

**Specialized Training: Investigating Sexual Abuse in
Correctional Settings
Notification of Curriculum Utilization
December 2013**

The enclosed *Specialized Training: Investigating Sexual Abuse in Correctional Settings* curriculum was developed by The Moss Group, Inc. (TMG) as part of contract deliverables for the National PREA Resource Center (PRC), a cooperative agreement between the National Council on Crime and Delinquency (NCCD) and the Bureau of Justice Assistance (BJA). The PREA standards served as the basis for the curriculum's content and development with the goal of the *Specialized Training: Investigating Sexual Abuse in Correctional Settings* curriculum to satisfy specific PREA standard requirements.

It is recommended that the *Specialized Training: Investigating Sexual Abuse in Correctional Settings* curriculum be reviewed in its entirety before choosing which modules to use. Any alterations to the original materials must be acknowledged during their presentation or requires removal of the PRC and TMG logos.

BJA is currently undergoing a comprehensive review of the enclosed curriculum for official approval at which point the BJA logo may be added.

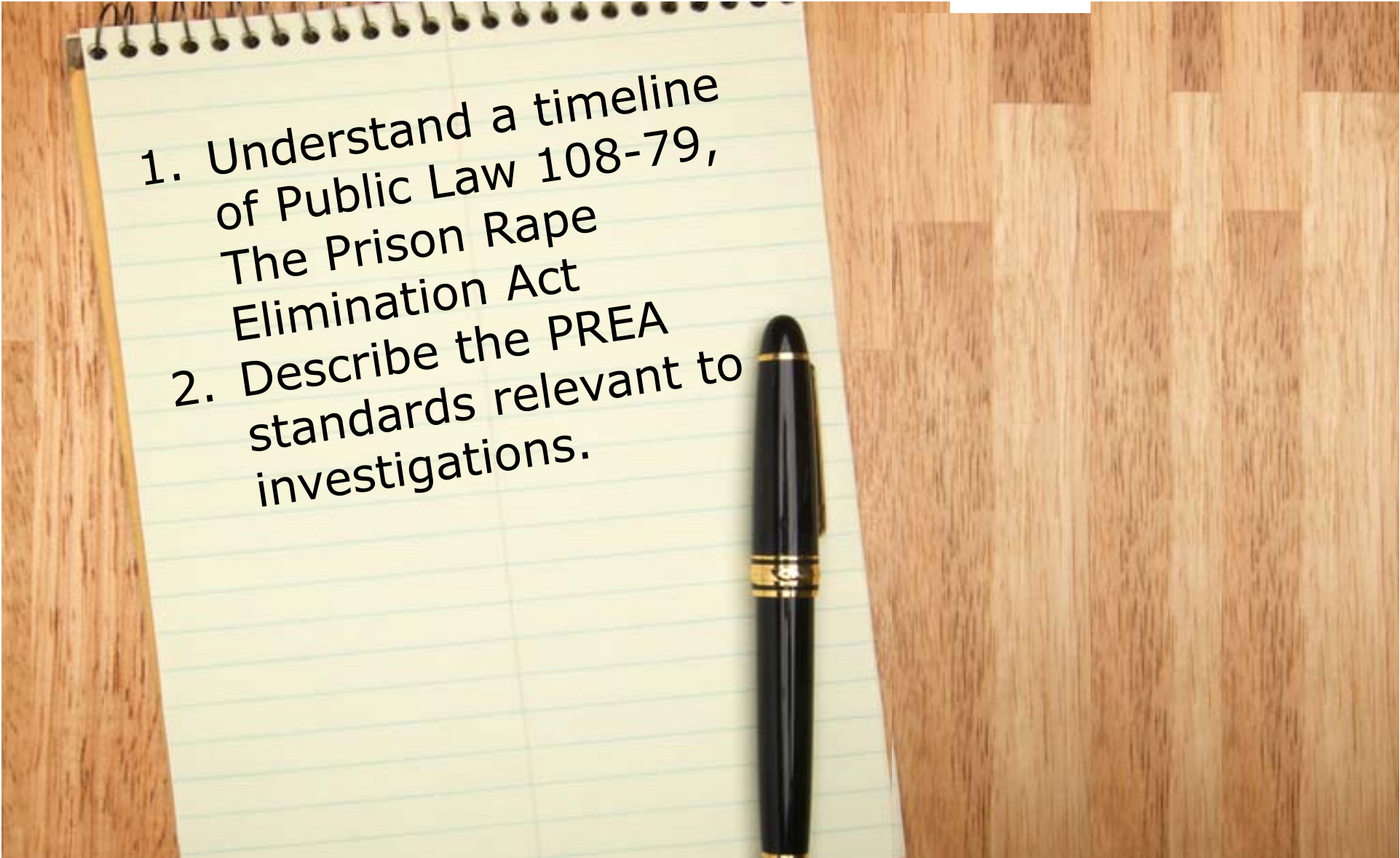
Note: Utilization of the enclosed curriculum, either in part or whole, does not guarantee that an auditor will find a facility "meets standard". Rather, an auditor will take into consideration the curriculum used as part of their overall determination of compliance.




