

## Standard in Focus

**Responsive Planning****§115.21, 115.121, 115.221, 115.321 Evidence protocol and forensic medical examinations**

- a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
- b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011.
- c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.
- d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.
- e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.
- f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.
- g) The requirements of paragraphs (a) through (f) of this section shall also apply to:
  - i. Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in prisons or jails; and
  - ii. Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.
- h) For the purposes of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

## Purpose

By tailoring community best practices in sexual assault response to a correctional setting, this standard ensures that agencies are responding to sexual abuse of inmates in a coordinated, victim-centered manner that minimizes trauma for the victim and maximizes the potential for holding the responsible party accountable.

## Implementation

- Agencies that are responsible for conducting investigations are required to follow a uniform evidence protocol based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women (OVW) publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents" (national protocol), or similarly comprehensive and authoritative protocols developed after 2011. The national protocol, updated most recently in 2013, provides detailed guidelines for evidence preservation and collection for criminal justice and health care practitioners to follow in the immediate aftermath of a sexual assault. In 2013, OVW also published a guide for corrections administrators on how to adapt this protocol to correctional settings ([OVW's 2013 guide](#)). (See the Resources section for information pertaining to this guide and links to all other cited resources.) The evidence protocol should be developmentally appropriate for youth where applicable. For those that have evidence protocols in place, reviewing the guide alongside existing protocols may be a useful exercise to check for completeness and/or surface areas that need improvement.
- As part of the evidence protocol, agencies must offer victims access to a sexual assault forensic medical examination free of charge, where evidentiarily or medically appropriate. The standard uses the language "evidentiarily or medically appropriate" to signal that agencies should offer a forensic medical exam in all cases of sexual abuse, and not just ones involving completed penetration. For example, a case where an inmate is digitally penetrated may still require an exam. Recognizing the specialized training and expertise of Sexual Assault Forensic Examiners (SAFEs) and Sexual Assault Nurse Examiners (SANEs), the standard requires exams to be performed by these practitioners whenever possible. If SAFEs or SANEs are not available in the geographical area where the facility is located, other qualified medical practitioners may perform the exams. However, the standard requires agencies to document their efforts to provide SAFEs or SANEs. Agencies may find it helpful to consult the ["Find a SANE Program"](#) page on the website of the International Association of Forensic Nurses to locate a local program (See Resources section).
- Reflecting best practices in the community for victim-centered care and response, agencies must offer victims access to an advocate for support during the examination process and any investigatory interviews. In areas served by rape crisis centers, rape crisis counselors provide hospital-based advocacy and other supportive services to victims sexually assaulted in the community. Accordingly, the standard requires agencies to make attempts to engage rape crisis centers via a formal agreement to provide their services to victims of sexual abuse in confinement. If they are unable to broker an agreement with a rape crisis center or if no center is available to provide services to facilities in certain locations, they may arrange for another community-based organization or a qualified agency staff member to provide victims with emotional support, crisis intervention, information, and referrals. Importantly, under the standard, "a qualified agency staff member" or a "qualified community-based staff member" is someone who has been screened for appropriateness for this role and has received education concerning sexual assault and forensic examination issues in general.

## Implementation Cont'd

- For agencies that are not sure how to locate rape crisis centers in their areas, several helpful resources exist:
  - The National Sexual Assault Resource Center maintains a [directory](#) of state and territory sexual assault coalitions. The coalitions should be able to provide information about rape crisis centers in that state or territory.
  - Another resource to identify victim advocacy programs is Just Detention International's [Resource Guide for Survivors of Sexual Abuse Behind Bars](#).
  - The National Sexual Assault Hotline at 1-800-656-HOPE (4673) can also connect callers with a rape crisis center in their area.
  - Finally, local phone directories and Internet searches may list contact information for area rape crisis centers.
- For agencies that do not play any role in administrative or criminal investigations into allegations of sexual abuse, they must request that investigative agencies, including State or Department of Justice entities, follow the requirements in this standard and document this request.

