

POWER HOUR

Chat with a PREA Expert

115.61

Staff and agency reporting
duties

March 16, 2023

IMPACT/JUSTICE

NATIONAL
PREA
RESOURCE
CENTER



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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

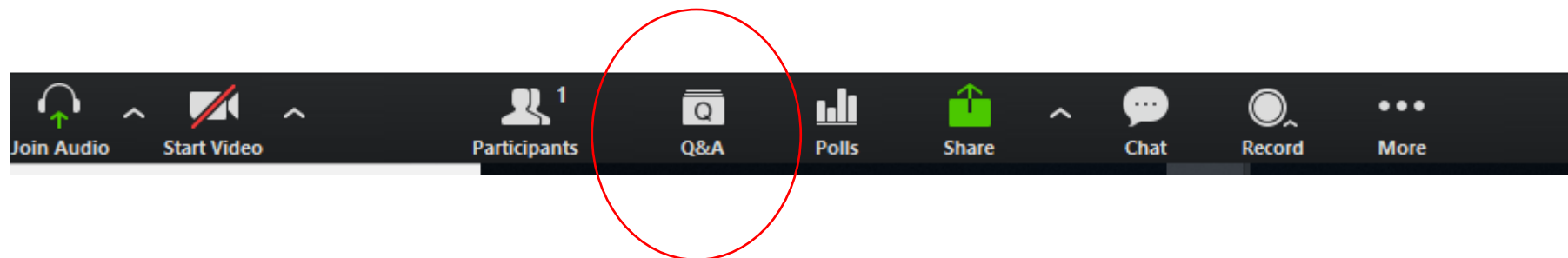
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Logistics

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- Presenters will address the questions at the end of the presentation.





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Standard requirements

§ 115.61, 115.161, 115.261, 115.361

- a) The agency shall require all staff to report immediately **and according to agency policy** any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
- b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, **as specified in agency policy**, to make treatment, investigation, and other security and management decisions.



Standard requirements (cont.)

§ 115.61, 115.161, 115.261, 115.361

- c) Unless otherwise precluded by federal, state, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.
- d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a state or local vulnerable persons statute, the agency shall report the allegation to the designated state or local services agency under applicable mandatory reporting laws.



Standard requirements (cont.)

§ 115.61, 115.161, 115.261, 115.361

- e) The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.



Purpose of the Standard

- To establish a strong, effective reporting culture among staff and ensure that the agency and facility receive timely information about sexual abuse, sexual harassment, retaliation, and staff neglect, or violations of responsibilities that may have contributed to an incident or retaliation. The standard requires the agency to ensure that facility staff report all allegations while also taking steps to protect the confidentiality of sexual abuse information by sharing internally with only those who need to know.



Purpose of the Standard

- To build confidence and trust in the reporting system and help minimize a victim's fear of reporting and possible retaliation by requiring that inmates be informed up front about the limits of confidentiality when receiving medical and mental health services. Robust reporting requirements and a system that values and protects confidentiality help create healthy, open, and safe environments that enhance protections for victims.

Implementation – internal reporting



Internal reporting

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

- Require all staff members, including medical and mental health practitioners, to immediately report any knowledge, suspicion, or information of any incident in any facility, even in a facility that is not a part of the agency, regarding:
 - Sexual abuse or sexual harassment.
 - Retaliation against an inmate or staff who reported an incident of sexual abuse or sexual harassment.
 - Staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

Implementation – internal reporting (cont.)



Internal reporting

- The **agency** must have a **policy** to:
 - Require medical and mental health practitioners to inform inmates of their duty to report incidents and any limitations of confidentiality at the beginning of the medical or mental health services (unless otherwise precluded by federal, state, or local law). This requirement should also be included in contractual agreements if the medical and/or mental health staff provide services to the agency or facility per a contract.
 - Identify those individuals with a need to know who may receive information related to sexual abuse reports to allow decisions to be made about treatment, investigations, and other security and management issues.

Implementation – internal reporting (cont.)



Internal reporting

- The **agency** must have a **policy** to:
 - Prohibit staff from revealing information related to a sexual abuse report to anyone other than individuals specified in the agency reporting policy.
- The **facility** must ensure that all allegations of sexual abuse and sexual harassment, including third-party and anonymous allegations, are reported to the facility's designated investigators.

Implementation – external reporting



External reporting

- The **agency** must comply with applicable state or local mandatory reporting laws and report any sexual abuse allegations concerning any victim under the age of 18, or any victim considered a vulnerable adult, to the designated state or local services agency as required by state or local law.

