

# POWER HOUR

Chat with a PREA Expert

115.67

Agency protection against  
retaliation

December 13, 2022

**IMPACT/JUSTICE**

NATIONAL  
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RESOURCE  
CENTER



# Lisa Capers

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## National PREA Resource Center Mission

The mission of the PRC is to assist adult prisons and jails, juvenile facilities, lockups, community confinement, and tribal facilities in their efforts to eliminate sexual abuse by increasing their capacity for prevention, detection, monitoring, responses to incidents, and services to victims and their families.

# Logistics

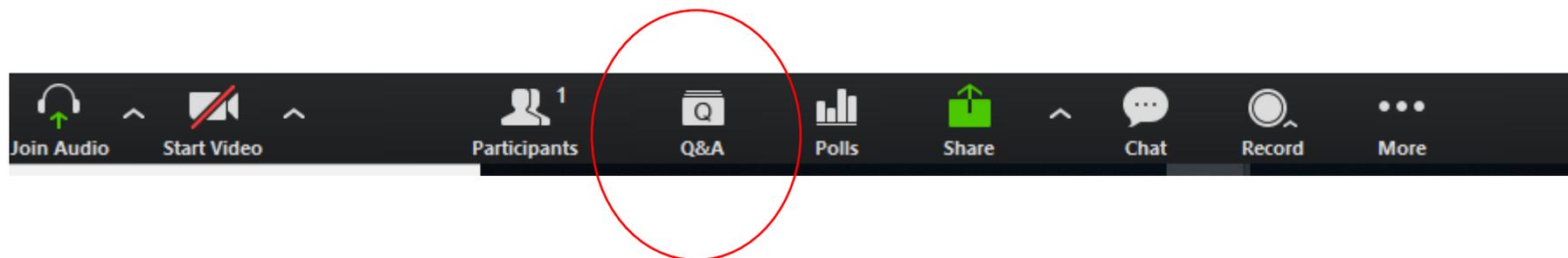
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# Logistics

## Submitting questions

- To submit a question during the webinar, use the Q&A feature on your webinar toolbar, as seen below.
- Presenters will address the questions at the end of the presentation.





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## Standard requirements



### § 115.67, 115.167, 115.267, 115.367

- a. The agency shall establish a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff, and shall designate which staff members or departments are charged with monitoring retaliation.
- b. The agency shall employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

## Standard requirements (cont.)

§ 115.67, 115.167, 115.267, 115.367



- c. For at least 90 days **following a report of sexual abuse**, the agency shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

## Standard requirements (cont.)

§ 115.67, 115.167, 115.267, 115.367

- d. In the case of inmates, such monitoring shall also include periodic status checks.
- e. If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.
- f. An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.



## Purpose of the Standard

This Standard establishes protections for all inmates and staff from retaliation for reporting sexual abuse or sexual harassment and for cooperating with sexual abuse investigations. The Standard recognizes the fact that retaliation for reporting instances of sexual abuse, and for cooperating with sexual abuse investigations is a serious concern in correctional facilities. Additionally, the Standard's monitoring requirements provide specifics about who must be monitored following a report of sexual abuse, what issues must be monitored, and the timeline for monitoring. The Standard creates a strong detection and monitoring system for these issues, which will deter retaliation and support an effective reporting system.

# Implementation

## Policy

The **agency** must establish a **policy** to:

1. Protect inmates and staff who report sexual abuse or sexual harassment from retaliation by other inmates or staff.
2. Protect inmates and staff who cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff.
3. Designate which staff members or departments are charged with monitoring retaliation.

# Implementation (cont.)

## Protection measures

The **agency** must use multiple protection measures, such as the following:

- **For inmates:**

1. Housing changes or transfers for inmate victims or abusers.
2. Removal of alleged staff or inmate abusers from contact with victims.
3. Emotional support services for inmates who fear retaliation for reporting sexual abuse or sexual harassment, or for cooperating with investigations.

**Note:** The use of segregated housing to protect a victim should be a last resort and is subject to the requirements of Standard 115.43.

# Implementation (cont.)

## Protection measures (cont.)

The **agency** must use multiple protection measures, such as the following:

- **For staff:**

1. Emotional support services **for staff** who fear retaliation **for reporting** sexual abuse or sexual harassment **or for cooperating** with investigations.