Module 1: PREA Update and Investigation Standards

Notice of Federal Funding Disclaimer – This project was supported by Grant No. 2010-RP-BX-K001 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice nor those of the National Council on Crime and Delinquency (NCCD), which administers the National PREA Resource Center through a cooperative agreement with the Bureau of Justice Assistance.

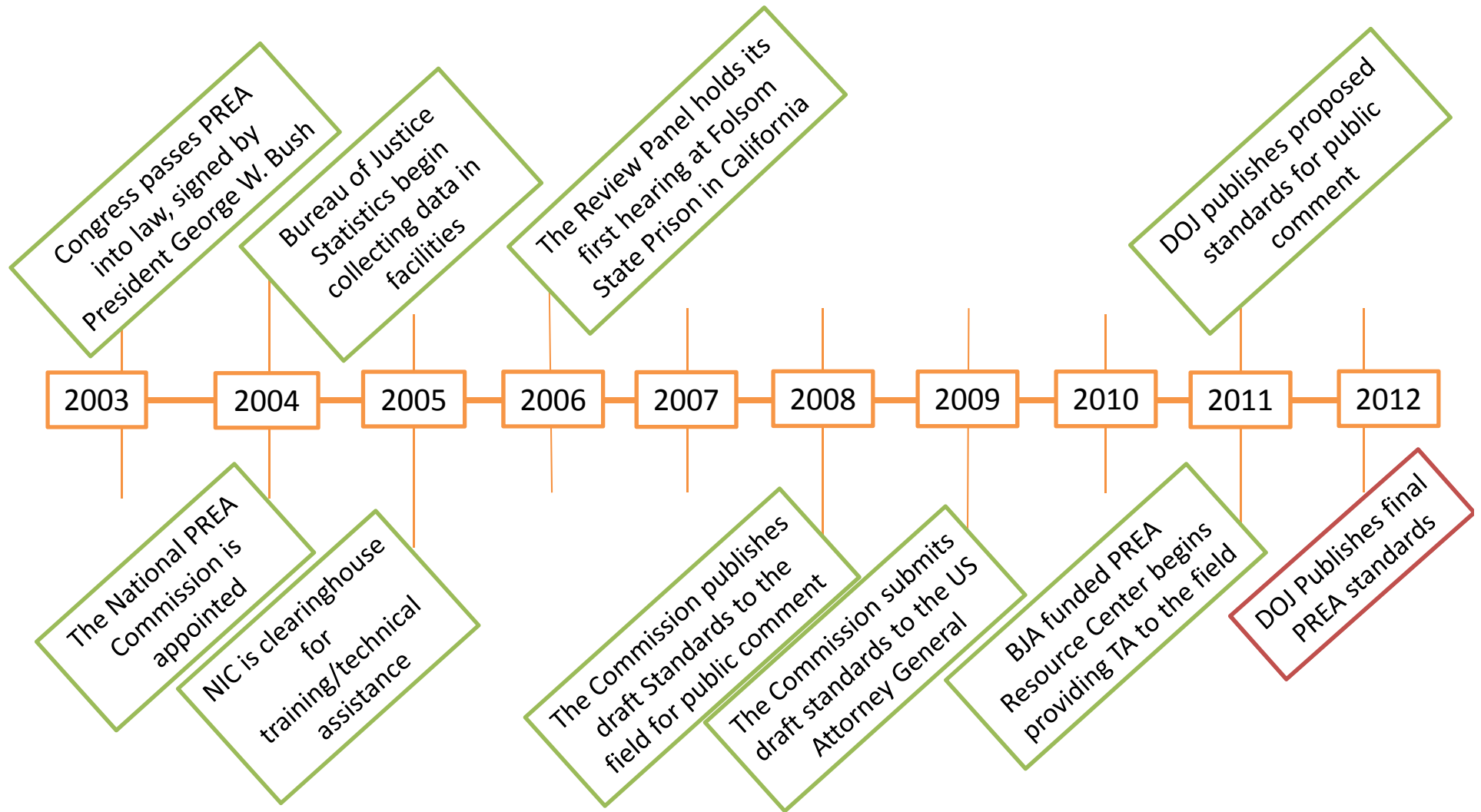
Module 1: Objectives

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1. Understand a timeline of Public Law 108-79, The Prison Rape Elimination Act
2. Describe the PREA standards relevant to investigations.

