

Standard in Focus

Responsive Planning**§115.22, 115.122, 115.222, 115.322 Policies to ensure referrals of allegations for investigations**

- a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.
- b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its website or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.
- c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.
- d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.
- e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.

Purpose

To ensure that every allegation of sexual abuse and sexual harassment is thoroughly and appropriately investigated, in order to increase reporting, ensure that victims receive the assistance they need, and ultimately deter sexual abuse. This includes putting policies in place that govern administrative investigations conducted by internal investigators and specify procedures for referring investigations that involve potentially criminal behavior to agencies with the legal authority to conduct criminal investigations.

Implementation

- Standard §115.22 is the second and last standard in the “Responsive Planning” section of the PREA Standards. Agencies may find it useful to couple this standard with the preceding one, §115.21 Evidence protocol and forensic medical examinations, when planning for implementation, writing policy, and training staff. Taken together, these standards set clear requirements for establishing an investigative infrastructure that clearly delineates roles, responsibilities, evidence protocols, and referral procedures. Critically, having this type of infrastructure in place will help minimize time delays and uncertainty about roles and responsibilities following a report of sexual abuse or sexual harassment.
- For §115.22, agencies will need to develop and publish policies that explain how allegations of sexual abuse or sexual harassment are referred for criminal investigations and maintain documentation of all referrals. Agencies may choose to leave it up to the facilities to identify the appropriate local, state, or federal law enforcement agency to conduct investigations and then the facility will work with its parent agency to establish a memorandum of understanding or other agreement with the investigative authority that delineates notification procedures, roles, and responsibilities. However, even if the facility identifies the proper investigative authority, the agency should have a guiding policy that requires investigations of all allegations, referrals for criminal investigations, and documentation of those referrals.

Implementation Cont'd

- The standard also requires external agencies responsible for conducting sexual abuse and sexual harassment investigations in correctional facilities to have policies governing those investigations. And, if an external agency (such as state police) is responsible for conducting criminal investigations, the corrections agency must publish on its website (or make otherwise available if it has no website) a policy that describes both the responsibilities of the corrections agency and the external investigative agency with regard to criminal investigations in the agency's facilities. So, for example, if criminal investigations in a county jail are conducted by state or local police, the jail must publish on its website a policy that describes its responsibility for referring those investigations to the police; what role, if any, it plays in collecting evidence for the police; and what the police department's responsibilities are for completing the investigation. The jail in this example must do this even if it does not have the cooperation of the police in developing this policy.

Challenges

- Agencies, particularly those agencies that are not typically staffed by trained law enforcement, may not have the expertise to identify when behavior is potentially criminal and thus may be challenged to know when it is appropriate to make a referral to a criminal investigator. Agency and/or facility staff must have at least some training to be able to identify when an allegation involves potentially criminal behavior to ensure that all such behavior is investigated by appropriate authorities.
- Similarly, most agencies are responsible for at least some administrative level investigation, and investigations of sexual abuse and sexual harassment require experience and expertise that administrative investigators may not have. It is incumbent on the agency to ensure that any staff responsible for conducting investigations, even administrative investigations, have appropriate training, which typically means they must have the specialized training required of investigators in § 115.34, but also might require additional training if those responsible for investigations have no investigative experience.
- Agencies do not have the authority to demand that external investigative agencies establish policies that adhere to the requirements in PREA Standards §115.21 and §115.22. They should request that external agencies follow the outlined requirements and ensure that they are adhering to the requirements under their control, which are designed to maximize the potential for a response/investigation that centers victims and holds abusers accountable.