# Implementation (cont.)

## Monitoring

- For at least 90 days **following a report of sexual abuse** the agency must monitor the following for changes that may suggest retaliation by inmates or staff:
  1. Inmates and staff who reported sexual abuse.
  2. Inmates who were reported to have suffered sexual abuse.
- Retaliation monitoring **must start as soon as a report of sexual abuse is made or when cooperation** with a sexual abuse investigation **begins**. Starting the monitoring **is not contingent** on the investigation's completion or outcome.

# Implementation (cont.)

## Monitoring

- The agency must act promptly to remedy any retaliation that may be detected.
- Monitoring should include:

### **For inmates:**

1. Disciplinary reports.
2. Housing changes.
3. Program changes.
4. Periodic status checks.

# Implementation (cont.)

## Monitoring

- The agency must act promptly to remedy any retaliation that may be detected.
- Monitoring should include:

### **For staff:**

1. Negative performance reviews.
2. Reassignments.

# Implementation (cont.)

## Monitoring

- Monitoring must continue beyond the initial 90 days if the initial monitoring indicates a continued need.
- If any individual who cooperates with an investigation expresses a fear of retaliation, the agency must also protect that individual against retaliation.
- **Agency monitoring duties end:**
  1. If the agency investigates the allegation and determines that it did not occur (i.e., that it is unfounded). **Note: Monitoring for retaliation is required if the agency investigates the allegation and determines it to be substantiated or unsubstantiated.**
  2. 90 days following a report of sexual abuse, unless the initial monitoring indicates a continuing need.

# Challenges

- Identifying all inmates and staff who require protective measures and retaliation monitoring following an incident or report of sexual abuse.
- Identifying all available protective measures. For example, physical plant restrictions may constrain housing options for smaller facilities. If facilities are unable to accommodate housing changes, the facilities must identify and employ alternative protection measures.
- Ensuring that protective measures such as housing changes are explained to inmates and not perceived as retaliatory.
- Ensuring that retaliation against staff is monitored to the same extent as retaliation against inmates.

# Challenges (cont.)

- Maintaining staff and inmate confidentiality while monitoring for possible retaliation.
- Monitoring potentially large numbers of staff and inmates for possible retaliation.
- Ensuring that all retaliation monitoring and results, including periodic status checks of inmates, are properly documented.
- Promptly addressing any retaliation.

# Best practices

- This Standard is not designed to provide an exhaustive list of measures to take to protect staff and inmates from retaliation; rather, the Standard offers a number of potentially effective measures and affords agencies the flexibility to develop a monitoring policy consistent with their existing operations and professional judgment.
- Agencies can demonstrate that they take retaliation seriously by communicating proactively with inmates and staff about retaliation concerns; by explaining the steps in place to prevent and address retaliation; and by using the perspectives of inmates and staff to develop or revise agency policies that focus on retaliation.
- Agencies should ensure that all staff are trained on the specific actions that may be considered or perceived as retaliatory.

# Best practices (cont.)

- PREA Coordinators and PREA Compliance Managers should periodically meet with designated staff charged with monitoring retaliation to ensure that all monitoring efforts are documented and that all potential acts of retaliation are addressed.
- Agency policy should limit the number of staff with access to the names of staff and inmates who are being monitored because of concerns related to retaliation.
- Agencies should ensure that staff members who may be involved in retaliation are not entrusted with monitoring responsibilities.
- Staff or inmates who are alleged abusers should be removed from contact with the alleged victim pending the outcome of the investigation.

# Audit issues

- Auditors must ensure that the agency has a policy to protect all inmates and staff who report sexual abuse or sexual harassment, or who cooperate with sexual abuse or sexual harassment investigations, from retaliation by other inmates or staff.
- Auditors must ensure that the agency designates staff member(s) or charges department(s) with monitoring for possible retaliation.
- Auditors will interview the agency head, warden or designee, and staff designated to monitor retaliation to be sure that these stakeholders have a consistent and comprehensive understanding of the agency's policies to prevent and address concerns related to retaliation.

# Audit issues (cont.)

- Auditors will ask other staff members during interviews about the agency's efforts to prevent and address retaliation against inmates and staff who report sexual abuse and sexual harassment, and who participate in investigations of such reports.
- Auditors will interview inmates who allege they have suffered sexual abuse and inmates who have reported sexual abuse. Auditors should be aware that such inmates may be in segregated or restrictive housing. The focus of these inmate interviews should include the steps taken by the agency to prevent and address any retaliation from other inmates and staff.
- Auditors will review documentation of retaliation reports and agency responses, monitoring efforts, protective measures taken, and instances when monitoring was stopped and continued 90 days after a report of sexual abuse. When monitoring is stopped 90 days after a report of sexual abuse, documentation should include an explanation of why the monitoring is no longer needed.