A red notebook with a textured cover and a red pencil are positioned on the left side of the image. The notebook is open, showing white pages, and the pencil is sharpened and lies diagonally across the bottom left. The background is a plain, light gray.

The US Department of Justice
National Standards to Prevent,
Detect and Respond to Prison
Rape were released in May, 2012

PREA Standards Timeline



Standards Development

The field played an important role in development. The DOJ report released with the standards responds to the comments of the field and explains the reasoning behind the development of the final standards.

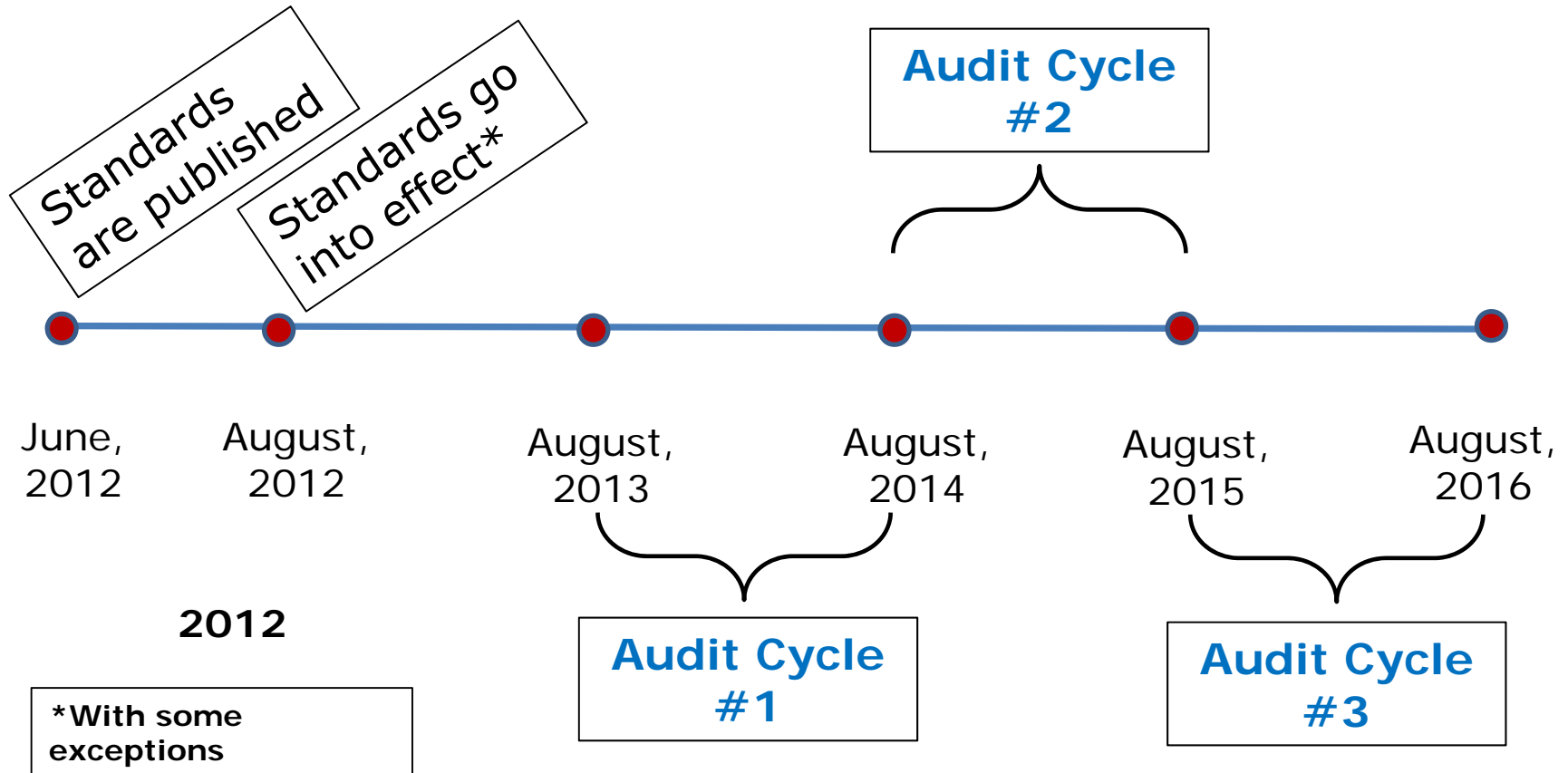
Comment. As noted above, § 115.22 of the proposed standards appeared to cause confusion because it covered both agreements regarding outside reporting and agreements regarding support services for victims. In addition, commenters were unclear as to how § 115.22 interacted with § 115.53, given the topical overlap.