Best Practices

- Agencies should establish memoranda of understanding or other agreements with outside law enforcement agencies that will be conducting criminal investigations inside facilities if the agency/facility does not have trained criminal investigators on staff. These agreements should clearly state criteria for determining whether an allegation involves potentially criminal behavior, notification and referral procedures, and roles and responsibilities of the administrative and criminal investigators

Best Practices Cont'd

- Staff should be trained to understand when an allegation involves potentially criminal behavior. An allegation of sexual abuse of an inmate that involves any type of contact is an allegation of a chargeable offense, in which case staff at the facility should know to refer such allegations for criminal investigation. Similarly, if staff suspect any potential instance of sexual abuse of an inmate that involves any type of contact, criminal investigators should be notified. If there is any question about whether information or an allegation raises the possibility that a criminal act occurred, line staff should be trained to ensure that supervisors or an administrative investigator in the facility, if available, is aware of the concern and can make a preliminary inquiry to determine whether there is any potential criminal behavior.
- The facility should reach out to the external investigative agency and the prosecutor's office to provide training directly or through a technical assistance provider about the dynamics of sexual abuse in confinement, to raise awareness and underscore the importance of treating crimes committed against people who are incarcerated as crimes.
- In an effort to bridge the knowledge gap between a first responder and a fully-trained, experienced, and authorized investigator, agencies may want to explore ways to provide facility staff with basic, or even some advanced training on conducting criminal investigations. Training coordinators might look to their state law enforcement training academies to determine if (1) investigations training is provided and (2) if it can be made available to corrections and local detention staff. In addition, some universities with robust criminal justice schools might also provide investigations training either as part of their course work, through an extension education service, or an adult continuing education program. In any case, the agency would need to understand what credentials or authority completion of such courses would provide and clearly incorporate this into policy, procedure, practice, and staff training.

Audit Issues

- Auditors will review the agency's policy regarding referrals for criminal investigations, check whether the policy has been published on the agency's website or by other means, and review documentation of referrals to ensure they took place when appropriate. The agency's policy must make explicit both the responsibilities of the agency in a criminal investigation and the corresponding responsibilities of the external investigating entity.
- Auditors will also review any other relevant documentation such as memoranda of understanding and/or policies developed by the external entities that govern investigations in correctional facilities. Additionally, auditors will interview internal investigators, agency leaders, and others to determine whether they understand the agency's policy and their roles and responsibilities following an allegation of sexual abuse or sexual harassment. Auditors will review all allegations of sexual abuse and sexual harassment from at least the past 12 months in order to ensure that all allegations resulted in investigations and that referrals to criminal investigators were made in every appropriate instance. They will also interview inmates who have reported sexual abuse about how they experienced the investigative process. Finally, during the site review, they may ask to see offices or spaces where an external investigator would be stationed while on site during the investigation to ensure that the facility is prepared to accommodate an appropriate criminal investigation.

Standard Variations

In addition to **Prisons and Jails**, the requirements in §115.22 apply to **Lockups** (§115.122), **Community Confinement Facilities** (§115.222), and **Juvenile Facilities** (§115.322).

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 policies to ensure referrals of allegations for investigations. Visit the PRC FAQ page and search for guidance under the standard 115.22 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>

➤ **Webinars, Videos, and other Online Curricula**

- **Webinar: Prosecuting Sexual Abuse in Confinement: A Case Study**
This webinar highlights investigative and prosecutorial strategies by utilizing an actual case that was prosecuted at the local level.
<https://www.prearesourcecenter.org/training-and-technical-assistance/webinars/1873/prosecuting-sexual-abuse-confinement-case-study>
- **Webinar: Investigating and Prosecuting the Intimidation of Victims of Sexual Abuse in Confinement**
This webinar is designed to identify strategies for investigations and prosecutions that build trust in the criminal justice system and provide multiple, safe, and confidential points of entry for potential reporters.
<https://www.prearesourcecenter.org/training-and-technical-assistance/webinars/1660/investigating-and-prosecuting-intimidation-victims>
- **Video: Investigating Sexual Assault and Sex Related Crimes in Confinement Settings: Guidance for Criminal Investigators**
Authors: International Association of Chiefs of Police
<https://vimeo.com/183649686>
- **Curricula: Investigating Allegations of Staff Sexual Misconduct with Inmates [Lesson Plans]**
Authors: Susan McCampbell, Elizabeth P. Layman
<https://www.prearesourcecenter.org/sites/default/files/library/125-investigatingallegationsofstaffsexualmisconductoctober2000.pdf>

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