PREA STANDARDS IN FOCUS

115.67 Agency protection against retaliation

NATIONAL PREA RESOURCE CENTER

Standard in Focus

§ 115.67

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.

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.

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

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; and
3. Designate which staff members or departments are charged with monitoring retaliation.

Protection measures

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

  For inmates:

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

  For Staff:

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

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

  For inmates:

  1. Disciplinary reports;
  2. Housing changes;

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[1] The use of segregated housing to protect a victim should be a last resort and is subject to the requirements of Standard 115.43.

3. Program changes; and
4. Periodic status checks.

For staff:

1. Negative performance reviews; and
2. Reassignments.

- Monitoring *must* continue beyond the initial 90 days if the initial monitoring indicates there is 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);[2] or
    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.
- 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.

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[2] Monitoring for retaliation is required if the agency investigates the allegation and determines it to be substantiated or unsubstantiated.

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.
- 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.
- 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 Standards are noted for **Lockups, Community Confinement Facilities, and 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.

- **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).
- **Community Confinement:** No differences.
- **Juvenile:** 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

Additional Training Resources:

Always check the following sources for excellent training on PREA.

- National Institute of Corrections

  ➔ nicic.gov/training/prea

- End Silence: The Project on Addressing Prison Rape
    - ➔ www.wcl.american.edu/endsilence

Notes and Federal Disclaimer

Note: Standards in Focus (SIFs) are not intended for use by the Department of Justice PREA auditors to evaluate PREA compliance. SIFs are a tool designed to help agencies and facilities implement, educate, and become familiar with the PREA standards and some related best practices, but are not a compliance checklist. They contain guidance about implementation best practices that may not be required and thus it would not be appropriate for auditors to audit against the SIF. SIFs also do not exhaust implementation guidance for every requirement in every standard.

Notice of Federal Funding and Federal Disclaimer – This project was supported by Grant No. 2019-RP-BX-K001 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. The opinions, findings, and conclusions or recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice or grant-making component.