Response. For clarity, the subject matter covered by proposed standard § 115.22 has been moved into §§ 115.51 and 115.53, as appropriate.

Comment. Numerous nonprofit organizations and some inmates supported the requirement in the proposed standard that agencies maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that could provide inmates with confidential emotional support services related to sexual abuse. These organizations recommended that the agreements between correctional agencies and victim advocacy organizations clarify the services that the organizations can provide and the limits to confidentiality.

Response. The Department agrees that such clarifications are a best practice and will assist the facilities in meeting their obligation to inform victims of the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws. As many

PREA: Audit Timeline



How is compliance determined?

- Governor of each State must certify full compliance with the standards with regard to state entities
- Governor certification does not apply to facilities operated by cities, counties, etc.
- Full compliance = compliance with all material requirements except for *de minimus* or temporary violations
 - Short term malfunction that prevents access to a confidential reporting hotline
 - Small number of instances where a facility fails to meet a deadline by a small number of days

How is compliance determined?

- Compliance is determined at the facility level through audits.
- The DOJ and the PREA Resource Center are currently developing the audit tool that will be used to assess compliance.
- The instrument:
 - Provides audit methodology
 - Provides compliance measures for each standard

How is compliance determined?

- From what date do you need documentation that you have been compliant?
- **Standard:** "PREA auditors shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one year period."

Also, remember that facilities who are not found to be compliant will have an additional 180-day corrective action period to remedy the situation!

Sexual Abuse Statistics

Bureau of Justice Statistic Data – Adults

- 4.0% in prison and 3.2% in jails report victimization
- 2.4% in prison and 1.8% in jails report victimization by staff
- Mentally ill inmates and non-heterosexual inmates were substantially more likely to be victimized by other inmates
- Most victims of sexual abuse by staff were male inmates; most perpetrators were female staff

Percentages indicate that 80,600 incarcerated adults were sexually victimized in custody within the 12 months before the survey

Sexual Abuse Statistics

Bureau of Justice Statistic Data – Youth

- 9.5% of youth reported sexual victimization
- 2.5% of youth reported victimization by other youth
- 10.3% of youth reported sexual victimization by staff
- Girls were over 2x as likely to report sexual victimization by other youth than boys
- Boys were almost 3x as likely to report sexual victimization by facility staff; 89.1% of youth reporting sexual activity with staff were males reporting activity with female staff

Percentages indicate that 3,220 incarcerated juveniles were sexually victimized in custody within the 12 months before the survey

Sexual Abuse Statistics

Bureau of Justice Statistics – Risk Factors

- Previous history of victimization inside or outside of incarceration
- Mental illness
- Medical disability
- Lesbian, gay, bisexual, transgender, intersex.
- College educated or above
- History of sexual predator crimes or behavior
- Small physical stature
- First incarceration

PREA Investigative Standards



Taking a Closer Look

Section 115.5: DEFINITIONS

- Substantiated Allegation: Allegation that was investigated and determined to have occurred
- Unfounded Allegation: Allegation that was investigated and determined not to have occurred
- Unsubstantiated Allegation: Allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

Section 115.(3)21: Evidence Protocol and Forensic Medical Exams

- If the agency investigates allegations, it shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence
- The protocol shall be based on the DOJ Office on Violence Against Women published protocol
- The agency shall offer a victim access to forensic medical exams performed by qualified medical practitioners, free of charge

Section 115.(3)21: Evidence Protocol and Forensic Medical Exams

- A qualified individual shall provide support through the medical exam process – either a victim advocate, qualified staff member or qualified community based organization member
 - If staff the agency provides a staff member, they must receive proper training
- If the agency is not responsible for investigating allegations, the agency shall inform the investigating entity of these policies

