "immediately."
 - **How to report:**
 - Staff members must be allowed to make reports orally (e.g., in person, by phone, or by radio/facility communication device).
 - Staff should be required to make the report in writing within a defined time period (e.g., by the end of the staff member's shift, within 24 hours, or during some other appropriate period that is clearly stated in policy).
- Agencies should provide effective training to staff members on their reporting duties.
 - Trainings should cover all aspects of the reporting policy, including the specific staff members who are in the reporting chain; the requirement imposed on all staff members to make reports of alleged incidents of sexual abuse and sexual harassment that come from third-party and anonymous sources; the time frame for reporting; methods for reporting; and documentation requirements.
 - Trainings should focus on why "hearsay" and "rumors" regarding sexual abuse and sexual harassment must be reported and should describe how the information can be used to enhance safety.
 - Staff members should be trained on recognizing "red flags" that can both indicate abuse and help prevent abuse.
 - Staff members must understand that they cannot make any decisions on the merit of the allegations; all allegations must be reported, regardless of a staff member's opinion about the validity or merit of the information.
 - Trainings for staff members should focus on retaliation and fear of retaliation, which often keep victims and staff members from reporting sexual abuse and sexual harassment. Such trainings should emphasize that the agency and the facility do not tolerate retaliation, and steps that staff members can take if they experience or are concerned about retaliation.
 - Trainings for staff members should focus on personal integrity and emphasize that the codes of silence that may have existed in agencies and facilities previously are not acceptable and will not be tolerated.

- **Mandatory reporting:** Agencies and facilities should work with their general counsels or other legal representatives, and medical and mental health staff to determine whether they are subject to mandatory reporting laws. Mandatory reporting laws vary by jurisdiction and identify classes of people who are required to report abuses of specified vulnerable populations, including minors and elderly people, to external protection agencies.

Audit Issues

- Auditors must review agency policy to ensure that it requires all staff to report any knowledge, suspicion, or information regarding any incident of sexual abuse or sexual harassment that occurred in a facility, regardless of whether it happened in that agency; retaliation against inmates or staff who report such incidents; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
- Auditors must review agency protocols to ensure that any sexual abuse allegation involving a victim who is under the age of 18 or who is considered a vulnerable adult under state or local statutes is reported to designated state or local service agencies, in accordance with all applicable mandatory reporting laws.
- Auditors must review contract language, if applicable, for contracted medical and mental health practitioners to confirm that they are required to report sexual abuse, and to inform inmates of their duty to report and their limitations of confidentiality at the initiation of services. Additionally, auditors must interview medical and mental health staff to corroborate their responsibilities regarding reporting and disclosure of their limits of confidentiality.
- Auditors are required to interview a random sample of line staff members for a variety of reasons, including to ensure that they are aware of their reporting duties and their responsibility not to reveal any information related to a sexual abuse or sexual harassment report to anyone other than those who must know the information. Auditors must also determine whether these limitations on the disclosure of information related to incidents of sexual abuse and sexual harassment are clearly outlined in agency policy.
- Auditors are obligated to review reports of sexual abuse and sexual harassment that are made to investigators, to evaluate whether agency staff members complied with their reporting responsibilities for all allegations.

Standard Variations

The following variations in the standard are noted for **Lockups, Community Confinement Facilities, and Juvenile Facilities**. The variations are discussed in summary fashion below, but readers are encouraged to consult the full text of the specific set of standards to ensure a complete understanding of the differences.

- **Lockups:** The following differences are noted:
- The lockup standards require reporting about incidents of sexual abuse and sexual harassment that occur in an agency lockup facility only; the reporting requirements do not extend to facilities that are not part of the agency. For example, if a detainee in a lockup states to a staff member that s/he was sexually abused in a confinement facility prior to being placed in the lockup, the staff member may report this incident, but the lockup standards do not require the staff person to

do so.

