

Standard in Focus

Prevention Planning**§115.17, 115.117, 115.217, 115.317 Hiring and promotion decisions**

- a)** The agency shall not hire or promote anyone who may have contact with inmates, and shall not enlist the services of any contractor who may have contact with inmates, who—
 - i. Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);
 - ii. Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
 - iii. Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.
- b)** The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.
- c)** Before hiring new employees who may have contact with inmates, the agency shall:
 - i. Perform a criminal background records check; and
 - ii. Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.
- d)** The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates.
- e)** The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees.
- f)** The agency shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.
- g)** Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.
- h)** Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

Purpose

To prevent staff sexual misconduct by ensuring that individuals who have a prior history of being sexually abusive are not hired or contracted into positions where they may have contact with inmates; and to ensure that the agency is aware of any substantiated acts of sexual abuse or sexual harassment perpetrated by existing staff to prevent the promotion of that staff and to ensure that any other appropriate action be taken to protect inmates.

Implementation

- The agency must implement hiring and promotion practices, and devise methods to collect and document information that will demonstrate compliance with the requirements reflected in the standard. In most cases, these practices and methods will be communicated through the agency's policy and procedures manual. Confirmation that these practices and/or policies are being implemented will usually be captured in employment applications and interview notes, personnel reviews, and evidence of criminal background and records checks. Achieving compliance with the standard may entail reviewing, updating, and incorporating the requirements into current practices and policies, and ensuring the staff responsible for hiring and promoting are familiar with the standard and these changes.
- The agency may not hire or promote any employee or enlist the services of any contractor who may have contact with inmates, which includes anyone who provides recurring services to the agency, if the agency knows that person to have a history of sexual abuse described in the standard. That includes:
 - Having engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (this means there is some administrative adjudication substantiating that the sexual abuse occurred in an institution, defined as state facilities for people who are mentally ill, disabled, or retarded, or chronically ill or handicapped; residential care or treatment facilities for juveniles; and facilities that provide skilled nursing, or intermediate or long-term care, or custodial or residential care);
 - Having been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse;
 - Having been civilly or administratively adjudicated to have engaged in any of the activity described above.
- Agencies are required to consider any incidents of sexual harassment in determining whether to hire, promote, or contract with anyone who may have contact with inmates. This consideration must be formal and documented in each case in a manner that an auditor can review.
- Prior to hiring new employees or enlisting contractors who may have contact with inmates, agencies must conduct a criminal background records check, which at a minimum means the agency must access the standardized criminal records databases maintained and widely used by law enforcement agencies. For prospective employees, the agency must also make best efforts to contact all previous institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of sexual abuse.
- The agency must directly ask all applicants for a new position or a promotion who may have contact with inmates about any previous incidents of institutional or community sexual abuse in interviews or written applications. The agency must take similar steps with employees up for review by directly asking them about any prior incidents in interviews or written self-evaluations. In addition to these measures, employees must be required by the agency to affirmatively disclose any sexual misconduct.

Implementation Cont'd

- The presumptive disciplinary action for failing to disclose information regarding prior sexual misconduct or providing false information shall be termination.
- Unless prohibited by law, the agency is required to provide information regarding substantiated incidents of sexual abuse or sexual harassment involving a former employee when contacted by a new prospective employer of that person. This requirement aims to address the fact that staff may resign from one correctional facility (in lieu of being terminated) because of an incident or investigation of staff sexual abuse or harassment and seek employment at another correctional facility.

Challenges

- Dedicating staff resources to ensure screenings of prospective employees and contractors are thorough and timely.
- Devising measures to ensure that current employers and contractors are automatically screened at 5-year intervals.
- Maintaining clear and detailed records of employee conduct—both for ensuring that any incidents of sexual abuse or harassment are considered during employee reviews and for being prepared for any request regarding the employee's conduct from a future prospective employer.
- Obtaining and providing information about substantiated allegations of sexual abuse or sexual harassment involving former employees, because many agencies have policies that prohibit them from providing such information.

Best Practices

- The PREA Coordinator should become familiar with hiring and promotion practices and ensure not only that practices are compliant, but that compliant practices are adequately documented.
- Hiring staff/human resource departments within correctional agencies should coordinate with internal investigators to determine who will conduct criminal and institutional background checks and decide how information will be communicated and maintained.
- Staff who conduct interviews with applicants and managers who conduct reviews with employees should be trained on how to ask individuals about prior sexual misconduct.