Section 115.(3)22: Policies to ensure referrals of allegations for investigations

- The agency shall ensure a criminal or administrative investigation is conducted for all allegations of sexual abuse or harassment
- The agency shall have a policy in place to ensure sexual abuse or harassment allegations are referred to an agency with the legal authority to conduct criminal investigations. This policy must be published on website
- Any entity conducting criminal or administrative investigations shall have a policy in place governing the conduct of such investigations

Section 115.(3)31: Employee Training

- Training shall include all topics identified in the standard. These include:
 - Zero tolerance policy
 - How to respond to signs of threatened and actual sexual abuse
 - How to comply with mandatory reporting laws
- All current employees trained within one year of effective date
- Refresher training every two years. In off years refresher information provided

Section 115.(3)33: Inmate/Resident Education

- During intake, inform inmates/residents of zero tolerance standard and how to report
- Within 30 (10) days comprehensive education (in person or via video)
 - Right to be free from sexual abuse
 - Right to be free from retaliation
 - Agency sexual abuse response policies
- Current inmates/residents educated within one year of the PREA standards effective date

Section 115.(3)34: Specialized Training-Investigations

- In addition to general training provided to all employees, the agency ensures that agency investigators conducting sexual abuse investigations have received specialized training.
- Training must be documented and include outside agency investigators
- Specialized training must include:
 - Interviewing (juvenile) sexual abuse victims
 - Use of Miranda- and Garrity-type warnings
 - Sexual abuse evidence collection in confinement settings
 - What is needed to substantiate a case for administrative action or prosecution referral

Section 115.(3)51: Inmate Reporting

- Agency provides multiple internal ways for inmates/residents to report
- Agency provides at least one way for inmates/residents to report to an entity that is not part of the agency. Procedures are in place for the outside entity to immediately forward reports to the agency.
- Staff accept reports made verbally, in writing, anonymously and from third parties. Reports are promptly documented.
- Agency shall provide a way for staff to privately report sexual abuse and sexual harassment of inmates/residents.

Section 115.(3)61: Staff and Agency Reporting Duties

- Staff shall be required to immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse
- Except for reporting to agency officials, staff shall not reveal any information other than to the extent necessary
- Unless otherwise precluded by law, medical and mental health practitioners shall be required to report sexual abuse and inform inmate's of confidentiality limits
- The facility shall report all allegations to designated investigators

Section 115.(3)66: Preservation of Ability to Protect Inmates/Residents from Contact with Abusers

- Cannot enter into any collective bargaining agreement or renew one that limits the agency's ability to remove alleged staff sexual abusers from contact with any inmate pending the outcome of an investigation

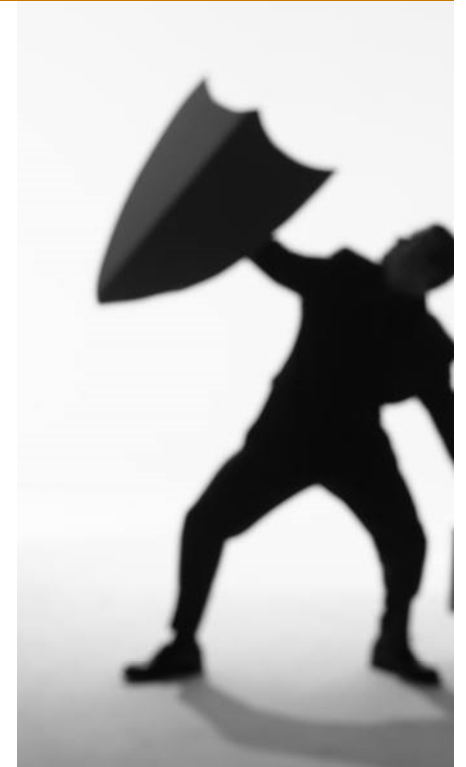
Section 115.(3)67: Agency Protection Against Retaliation

- Agency shall protect all inmates/residents and staff from retaliation for reporting sexual abuse or cooperating with investigations
- Agency shall have multiple protection measures such as housing changes, transfers, removal of staff, etc.



Section 115.(3)67: Agency Protection Against Retaliation (continued)

- Agency shall monitor the treatment of inmates/residents and staff who report or cooperate with investigations for at least 90 days following reporting or cooperation. Continued if needed.