Challenges



- Overcoming any potential staff “code of silence” or fear of retaliation, especially when allegations or suspicions concern the conduct of other staff.
- Fostering a culture where staff value their own personal integrity above loyalty to any code of silence and creating an environment where staff are engaged and willing to report red flags they have observed and suspicions they may have regarding those with whom they work, including those within the chain of command.
- Educating staff that they cannot judge the validity or merit of any allegation, and that they must report every allegation, even if it is based on “hearsay” or “rumor.”

Challenges (cont.)



- Establishing clear reporting protocols and identification of the chain of reporting.
- Identifying the individuals who need to know certain information relating to a sexual abuse report and ensuring that those individuals receive no more information than is strictly necessary to make treatment, investigation, and other security and management decisions.
- Ensuring that authorized staff who are privy to information regarding sexual abuse allegations maintain and protect the confidentiality of the information.
- Identifying any applicable state or local reporting laws, determining which staff are considered mandatory reporters, and training these staff on their specific roles and responsibilities as mandatory reporters.

Best practices



Agency **policy** on staff reporting duties should clearly explain, at a minimum, the following:

- **Who is required** to report under the policy:
 - All employees and contract staff. This includes medical and mental health practitioners, specifically including practitioners who work directly for the agency or facility, and practitioners who work pursuant to a contractual agreement with the agency or facility.
 - **Note:** *Reporting requirements for medical and mental health practitioners should also be included in relevant medical and mental health policies, which should be cross-referenced in the staff reporting policy.*

Best practices (cont.)



Agency **policy** on staff reporting duties should clearly explain, at a minimum, the following:

- **What types of incident** must be reported:
 - Any incident of either sexual abuse or sexual harassment that may have happened in any correctional facility, including:
 - In the facility where the staff member works.
 - In another facility within the agency.
 - In a facility outside the agency entirely.
 - Retaliation against inmates or staff who reported such an incident.
 - Staff neglect or violation of responsibilities that may have contributed to an incident.

Best practices (cont.)



Agency **policy** on staff reporting duties should clearly explain, at a minimum, the following:

- **What level of awareness** must be reported:
 - The PREA Standards require the reporting of any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment. These terms are discussed below:
 - **Knowledge of an incident** is when a staff member knows for certain that something happened, based on firsthand knowledge (i.e., the staff person saw and/or heard the incident); or the staff person is told about an incident by someone who witnessed it firsthand.
 - **Suspicion that an incident may have occurred** is when a staff person thinks, but is not totally certain, that something may have happened or is happening. Suspicion may be based on “**red flags**,” or hearing other talk about possible sexual abuse or sexual harassment.

Best practices (cont.)



- **Information regarding an incident** is when a staff person has been told something or receives a note or “kite” from an inmate about an incident. The information may be second-hand and not based on the reporter’s personal knowledge or firsthand observations.

Important notes on reporting knowledge, suspicion, and information:

- “Hearsay” or “rumors” are types of information from other people that cannot be substantiated or proven. Staff members are required to report all information they have about instances of sexual abuse and sexual harassment, **including rumors and hearsay.**
- It is important to emphasize in policy that staff members must report knowledge, suspicion, and information regardless of whether staff personally believe the information to be true or reliable.
- Staff must also report knowledge, suspicion, and information regardless of whether an incident is under investigation, or even if an investigation about the incident has already been completed.

“Red Flags”



A few common examples of “**red flags**” that may indicate that sexual abuse or sexual harassment by another inmate or staff member is or may be occurring **include, but are not limited to:**

- Changes in an inmate’s behavior for no apparent reason; inmates in unauthorized areas or repeatedly out of their assigned place; horseplay, sexualized interactions between staff and inmates.
- Staff granting special requests, showing favoritism, or spending unexplainable amounts of time with an inmate; staff being overly concerned about an inmate or over-identifying with the inmate or their issues.
- Inmate refuses to take showers or undress in shower or seeks to be alone or isolated from a particular inmate.

“Red Flags” (cont.)



- Conversations between staff and inmate that are sexualized in nature; staff taking inmate out of cell at unusual times; staff have excessive knowledge about inmate and his/her family situation; staff work in secluded areas with inmate(s); staff defend an inmate; staff in facility during “off hours”.
- Inmate knows personal information about staff; inmate has letters or photos of staff.
- Inmate appears to have more personal items or food than others; inmate improving his/her appearance, dress, make-up, hair.

Best practices (cont.)