## Challenges

- Identifying SANE or SAFE programs that are willing and prepared to perform exams for victims from correctional facilities. Not all areas have SAFE and SANE programs, and even in areas that do, providers may be reluctant to serve victims from correctional facilities because of concerns about safety and security at the examination site. They may also have reservations about traveling to facilities to perform exams for similar reasons or because of costs associated with travel. If agencies identify qualified providers but encounter this reluctance, they should probe for the underlying reasons for the reluctance and work with the providers to devise safety and security precautions that may ease concerns about serving victims from correctional facilities.
- Similarly, identifying rape crisis centers willing to serve victims from correctional facilities may be challenging. In some cases, rape crisis centers may operate on very limited budgets and may lack capacity to expand service provision to incarcerated people. In others, advocates from rape crisis centers may need some training or assistance with gaining comfort with working with incarcerated victims. Facility tours, training from corrections staff, and clear roles and procedures outlined in a memorandum of understanding may help them overcome that discomfort.
- If an agency is unable to identify a rape crisis center willing and able to serve its population, they may find it difficult and time-consuming to identify an appropriate alternative community service provider or qualified agency staff member. The PREA Notice of Final Rule suggests contacting the state sexual assault coalition because they may provide the 40-hour advocate training to a qualified staff member at a reasonable cost. Alternatively, the agency may use free curricula on the PRC website to train agency staff members (e.g., "Victim Services and PREA: A Trauma-Informed Approach").

## Best Practices

[OVW's 2013 guide](#) for corrections administrators on how to adapt the national protocol to correctional settings provides detailed guidance on how to tailor community best practices regarding victim-centered care and coordinated response to sexual abuse in confinement. It offers many practical recommendations on topics such as:

- How to plan for and develop an immediate response protocol for incidents of sexual abuse in confinement;
- What training core responders (medical and mental health staff, investigators, victim advocates) need to be able to fulfill their responsibilities when a report of sexual abuse is made;
- How to locate victim advocates;
- How to orient advocates to the correctional environment and discuss topics like confidentiality and security;
- How to work with advocates to determine the range of supportive services they will be able to provide and how they will provide them (e.g., by phone, at the hospital, and/or at the facility);
- Considerations for developing a memorandum of understanding with advocacy programs;
- How to locate SANE or SAFE programs and facilitate exam site readiness for serving incarcerated victims, to include negotiating operational security procedures when/if a victim is transported to a hospital for an exam;
- The importance of using independent forensic examiners;
- Understanding that a forensic exam addresses the full spectrum of sexual abuse, not only attempted and/or completed sexual penetration; and
- Information that victims should receive following an incident of sexual abuse.

Additionally, the National Institute of Justice published a best practices guide for sexual assault kits in 2017, which agencies may find helpful to consult. (See Resources section.)

## Audit Issues

- Auditors will review any memoranda of understanding with rape crisis centers or other community-based victim advocates or documentation demonstrating efforts to secure services from community-based advocates. Similarly, they will review documentation related to access to forensic exams, which may include reviewing an agreement with a hospital that has a SAFE or SANE program or other documentation showing attempts to identify and engage a SAFE or SANE program. If no SAFE or SANE program exists in the area or if the facility has been unsuccessful in engaging the local program, the auditor will review the alternative plan that the facility has devised for ensuring access to forensic exams.
- Auditors will review the number of medical exams conducted, the number performed by SANE/SAFE professionals, and the number performed by qualified medical practitioners in the past 12 months.
- Auditors will also review the agency's evidence protocol and ensure that it adheres to the principles of coordination and victim-centered care, is developmentally appropriate for youth when relevant, details clear roles and responsibilities for immediate response to sexual abuse and describes procedures for engaging supportive services and obtaining forensic medical exams for victims, where evidentiarily or medically appropriate. Auditors will also interview random staff to ascertain if they know their first response duties and specialized staff, including investigators, to ensure that they understand and can explain their roles and responsibilities regarding preserving evidence and treating victims. (Responses to these interview questions may also support findings for standards 115.31, 115.34, and 115.35.)

## Audit Issues Cont'd

Regarding the terms “evidentiarily or medically appropriate,” investigators, the PREA compliance manager, and/or the facility head or a designee should be able to explain how decisions are made regarding access to forensic exams. Auditors will probe for responses that indicate knowledge of the specific jurisdiction’s accepted timeframe for evidence collection and consideration of the victim’s health needs and concerns.

- In interviews with inmates who have reported sexual abuse, the auditors will ask questions to learn whether they had access to supportive services and, where appropriate, access to a forensic exam. They will also inquire about what information the inmate received following a report.

## Standard Variations

In addition to **Prisons and Jails**, the requirements in §115.21 apply to **Community Confinement Facilities** (§115.221), and **Juvenile Facilities** (§115.321).

They also apply to **Lockups** (§115.121) with one difference:

- Lockups are not required to provide victims with access to a victim advocate. Instead, §115.121(d) states that if a victim is transported to an outside hospital for a forensic medical examination and that hospital offers victim advocacy services, the detainee shall be permitted to use those services to the extent available, consistent with security needs.