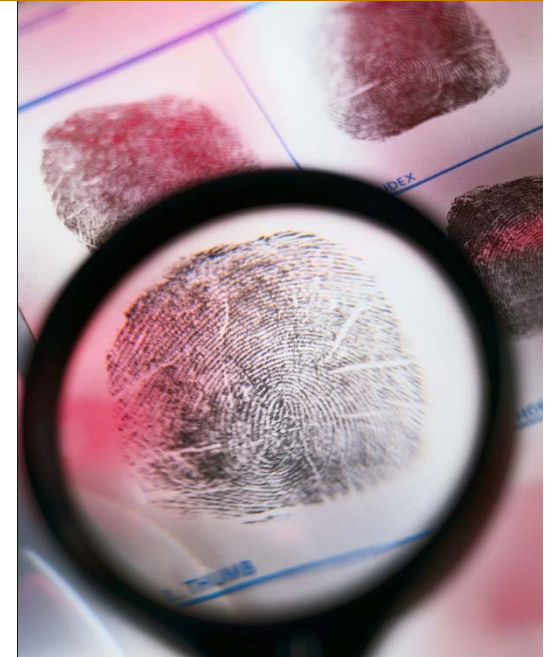


Section 115.(3)71: Criminal and Administrative Agency Investigations

- Investigations into allegations of sexual abuse are prompt, thorough, objective, and conducted by investigators who have received special training in sexual abuse investigations.
- Investigators gather direct and circumstantial evidence, including physical and DNA evidence when available; interview alleged victims, suspected perpetrators, and witnesses; and review prior complaints and reports of sexual abuse.
- When outside agencies investigate sexual abuse, the facility has a duty to keep abreast of the investigation and cooperate with outside investigators.

Section 115.(3)71 (continued)

- When the evidence supports prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors to determine whether they will be an obstacle.
- The credibility of a victim, suspect or witness shall be assessed on an individual basis and shall not be determined on the basis of status as an inmate/resident or staff.



Section 115.(3)71 (continued)

Administrative Investigations:

- Shall include an effort to determine whether staff actions or failures to act facilitated the abuse;
- Shall document in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative findings.



Section 115.(3)71 (continued)

Criminal Investigations:

Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.



Section 115.(3)71 (continued)

Prosecutions/Records:

- Substantiated allegations of conduct that appear to be criminal shall be referred for prosecution
- The agency shall retain investigative records for as long as the alleged abuser is incarcerated or employed by the agency, plus five years



Section 115.(3)71 (continued)

Continuing investigations and cooperation:

- The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.
- Any outside entity investigating shall also follow the provisions of this standard.

Section 115.(3)72: Evidence Standard for Administrative Investigations

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated.



Section 115.(3)73: Reporting to Inmates/Residents

- Following an investigation, the agency shall inform the inmate/resident as to whether the allegation has been determined to be substantiated, unsubstantiated or unfounded
- If the agency did not conduct the investigation, it shall request the information from the investigative agency to inform the inmate/resident

Section 115.(3)73: Reporting to Inmates/Residents

- Unless the allegation is unfounded, the agency shall subsequently inform the inmate/resident whenever:
 - The staff member is no longer posted within the inmate's unit;
 - The staff member is no longer employed at the facility;
 - The agency learns the staff member is indicted or convicted on a charge of sexual abuse in the facility. This information shall also be provided when an inmate/resident makes an allegation against another inmate/resident.

Section 115.(3)76: Staff Discipline

- Staff subject to discipline, including termination, for violating sexual abuse policies
- Termination shall be the presumptive disciplinary sanction for staff engaging in sexual abuse
- All terminations of staff, or resignations in lieu of termination, shall be referred to law enforcement if behavior is potentially criminal and to appropriate licensing bodies

Section 115.(3)77: Corrective Action for Contractors and Volunteers

- Any contractor or volunteer engaging in sexual abuse shall be prohibited from contact with inmates and reported to law enforcement agencies and licensing bodies
- For other violations of agency sexual abuse or harassment policies the agency shall consider other remedial measures for volunteers and contractors

Section 115.(3)78: Inmate Discipline / Interventions and Disciplinary Sanctions for Residents

- May discipline for sexual contact with staff only if the staff member did not consent
- False Reporting. A report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if the subsequent investigation does not establish evidence sufficient to substantiate the allegation

Section 115.(3)86: Sexual Abuse Incident Reviews

- Reviews conducted after every allegation, including those either substantiated or unsubstantiated
- The review team shall include investigators
- Consider whether to change policies or practices to better prevent, detect or respond to sexual abuse
- Prepare a report of findings and submit to facility head and PREA Coordinator

Questions?