Agency **policy** on staff reporting duties should clearly explain, at a minimum, the following:

- **Who shall receive reports:**

- Should clearly explain to whom staff members must report sexual abuse and sexual harassment, for all types and levels of staff members:
 - Non-uniform or civilian staff members typically are required to report directly to their immediate supervisor.
 - Uniform staff typically are required to report according to the established chain of command. However, some facilities require all reports of sexual abuse and sexual harassment to be made to the facility head or warden.

Best practices (cont.)



- **Who receives reports:**
 - Uniform and civilian supervisory staff should be required to report to a higher-level person, possibly including the facility head/warden.
 - Facility investigators, having received specialized training for investigating sexual abuse in confinement settings, must receive all reports. This includes third-party and anonymous reports.
 - It must also be made clear to whom staff may or must reveal information related to a report of sexual abuse or sexual harassment.

Best practices (cont.)



Agency **policy** on staff reporting duties should clearly explain, at a minimum, the following:

- **When** to report:
 - Staff members must report immediately and according to agency policy. This requirement allows for immediate verbal notification and for written reports pursuant to policy, which may provide additional time.

Best practices (cont.)



Agency **policy** on staff reporting duties should clearly explain, at a minimum, the following:

- **How** to report:
 - Staff members must be allowed to make reports privately and verbally (e.g., in person, by phone, or by radio/facility communication device).
 - Staff should be required to make the report in writing within a defined time period (e.g., by the end of the staff member's shift, within 24 hours, or during some other appropriate period that is clearly stated in policy).

Best practices (cont.)



- Effective training for staff on their reporting duties:
 - Trainings should cover all aspects of the reporting policy, including the specific staff members who are in the reporting chain; the requirement imposed on all staff members to make reports of alleged incidents of sexual abuse and sexual harassment that come from third-party and anonymous sources; the time frame for reporting; methods for reporting; and documentation requirements.
 - Trainings should focus on why “hearsay” and “rumors” regarding sexual abuse and sexual harassment must be reported and should describe how the information can be used to enhance safety.
 - Staff members should be trained on recognizing “red flags” that can both indicate abuse and help prevent abuse.

Best practices (cont.)



- Staff members must understand that they cannot make any decisions on the merit of the allegations; all allegations must be reported, regardless of a staff member's opinion about the validity or merit of the information.
- Trainings for staff members should focus on retaliation and fear of retaliation, which often keep victims and staff members from reporting sexual abuse and sexual harassment. Such trainings should emphasize that the agency and the facility do not tolerate retaliation and include steps that staff members can take if they experience or are concerned about retaliation.
- Trainings for staff members should focus on personal integrity and emphasize that the codes of silence that may have existed in agencies and facilities previously are not acceptable and will not be tolerated.

Best practices (cont.)



Mandatory reporting:

- Agencies and facilities should work with their general counsels or other legal representatives, and medical and mental health staff to determine whether they are subject to mandatory reporting laws. Mandatory reporting laws vary by jurisdiction and identify classes of people who are required to report abuses of specified vulnerable populations, including minors and elderly people, to external protection agencies.

Audit issues



- Auditors must assess agency practice to ensure that all staff report any knowledge, suspicion, or information regarding any incident of sexual abuse or sexual harassment that occurred in a facility, regardless of whether it happened in that agency; retaliation against inmates or staff who report such incidents; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
- Auditors must ensure the agency is properly reporting and responding to sexual abuse allegations involving victims under the age of 18 or who are considered a vulnerable adult under state or local statutes.

Audit issues (cont.)



- Auditors must assess whether medical and mental health practitioners are required to report sexual abuse, and to inform inmates of their limitations of confidentiality at the initiation of services.
- Auditors must interview a random sample of staff to ensure, as it relates to this standard, that they are aware of their reporting duties and their responsibility not to reveal any information related to a sexual abuse or sexual harassment report to anyone other than those who must know the information.
- Auditors must review reports of sexual abuse and sexual harassment that are made to investigators, to evaluate whether agency staff members complied with their reporting responsibilities for all allegations.

The following variations in this 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.

Community Confinement: None

Lockups:

- The lockup standards require reporting about incidents of sexual abuse and sexual harassment that occur in an agency lockup facility **only** and do not extend to facilities that are not part of the agency. For example, if a detainee in a lockup states they were sexually abused in a confinement facility prior to being placed in the lockup, the staff member *may* report this, but there is no actual requirement to do so.