**Note:** The variations are discussed in summary fashion below and the reader should consult the full text of the specific set of standards to ensure complete understanding of the differences.

## Resources

- **Frequently Asked Questions (FAQs) on the PREA Resource Center (PRC) Website:** <https://www.prearesourcecenter.org/frequently-asked-questions>

The Department of Justice has issued extensive guidance regarding evidence protocol and forensic medical examinations. Visit the PRC FAQ page and search for guidance under the standard 115.21 for the many related FAQ responses provided by DOJ. The FAQs to date are as follows:

- **February 19, 2015.** *In regard to standards 115.21, 115.22, 115.34, and 115.71, what is required of agencies being audited, auditors, and external entities that conduct investigations of sexual abuse and harassment, and how will these obligations be audited?* <https://www.prearesourcecenter.org/node/3230>
- **April 23, 2014.** *Can an auditor find a federal Bureau of Prisons, state, county, or other local or private facility compliant with the PREA standards if an entity external to the confining agency, which conducts criminal investigations of sexual abuse in the facility being audited, is not compliant with the external investigative entity’s obligations under standards 115.21, 115.22, 115.34, and 115.71?* <https://www.prearesourcecenter.org/node/3229>



## Resources Cont'd

➤ **Resources On the PREA Resource Center Website:**

- **PREA Essentials on the National PREA Resource Center Webpage**  
<https://www.prearesourcecenter.org/training-technical-assistance/prea-essentials>
- **Archived PREA in Action Webinars and Case Study on the PRC website: Partnerships Between Correctional Agencies and Community-Based Service Providers**  
<https://www.prearesourcecenter.org/training-technical-assistance/prea-in-action/partnerships>
  - **November 13, 2013.** *Developing Partnerships with Community-Based Service Providers – Part I.*
  - **December 4, 2013.** *Developing Partnerships with Community-Based Service Providers – Part II.*
- **Building Partnerships Between Rape Crisis Centers and Correctional Facilities to Implement the PREA Victim Services Standards, U.S. Department of Justice, Office for Victims of Crime (2013).**  
<https://www.prearesourcecenter.org/file/1898/building-partnerships-between-rape-crisis-centers-and-correctional-facilities-implement>
- **Examples of Memoranda of Understanding between community sexual assault advocates and correctional facilities, available on the PRC's website:**  
<https://www.prearesourcecenter.org/library/search?keys=MOU&cat=All>
- **For Kids' Sake: PREA and Victim Services in Youth Facilities, archived webinar (2013) on the PRC's website:**  
<https://www.prearesourcecenter.org/training-and-technical-assistance/webinars/1609/kids-sake-prea-and-victim-services-youth-facilities>
- **Making Connections: Linking Community Confinement and Sexual Assault Response Teams, archived webinar (2018) on the PRC's website:**  
<https://www.prearesourcecenter.org/training-and-technical-assistance/webinars/5531/making-connections-linking-community-confinement>

➤ **Outside Resources:**

- **No One Left Behind: Building a Victim Services Program for Incarcerated Survivors of Sexual Abuse, Just Detention International (2017).**  
<https://justdetention.org/wp-content/uploads/2017/10/jdi-nooneleftbehind-.pdf>
- **National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach, National Institute of Justice (2017).**  
<https://www.ncjrs.gov/pdffiles1/nij/250384.pdf>
- **A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents, Second Edition, U.S. Department of Justice, Office on Violence Against Women (April 2013).**  
<https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>

## Resources Cont'd

- **International Association of Forensic Nurses, SANE Program Listing Webpage**  
<https://www.forensicnurses.org/page/A5>
- **National Sexual Violence Resource Center, Directory of State and Territory Coalitions**  
<https://www.nsvrc.org/organizations/state-and-territory-coalitions>
- ***Partnering with Community Sexual Assault Response Teams: A Guide for Local Community Confinement and Juvenile Detention Facilities*, Allison Hastings, Ram Subramanian, and Kristin Littell, Vera Institute of Justice (2015).**  
<http://www.preaguide.org/>
- ***Recommendations for Administrators of Prisons, Jails, and Community Confinement Facilities for Adapting the U.S. Department of Justice's A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents*, U.S. Department of Justice, Office on Violence Against Women (August 2013).**  
<https://www.justice.gov/sites/default/files/ovw/legacy/2013/08/12/confinement-safe-protocol.pdf>
- ***The Resource Guide for Survivors of Sexual Abuse Behind Bars* (web-based resource guide), Just Detention International.**  
<https://justdetention.org/service/>

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