Audit Issues

Auditors will review policies, application materials, personnel review materials, contracts for services, and investigation and/or personnel files. They will also conduct interviews with investigators, hiring staff, and current employees and ask questions about how hiring and promotion decisions are made.

Standard Variations

In addition to **Prisons and Jails**, the requirements in §115.17 apply to **Lockups** (§115.117), **Community Confinement Facilities** (§115.217), and **Juvenile Facilities** (§115.317).

The following variations in the standard are noted for **Juvenile Facilities**. 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.

- In addition to conducting criminal records background checks of all potential employees and contractors, the agency must, in the case of potential employees, consult the child abuse registry maintained by the State or locality in which the employee would work, and in the case of potential contractors, consult any applicable child abuse registries.

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 hiring and promotions. Visit the PRC FAQ page and search for guidance under the standard 115.17 for the many related FAQ responses provided by DOJ. The FAQs to date are as follows:

- **September 29, 2015.** *Does the provision in standard 115.17(f) that requires the agency to ask employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of the standard, “in any interview or written self-evaluation conducted as part of reviews of current employees,” still apply if the agency does not interview nor provide employees with an opportunity to self-evaluate as part of their review process? And, if so, does an ongoing affirmative duty to report said misconduct as an employee of the agency satisfy this requirement?*
<https://www.prearesourcecenter.org/node/3601>
- **September 29, 2015.** *Do the PREA standards require that agencies conduct criminal records background checks on, and provide PREA-related contractor or volunteer training for, public defenders, other attorneys, interns working with public defenders or other attorneys, or law students practicing as attorneys under a practice agreement, pursuant to legal representation, before they may enter a confinement facility?*
<https://www.prearesourcecenter.org/node/3212>
- **September 28, 2015.** *Are there criminal records background check and training requirements for individuals who have regular contact with inmates, residents, or detainees, and who provide recurring services to the agency, or on behalf of the agency? Such services are provided inside facilities pursuant to an informal arrangement, agreement, or understanding, rather than a written, formal contract or agreement.*
<https://www.prearesourcecenter.org/node/3211>

Resources Cont'd

- **September 28, 2015.** *Are teachers and other education workers in a PREA-covered facility subject to the criminal background records check of standard 115.17 (115.117/115.217/115.317), or the employee and contractor training requirements of standards 115.31 (115.131/115.231/ 115.331) and 115.32 (115.132/115.232/115.332)?*
<https://www.prearesourcecenter.org/node/3207>
- **September 28, 2015.** *Many corrections agencies, particularly community confinement agencies, place their inmates or residents in employment settings off-site. In many cases, there is no explicit contractual arrangement between the correctional agency and the employer. However, these employers have significant contact with inmates or residents. In some cases, inmates or residents are sent to other correctional facilities during the day to work. Are there any circumstances in which off-site supervisors would be subject to either the criminal background records check requirements of standard 115.17 (115.117/115.217/115.317) or the contractor training requirements of standard 115.32 (115.132/115.232/115.332)?* <https://www.prearesourcecenter.org/node/3205>
- **September 28, 2015.** *Under what circumstances would medical and mental health care providers who provide services to inmates or residents off-site (only) be subject to the criminal background records check requirements of standard 115.17 (115.117/115.217/115.317), the contractor training requirements under standard 115.32 (115.132/115.232/115.332), and/or the specialized training requirements for medical and mental health care providers in standard 115.35 (115.232/115.332)? Must a formal contract for services exist for these requirements to be triggered? Are the specialized training requirements ever triggered in the case of off-site medical or mental health providers, for instance, when there is no health care available at the facility and so all health care is provided off-site?*
<https://www.prearesourcecenter.org/node/3204>
- **August 12, 2014.** *Under what circumstances may former sex offenders, as identified in PREA standards 115.17(a)/117(a)/217(a)/317(a), be hired or contracted with by a confining agency when that former offender is utilized in programs to aid in rehabilitative programming for inmates, detainees, or residents?*
<https://www.prearesourcecenter.org/node/3206>
- **PREA Essentials on the National PREA Resource Center Webpage**
www.prearesourcecenter.org/training-technical-assistance/PREA-essentials
- **Archived Webinars (2012 & 2013): The National PREA Standards: Implications for Human Resource Practices in Correctional Settings**
<https://www.prearesourcecenter.org/training-technical-assistance/prea-in-action/youthful-inmate-implementation>

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