

PREA STANDARDS FOR JUVENILE FACILITIES

U.S. Department of Justice

Juvenile PREA Coordinator's Conference

June 19 – 21, 2012

Presenters

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- Elissa Rumsey – USDOJ/OJJDP
- Josh Delaney – USDOJ/CRT

Additional USDOJ Faculty/Staff Present

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- Michael Alston – USDOJ/Civil Rights
- Thurston Bryant – USDOJ/BJA
- Lorie Brisbin* – USDOJ/NIC
- Gary Dennis* – USDOJ/BJA
- Dee Halley* – USDOJ/NIC
- Abigail Harris* – USDOJ/BOP

Today's Presentation

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- Pre/Post test
- Video
- History, overview of the federal law (“PREA”)
- Small group breakouts in afternoon re Standards
- Q & A throughout (“Ask it Baskets”)

Pre/Post Test

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- Pre test identical to Post test
- 10 questions
- Measure “percent change” from 1st day to last
- Prizes for high score(s)
- Please put name of State (or county) so we can demonstrate your percent change

Video/Icebreaker

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- Herding Cats
- http://www.youtube.com/watch?v=m_MaJDK3VNE&feature=em-share_video_user

History and Overview of PREA

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- Federal law enacted September 4, 2003
- Defines “Prison” as all facilities that house juveniles and/or adults
- Requires standards be promulgated by USDOJ to prevent, detect and intervene when rape occurs in facilities
- Links compliance with the standards to USDOJ grant funds
- Requires numerous activities for different entities of USDOJ

USDOJ & PREA

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- BJA: Provide programmatic grants.
- NIJ: Provide research grants
- BJS: Conduct studies
- NIC: Provide training, technical assistance
- USDOJ: Issue standards

Review Panel

- PREA established “Review Panel”.
- Based on BJS’ work, facilities identified as high and low incidence of sexual assault.
- High and low incidence facilities required to provide information to and testify before the Review Panel.
- Reports issued and available at:
<http://www.ojp.usdoj.gov/reviewpanel/reviewpanel.htm>

“The Commission”

- PREA established a commission.
- Commission studied the available data and information re: the issue
- Commission held hearings
- Commission drafted standards

Standards

- PREA Commission provided draft standards to USDOJ/Attorney General (AG) June 2009
- PREA Commission dissolved shortly after
- AG created internal USDOJ “working group” comprised of numerous USDOJ staff, including a number here today
- Working Group tasked with analyzing draft standards, recommending final standards to AG

Working Group

- Working Group toured facilities in CA, OR, KY, VA, DC
- Held numerous “listening sessions” at USDOJ, including with some of you here today
- Reviewed line by line, often multiple times, each and every draft standard provided by the Commission

Working Group

- **USDOJ Working Group produced the following, as approved and disseminated by the AG on May 17, 2012:**
- **Preamble (n=184 Pages)**
- **Four sets of Standards**

Final PREA Standards

14

- Four sets of standards:
- (1) Prison/Jails
- (2) Lockups
- (3) Juvenile Facilities
- (4) Community Confinement

Final PREA Standards

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- All four sets have same:
- Definitions
- Audit and Compliance Standards
- Numerous other similarities across 4 sets of standards

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Juvenile Facility Standards



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Prevention Planning

§ 115.311 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

- (a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.
- (b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.
- (c) Where an agency operates more than one facility, each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards.

§ 115.312 Contracting with other entities for the confinement of residents.

- (a) A public agency that contracts for the confinement of its residents with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards.
- (b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.

§ 115.313 Supervision and monitoring

- a) The agency shall ensure that each facility it operates shall develop, implement, and document a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect residents against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:
 - 1) Generally accepted juvenile detention and correctional/secure residential practices;
 - (2) Any judicial findings of inadequacy;

§ 115.313 Supervision and monitoring (continued...)

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- (3) Any findings of inadequacy from Federal investigative agencies;
- (4) Any findings of inadequacy from internal or external oversight bodies;
- (5) All components of the facility's physical plant (including "blind spots" or areas where staff or residents may be isolated);
- (6) The composition of the resident population;
- (7) The number and placement of supervisory staff;
- (8) Institution programs occurring on a particular shift;
- (9) Any applicable State or local laws, regulations, or standards;
- (10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse;
and
- (11) Any other relevant factors.

§ 115.313 Supervision and monitoring (continued...)

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- b) The agency shall comply with the staffing plan except during limited and discrete exigent circumstances, and shall fully document deviations from the plan during such circumstances.
- (c) Each secure juvenile facility shall maintain staff ratios of a minimum of 1:8 during resident waking hours and 1:16 during resident sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. Only security staff shall be included in these ratios. Any facility that, as of the date of publication of this final rule, is not already obligated by law, regulation, or judicial consent decree to maintain the staffing ratios set forth in this paragraph shall have until October 1, 2017, to achieve compliance.