- The lockup standards limit providing information about sexual abuse and sexual harassment, other than to designated supervisors and to staff members who are specified in agency policy who need the information to make treatment and investigation decisions. The lockup standards do not require incidents of sexual abuse and sexual harassment to be reported to staff members who are in charge of facility security and the day-to-day management of detainees.
- The lockup standards do not contain any requirements regarding reporting responsibilities or disclosure of limits of confidentiality for any medical or mental health practitioners. However, these practitioners may have obligations to disclose their limits of confidentiality that are based not on the lockup standards but on their own professional licensures and/or codes of professional responsibility. They may also be required by mandatory reporting laws in their particular state to disclose the limits of confidentiality.
- **Community Confinement:** None.
- **Juvenile:** The following differences are noted:
 - The juvenile standards state that the agency must require all staff to comply with any applicable mandatory child abuse reporting laws. [§115.361(b)]
 - The juvenile standards incorporate “designated State or local services agencies” into §115.361(c) as entities expected to receive information about sexual abuse and sexual harassment reports, in addition to the “designated supervisors or officials” identified in the prison and jail standards.
 - The juvenile standards clarify that medical and mental health practitioners are required to report to the designated state or local services agency where required by mandatory reporting laws. These state or local agencies are typically child protective service agencies that investigate child abuse allegations. Notification to these agencies is necessary only if state law requires it. In some states, child abuse in juvenile confinement facilities is investigated by offices of inspectors general or other external investigative entities that are not part of the child protective service agencies. [§115.361(d)(1)]
- The juvenile standards add additional specific external reporting requirements:
 - (e)(1) Upon receiving any allegation of sexual abuse, the facility head or his or her designee shall promptly report the allegation to the appropriate agency office and to the alleged victim’s parents or legal guardians, unless the facility has official documentation showing that the parents or legal guardians should not be notified.
 - (2) If the alleged victim is under the guardianship of the child welfare system, the report shall be made to the alleged victim’s caseworker instead of the parents or legal guardians.
 - (3) If a juvenile court retains jurisdiction over the alleged victim, the facility head or designee shall also report the allegation to the juvenile’s attorney or other legal representative of record within 14 days of receiving the allegation.

Resources

Frequently Asked Questions

→ www.prearesourcecenter.org/frequently-asked-questions

The Department of Justice has issued extensive guidance regarding reporting obligations. Visit the PREA Resource Center’s FAQ page and search under Standard 115.61 for the many related FAQ

responses provided by the Department of Justice. The FAQs to date are as follows:

- **November 18, 2015.** What are the agency's reporting obligations under Standard 115.361(e) in cases where a juvenile is an emancipated youth?
→ www.prearesourcecenter.org/node/3812
- **September 28, 2015.** Are clergy employed by or who volunteer in a correctional facility bound by the mandatory staff reporting provision in Standard 115.61(a)? Is there any protection for confidential communication with clergy, and is there any special consideration for confidentiality within confessional communication?
→ www.prearesourcecenter.org/node/3599

PREA Resource Center Library

- PREA refresher
 - "Prisons & Jails PREA Refresher #8 – Reporting Knowledge, Suspicion, or Information" (*also available for community confinement and juvenile facilities*):
→ www.prearesourcecenter.org/training-and-technical-assistance/prea-refreshers
 - "PREA and Victim Services: A Trauma-Informed Approach Notification of Curriculum Utilization" (*reporting sexual abuse and sexual harassment PowerPoint*):
→ www.prearesourcecenter.org/sites/default/files/content/vs_curriculum_ppt_module_4_final.pdf
 - "Legal Responses to Sexual Violence in Custody: Using Existing State Mandatory Reporting Statutes to Improve Disclosure of Sexual Violence in Correctional Settings":
→ www.prearesourcecenter.org/sites/default/files/library/legalresponsetosexualviolenceincustody-usingexistingstatemandatoryreportingstatuestoimprovedisclosure.pdf
 - "PREA Employee Training Notification of Curriculum Utilization:"
→ www.prearesourcecenter.org/sites/default/files/content/unit_3.2_lesson_plan.pdf
 - "State of Wisconsin Department of Corrections PREA Flow Charts"
 - Reporting staff-on-inmate:
→ www.prearesourcecenter.org/sites/default/files/library/wisconsinpreareportingflowchartstaffoninmate.pdf
 - Reporting inmate-on-inmate:
→ www.prearesourcecenter.org/sites/default/files/library/wisconsinpreareportingflowchartinmateoninmate.pdf

Archived Webinars on the PRC Website

Additional Training Resources:

Always check the following sources for excellent training on PREA.

- National Institute of Corrections
→ [nicic.gov/training/prea](https://www.nicic.gov/training/prea)
- End Silence: The Project on Addressing Prison Rape
→ www.wcl.american.edu/endsilence

Notes and Federal Disclaimer

Note: Standards in Focus (SIFs) are not intended for use by the Department of Justice PREA auditors to evaluate PREA compliance. SIFs are a tool designed to help agencies and facilities implement, educate, and become familiar with the PREA standards and some related best practices, but are not a compliance checklist. They contain guidance about implementation best practices that may not be required and thus it would not be appropriate for auditors to audit against the SIF. SIFs also do not exhaust implementation guidance for every requirement in every standard.

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