

115.86

Sexual abuse incident reviews

Standard in Focus

Sexual abuse incident reviews

§115.86

- a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.
- b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.
- c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
- d) The review team shall:
 1. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
 2. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
 3. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
 4. Assess the adequacy of staffing levels in that area during different shifts;
 5. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
 6. Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.
- e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

Purpose

This Standard requires a sexual abuse incident review to be conducted at the conclusion of every sexual abuse investigation, with one exception that is described below. The purpose of the incident review is to identify problems that may have contributed to the sexual abuse incident. These problems

may include policies, practices, group dynamics within the facility, physical barriers and blind spots, facility staffing levels, or strategies used to monitor persons who are confined. The identification of such problems can guide facility changes that may prevent sexual victimization in the future:

Implementation

- The facility must implement a procedure to review each sexual abuse allegation at the conclusion of every investigation that finds the allegation to be “substantiated” or “unsubstantiated.” The facility is not required to review sexual abuse allegations that are deemed to be “unfounded” by the investigation. The following three terms are defined by the PREA Standards; understanding them is vital to successfully implementing Standard 115.86.
 - *Substantiated* allegation means an allegation that was investigated and determined to have occurred.
 - *Unsubstantiated* allegation means an allegation that was investigated, and the investigation produced insufficient evidence to make a final determination as to whether the event occurred.
 - *Unfounded* allegation means an allegation that was investigated and determined not to have occurred.
- Unlike the sexual abuse investigation, which is intended to determine whether the alleged incident occurred, the sexual abuse incident review is intended to evaluate whether changes to facility policies, procedures, or other areas are necessary to help prevent sexual abuse in the future.
- The sexual abuse incident review is not intended to assign blame to staff members. Rather, the focus of the review is to identify and address issues that contributed to the sexual abuse.
- The review should go beyond the “who” and “what” of the incident to focus on “why” it happened (when the allegation is substantiated) or “why” it may have happened (when the allegation is unsubstantiated). The focus on “why” is intended to result in the identification and implementation of steps the facility can take to decrease the likelihood of sexual abuse in the future.
- Once the investigation is completed and there is a finding of substantiated or unsubstantiated, the facility must initiate a sexual abuse incident review as quickly as possible. This review “shall ordinarily occur **within 30 days** of the conclusion of the investigation.”
- Because the facility must establish a “**review team**,” many facilities across the country have established formal, standing Sexual Abuse Investigation Review (SAIR) Teams that carry out their work virtually and/or in-person, and that begin work immediately after a sexual abuse investigation that results in a substantiated or unsubstantiated finding.
- “**Upper-level management officials**” must be members of the review team, and the team must collect “input from line supervisors, investigators, and medical or mental health practitioners.” Review teams should also include other relevant participants, such as the agency PREA coordinator and the facility PREA compliance manager, who should have a comprehensive understanding of relevant facility policies and practices that are intended to prevent, detect, and respond to sexual abuse of persons who are confined. In agencies with multiple confinement facilities, the involvement of the PREA coordinator in the review team may be particularly important to ensure that agency policies and procedures related to sexual abuse incident reviews are followed, and to identify potential adjustments to these policies and procedures to enhance the work of review teams across the agency.

- At a minimum, the facility's sexual abuse incident review team must **consider and evaluate** the following:
 - **Need to change policy or practice** to prevent, detect, or respond to sexual abuse. (E.g., does the facility need to change the frequency of unannounced rounds or is refresher training needed for some or all staff members?)
 - **Potential motivations of an abusive incident:** race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or other group dynamics at the facility. (E.g., is there any evidence that race was a factor in the incident? Was the victim known or perceived to be lesbian, gay, bisexual, transgender, or intersex, and if so, how did this impact their vulnerability to sexual abuse in the facility? Was anyone involved in the incident affiliated with a gang and did that affiliation play a part in the incident? Was the incident motivated or otherwise caused by other group dynamics at the facility?) The purpose of analyzing these potential motivations is to identify group dynamics and different forms of bias and prejudice in the facility that may increase the likelihood of sexual abuse.
 - **Physical barriers** in the area that may enable sexual abuse. (E.g., is there a blind spot in the location where the incident occurred (substantiated) or may have occurred (unsubstantiated)? Does the physical layout in the relevant area of the facility create a barrier that allowed the abuse to take place? If so, could changing that space in some way, such as removing a partial wall or rearranging furniture in a common area, enhance lines of sight and reduce the risk of abuse in the future?)
 - The **adequacy of staffing** levels in the relevant area of the facility during different shifts. (E.g., was the possibility of abuse increased because of inadequate staffing? If so, how can existing staffing resources and patterns be adjusted to ensure that there is sufficient staffing in the relevant area of the facility, without jeopardizing safety in other areas of the facility? If it is possible to hire additional facility staff, should the relevant area be prioritized for additional staff monitoring in the future?)
 - Whether **monitoring technology** such as cameras or mirrors could have helped prevent the abuse. (E.g., is a convex mirror or an extra camera needed in a specific location in the facility, such as a stairwell or the end of a hallway?)
- At the conclusion of the review of the sexual abuse incident, the team must prepare a **report of its findings**. Such reports must include, at a minimum:
 - Any determinations made pursuant to Standard 115.86(d)(1) - (d)(5), which focus on the issues defined above (i.e., policies and practices, potential motivations, physical barriers, adequacy of staffing, and monitoring technology).
 - Recommendations to reduce the likelihood of sexual abuse in the facility in the future.
- The incident review report must be submitted to the facility head and PREA compliance manager.
- The facility must either implement the recommendations for improvement that are described in the report or document the reasons for not doing so.