## Standard Variations

The following variations in the standard are noted **for Lockup 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 do not set a time limit for monitoring staff or detainees who report, and do not list specific items to monitor. Standard 115.167 (c) states, in full: “The agency shall monitor the conduct and treatment of detainees or staff who have reported sexual abuse and of detainees who were reported to have suffered sexual abuse, and shall act promptly to remedy any such retaliation.”
- The Lockup Standards do not require that monitoring detainees include periodic status checks, as required for inmates under Standard 115.67(d)

**Juveniles & Community Confinement:** No differences.

## Resources

### **PREA Resource Center Library**

- Michigan Department of Corrections PREA Sexual Abuse Retaliation Monitoring Form (Available by searching the National PREA Resource Center library)

### **Archived Webinars on the PRC Website**

- April 21, 2005. Keeping Vulnerable Populations Safe Under PREA: Alternative Strategies to the Use of Segregation in Prisons and Jails  
[https://www.prearesourcecenter.org/sites/default/files/library/keepingvulnerablepopulationssafeunderpreaapril2015\\_0.pdf](https://www.prearesourcecenter.org/sites/default/files/library/keepingvulnerablepopulationssafeunderpreaapril2015_0.pdf)

## Resources

Always check the following sources for excellent training on PREA:

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

# Questions & Answers



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## Resource library

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**TOOL: AUDIT**

**Documentation Requirements - Juvenile PREA Standards**

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**STANDARDS:**

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**FACILITY:** Juvenile Facility

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Audit Instrument (+1)

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**Documentation Requirements - Prisons and Jail PREA Standards**

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**STANDARDS:**

All

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**FACILITY:** Prisons and Jails

**TERMS:** Compliance  
Audit (+1)

**FEATURED RESOURCE**

**WEBINAR**

**Power Hour: Chat with a PREA Expert on Standard 115.32**

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**STANDARDS:**

115.32

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**FACILITY:** Community Confinement  
Juvenile Facility (+2)

**TERMS:** Volunteers  
Contractors (+2)

**WEBINAR**

**PRC Website Revision: Overview and Q&A**

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**STANDARDS:**

None

**FEATURED RESOURCE**

**WEBINAR**

**Developing a PREA-Compliant Language Access Plan for Incarcerated...**

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**STANDARDS:**

115.16, 115.21, 115.51, 115.53

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**FACILITY:** Community Confinement  
Juvenile Facility

**TERMS:** Accessibility  
Limited English proficient

**TOOL: AUDIT**

**Audit Report Template - Juvenile Facilities**

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**STANDARDS:**

115.401

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**FACILITY:** Juvenile Facility

**TERMS:** Audit  
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## Implementation

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Training

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### Request for assistance

Please fill out the form below in order to request PREA-related training and/or technical assistance for your jurisdiction or agency. The more detail provided in your request will improve the PREA Resource Center's (PRC) ability to meet your needs. For jurisdictions less familiar with PREA, the PRC would encourage you to browse the resources on the [Where to begin page](#). If your jurisdiction has general questions or comments for the PRC you can communicate those through the [Contact us form](#).

To submit information on complaints or concerns about the conduct of a DOJ-certified PREA auditor, please refer to the [Auditor feedback form](#).

The PRC collects the information below in order to efficiently route and respond to inquiries. While all fields are not required, please fill out as much information as possible so that we may better assist you.

# Request assistance

Jurisdictions can request assistance by completing a web form on the PRC website under the “Implementation” tab and clicking “Request for assistance” under “Training.”

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# Sign up for our PRC Newsletter

Jurisdictions can sign up for the PRC Newsletter by completing a web form on the PRC website under the “How to use this site” tab and going to Frequently Asked Questions and clicking “Subscribe to our newsletter.”

# Dana Shoenberg

## PRC Director

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For more information about the National PREA Resource Center, visit [www.prearesourcecenter.org](http://www.prearesourcecenter.org).

To ask a question, please visit our [Contact us](#) page.

**Thank you!**



**Good luck!**

# Notice of federal funding and federal disclaimer

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