Lockups:

- Like the other facility types, the lockup standards limit providing information about sexual abuse and sexual harassment, other than to designated supervisors and to staff specified in agency policy for treatment and investigation decisions. However, the lockup standards do not require incidents of sexual abuse and sexual harassment be reported to staff in charge of facility security and day-to-day management of detainees.
- The lockup standards do not contain any requirements regarding reporting responsibilities or disclosure of limits of confidentiality for any medical or mental health practitioners. However, these practitioners may have such obligations based on their own professional licensures and/or codes of professional responsibility. They may also be required by mandatory reporting laws in their particular state to disclose the limits of confidentiality.

Juvenile Facilities:

- The juvenile standards incorporate “designated State or local services agencies” into §115.361(c) as entities expected to receive information about sexual abuse and sexual harassment reports, in addition to the “designated supervisors or officials” identified in the prison and jail standards.
- The juvenile standards clarify that medical and mental health practitioners are required to report to the designated state or local services agency where required by mandatory reporting laws. Notification to these agencies is necessary only if state law requires it. In some states, child abuse in juvenile confinement facilities is investigated by offices of inspectors general or other external investigative entities that are not part of the child protective service agencies.

Juvenile Facilities:

Additional external reporting requirements:

- (e)(1) Upon receiving any allegation of sexual abuse, the facility head or his or her designee shall promptly report the allegation to the appropriate agency office and to the alleged victim's parents or legal guardians, unless the facility has official documentation showing that the parents or legal guardians should not be notified.
- (2) If the alleged victim is under the guardianship of the child welfare system, the report shall be made to the alleged victim's caseworker instead of the parents or legal guardians.
- (3) If a juvenile court retains jurisdiction over the alleged victim, the facility head or designee shall also report the allegation to the juvenile's attorney or other legal representative of record within 14 days of receiving the allegation.

Resources

Frequently Asked Questions:

<https://www.prearesourcecenter.org/frequently-asked-questions>

The Department of Justice has issued extensive guidance regarding reporting obligations. Visit the PREA Resource Center's FAQ page and search under Standard 115.61 for the many related FAQ responses provided by the Department of Justice. The FAQs to date are as follows:

- **November 18, 2015.** What are the agency's reporting obligations under Standard 115.361(e) in cases where a juvenile is an emancipated youth?
<http://www.prearesourcecenter.org/node/3812>

Resources

Frequently Asked Questions:

<https://www.prearesourcecenter.org/frequently-asked-questions>

- **September 28, 2015.** Are clergy employed by or who volunteer in a correctional facility bound by the mandatory staff reporting provision in Standard 115.61(a)? Is there any protection for confidential communication with clergy, and is there any special consideration for confidentiality within confessional communication?

www.prearesourcecenter.org/node/3599

PRC Library

PREA refresher

- “Prisons & Jails PREA Refresher #8 – Reporting Knowledge, Suspicion, or Information” (also available for community confinement and juvenile facilities):
<https://www.prearesourcecenter.org/training-and-technical-assistance/prea-refreshers>
- “PREA and Victim Services: A Trauma-Informed Approach Notification of Curriculum Utilization” (reporting sexual abuse and sexual harassment PowerPoint):
https://www.prearesourcecenter.org/sites/default/files/content/vs_curriculum_ppt_module_4_final.pdf

PRC Library

PREA refresher

- “Legal Responses to Sexual Violence in Custody: Using Existing State Mandatory Reporting Statutes to Improve Disclosure of Sexual Violence in Correctional Settings”

<https://www.prearesourcecenter.org/sites/default/files/library/legalresponsetosexualviolenceincustody-usingexistingstatemandatoryreportingstatuestoimprovedisclosur.pdf>

PRC Library

- “PREA Employee Training Notification of Curriculum Utilization:”
www.prearesourcecenter.org/sites/default/files/content/unit_3.2_lesson_plan.pdf
- “State of Wisconsin Department of Corrections PREA Flow Charts”
 - Reporting staff-on-inmate:
<https://www.prearesourcecenter.org/sites/default/files/library/wisconsinpreareportingflowchartstaffoninmate.pdf>
 - Reporting inmate-on-inmate:
<https://www.prearesourcecenter.org/sites/default/files/library/wisconsinpreareportingflowchartinmateoninmate.pdf>

Additional Training Resources

Always check the following sources for excellent training on PREA:

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

Questions & Answers



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Power Hour: Chat with a PREA Expert on Standard 115.32

STANDARDS: 115.32

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PRC Website Revision: Overview and Q&A

STANDARDS: None

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

STANDARDS: 115.16, 115.21, 115.51, 115.53

FACILITY: Community Confinement
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Audit Report Template - Juvenile Facilities

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FACILITY: Juvenile Facility

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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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For more information about the National PREA Resource Center, visit www.prearesourcecenter.org.

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

Thank you!

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