Challenges

- Ensuring that sexual abuse incident reviews “ordinarily” take place **within 30 days** of the conclusion of an investigation.

- Reviewing all the factors required by Standard 115.86(d)(1) - (d)(5) that may have contributed to a substantiated or unsubstantiated incident of sexual abuse.
- Determining changes (to policies, practices, staffing, physical barriers, monitoring technology, etc.) that must be carried out by the facility to decrease the likelihood of sexual abuse.
- Implementing all recommendations in the sexual abuse incident review team's report successfully and ensuring that the changes made are sustained and institutionalized in the future.

Best Practices

- In some facilities, the PREA compliance manager or their designee serves as the facility staff member responsible for convening the sexual abuse incident review team immediately after the investigation concludes. This individual is responsible for guiding the team's work; keeping it on schedule; ensuring that the team's report is completed in a timely manner (i.e., "ordinarily" no more than 30 days after the investigation ends); and coordinating the successful implementation of the recommendations in the report to decrease the likelihood of sexual abuse in the facility. If one or more of the review team's recommendations are not implemented, the PREA compliance manager documents and explains the reasons why.
- Many facilities have established sexual abuse incident review teams that "ordinarily" complete their reviews within 30 days of the conclusion of sexual abuse investigations. As emphasized in the implementation section above, facilities across the country have created formal, standing, highly collaborative SAIR teams that begin work immediately after a sexual abuse investigation results in a substantiated or unsubstantiated finding. Some SAIR teams convene immediately before or after standing meetings that include some or all staff members who are required to be involved in sexual abuse incident reviews (i.e., "upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners").
- If sexual abuse incident reviews are "not ordinarily" completed within 30 days of the conclusion of the investigation, the PREA compliance manager and other facility staff members should identify the specific reasons for the delays and should work with facility leadership to address these reasons, so that dates and deadlines are consistently followed, and reviews are "ordinarily" completed no more than 30 days after an investigation ends.
- The review team should, on a case-by-case basis, identify specific facility staff members and others who may be able to offer helpful and relevant perspectives and information about the incident of sexual abuse that is being examined. For example, the review team may need to collect information from staff members, contractors, and volunteers who work in the area or unit of the facility where the incident took place. Collecting information from these stakeholders (and/or inviting them to serve on the review team) serves the team's overarching goal of collecting as much information as possible to inform recommendations that will help reduce sexual victimization in the facility.
- Prior to beginning the sexual abuse incident review, the review team should examine the investigation report together, ideally with the investigator(s) who conducted the investigation. This is particularly important because the investigation report may not contain every relevant piece of information regarding the investigation process, and the investigator(s) may have important insights to offer related to the issues the review team must address, as defined in Standard 115.86(d)(1) - (d)(5) (i.e., policies and practices, potential motivations, physical barriers, adequacy of staffing, and monitoring technology).
- In addition to the required considerations defined in Standard 115.86(d)(1) - (d)(5), it is possible that the sexual abuse incident review team will identify one or more **systemic issues** in the facility

that increase the likelihood of sexual abuse. One example of a systemic issue in a confinement facility is a belief held by staff members that it is acceptable for persons in confinement to be sexually victimized. It is important for such attitudes to be identified and addressed as quickly and effectively as possible. Strategies to do so include implementing new or revised mandatory staff training and convening focus groups with facility staff members. Staff training and focus groups can:

- Help to explain why a zero-tolerance culture related to sexual abuse is vitally important in the facility.
 - Emphasize the benefits of such a culture to all parties (e.g., persons who are confined, their family members, facility staff members, contractors, and volunteers working in the facilities, etc.).
 - Provide opportunities for open discussion among staff members about their key roles in preventing sexual abuse.
 - Empower participants to offer helpful guidance on steps the facility can take to reduce the likelihood of abuse.
- The sexual abuse incident review team's report should be comprehensive and focus on recommendations for changes needed to reduce the likelihood of sexual victimization in the facility. Ideally, the review team's report will also be as specific as possible, including next steps and deadlines to support the successful implementation of needed changes. As noted above, the implementation of these next steps and fulfilling these deadlines are examples of the responsibilities that can be overseen and managed by the PREA compliance manager or designee.
 - The recommendations in the review team's report may include, but are not limited to, the following:
 - Additional staff training on specific topics.
 - Revisions to or expansion of existing staff training curricula.
 - Revisions to or expansion of existing education materials for persons who are confined.
 - Changes in facility staffing levels or patterns.
 - Adjustments in the ways that confined persons are supervised in the facility.
 - Additions to or changes in monitoring technology.
 - Alterations to the risk screening and/or classification processes used to inform housing and placement decisions.
 - Reassignments of specific staff members.
 - Changes in how certain facility staff members are supervised.
 - The members of the sexual abuse incident review team should endeavor to remain informed about the progress of every sexual abuse investigation that is currently underway in the facility. Checking in on each investigation once a month can be an effective way to do this. Staying abreast of ongoing investigations allows review team members to anticipate when each will be completed, and to plan reviews that are efficient, comprehensive, and high-quality.
 - Although the facility is not required to conduct a sexual abuse incident review when sexual harassment occurs, or in cases when an alleged incident of sexual abuse is determined to be **unfounded**, conducting reviews in these cases may help the facility identify additional opportunities to reduce the likelihood of sexual victimization. For example, if an unfounded allegation is determined to have mitigating circumstances (e.g., a confined person made a report

of abuse that was false because the individual feared their cellmate), the review team may identify housing changes or additional security measures that would be appropriate.

- Many facilities and the agencies that oversee them have developed sexual abuse incident review policies, protocols, forms, and templates to promote reviews that are consistent, efficient, comprehensive, and high-quality. Facilities should take care to ensure that such policies, protocols, forms, and templates support a strategic and highly collaborative effort among review team members that includes ongoing communication. The resulting report should go far beyond “checking” a series of boxes to indicate that each of the required considerations in Standard 115.86(d)(1) - (d)(5) was examined.
- A form or template that guides the development of a review team’s report should include prompts and space to ensure that the team always documents:
 - Review team member names, positions, and contact information.
 - The name(s) and contact information of the investigator(s) who determined the incident of sexual abuse being reviewed was substantiated or unsubstantiated.
 - The names, positions, and contact information of individuals who are not members of the team but who provided information to the team to inform the incident review.
 - The dates of, and findings and information from the investigation that are relevant to the incident review.
 - Conclusions associated with the issues enumerated in Standard 115.86(d)(1) - (d)(5); all related recommendations; suggested next steps; and possible timeframes for implementing the recommendations successfully.
 - Additional problems that may impact sexual safety in the facility that need to be addressed, such as the systemic issues described above, and recommendations regarding how these can be addressed most effectively.
- Implementation of policies, protocols, forms, and templates to guide the work of the review team can also help to memorialize the review team’s work and to guide successful implementation of the team’s recommendations to prevent sexual abuse in the facility in the future.

Audit Issues

- Auditors will evaluate whether the facility has conducted a sexual abuse incident review for every substantiated and unsubstantiated sexual abuse incident or allegation.
- Auditors will determine if the sexual abuse incident reviews conducted by the facility focused, at a minimum, on the required considerations enumerated in Standard 115.86(d)(1) - (d)(5) (i.e., policies and practices, potential motivations, physical barriers, adequacy of staffing, and monitoring technology).
- Auditors will evaluate whether sexual abuse incident reviews are “ordinarily” completed within 30 days of the investigation closure date. If these reviews are not “ordinarily” finished within 30 days, the auditor will work with the facility to identify steps it can take to reduce the time it takes for the review team to carry out its work while not sacrificing the quality of the review.
- Auditors will examine reports of findings from sexual abuse incident reviews.
- Auditors will focus on recommendations for improvement that result from sexual abuse incident reviews and determine if these recommendations have been successfully implemented.
- In instances where recommendations from the review team were not carried out by the facility,

the auditor will assess why this has not happened, and ensure that these reasons have been documented by the facility.

Standard Variations

The following variations in standards are noted for lockups, community confinement facilities, and juvenile facilities.

- **Lockups:** (c) The review team shall include upper-level management officials, with input from line supervisors and investigators (i.e., medical and mental health practitioners are not required).
- **Community confinement:** no differences.
- **Juvenile:** no differences.

Resources

Frequently Asked Questions

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

None available for this standard as of 9/21/2022.

National PREA Resource Center Library

- Sexual Abuse Incident Review (SAIR) Procedure, Meeting Template, CAP Document - Authors: The Moss Group, Inc. (June 2022)
→ <https://www.prearesourcecenter.org/resource/sexual-abuse-incident-review-sair-procedure-meeting-template-cap-document>

Additional Training Resources

Always check the following sources for excellent training on PREA:

- National Institute of Corrections
→ 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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