§ 115.313 Supervision and monitoring (continued...)

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- (d) Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by § 115.311, the agency shall assess, determine, and document whether adjustments are needed to:
 - (1) The staffing plan established pursuant to paragraph (a) of this section;
 - (2) Prevailing staffing patterns;
 - (3) The facility's deployment of video monitoring systems and other monitoring technologies; and
- (4) The resources the facility has available to commit to ensure adherence to the staffing plan.

§ 115.313 Supervision and monitoring (continued...)

- (e) Each secure facility shall implement a policy and practice of having intermediate-level or higher level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. Each secure facility shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

§ 115.315 Limits to cross-gender viewing and searches.

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- a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.
- (b) The agency shall not conduct cross-gender pat-down searches except in exigent circumstances.
- (c) The facility shall document and justify all cross-gender strip searches, cross-gender visual body cavity searches, and cross-gender pat-down searches.

§ 115.315 Limits to cross-gender viewing and searches (continued...)

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- d) The facility shall implement policies and procedures that enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering a resident housing unit. In facilities (such as group homes) that do not contain discrete housing units, staff of the opposite gender shall be required to announce their presence when entering an area where residents are likely to be showering, performing bodily functions, or changing clothing.

§ 115.315 Limits to cross-gender viewing and searches (continued...)

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- (e) The facility shall not search or physically examine a transgender or intersex resident for the sole purpose of determining the resident's genital status. If the resident's genital status is unknown, it may be determined during conversations with the resident, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.
- (f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex residents, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

§ 115.316 Residents with disabilities and residents who are limited English proficient.

- a) The agency shall take appropriate steps to ensure that residents with disabilities (including, for example, residents who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include, when necessary to ensure effective communication with residents who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In addition, the agency shall ensure that written materials are provided in formats or through methods that ensure effective communication with residents with disabilities, including residents who have intellectual disabilities, limited reading skills, or who are blind or have low vision. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans With Disabilities Act, 28 CFR 35.164.

§ 115.316 Residents with disabilities and residents who are limited English proficient (continued...)

- b) The agency shall take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to residents who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
- (c) The agency shall not rely on resident interpreters, resident readers, or other types of resident assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the resident's safety, the performance of first-response duties under § 115.364, or the investigation of the resident's allegations.

§ 115.317 Hiring and promotion decisions

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- (a) The agency shall not hire or promote anyone who may have contact with residents, and shall not enlist the services of any contractor who may have contact with residents, who—
 - (1) 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);
 - (2) 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
 - (3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.

§ 115.317 Hiring and promotion decisions (continued...)

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- (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 residents.
- (c) Before hiring new employees who may have contact with residents, the agency shall:
 - (1) Perform a criminal background records check;
 - (2) Consult any child abuse registry maintained by the State or locality in which the employee would work; and
 - (3) 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.

§ 115.317 Hiring and promotion decisions (continued...)

32

- (d) The agency shall also perform a criminal background records check, and consult applicable child abuse registries, before enlisting the services of any contractor who may have contact with residents.
- (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 residents or have in place a system for otherwise capturing such information for current employees.

§ 115.317 Hiring and promotion decisions (continued...)

33

- f) The agency shall also ask all applicants and employees who may have contact with residents 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.

§ 115.318 Upgrades to facilities and technologies.

34

- (a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect residents from sexual abuse.
- (b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect residents from sexual abuse.

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Responsive Planning

§ 115.321 Evidence protocol and forensic medical examinations.

36

- (a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
- (b) The protocol shall be developmentally appropriate for youth and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011.

§ 115.321 Evidence protocol and forensic medical examinations (continued...)

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- (c) The agency shall offer all residents who experience sexual abuse access to forensic medical examinations whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.

§ 115.321 Evidence protocol and forensic medical examinations (continued...)

38

- (d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers.

For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages.

The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.

□

§ 115.321 Evidence protocol and forensic medical examinations (continued...)

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- (e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.

- (f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.

§ 115.321 Evidence protocol and forensic medical examinations (continued...)

40

- (g) The requirements of paragraphs (a) through (f) of this section shall also apply to:
 - (1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in juvenile facilities; and
 - (2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in juvenile facilities
- (h) For the purposes of this standard, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

§ 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.

§ 115.322 Policies to ensure referrals of allegations for investigations (continued...)

42

- (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 juvenile facilities 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 juvenile facilities shall have in place a policy governing the conduct of such investigations.

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Training and Education



§ 115.331 Employee training.

- a) The agency shall train all employees who may have contact with residents on:
 - (1) Its zero-tolerance policy for sexual abuse and sexual harassment;
 - (2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
 - (3) Residents' right to be free from sexual abuse and sexual harassment;

§ 115.331 Employee training (continued...)

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- 4) The right of residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
- (5) The dynamics of sexual abuse and sexual harassment in juvenile facilities;
- (6) The common reactions of juvenile victims of sexual abuse and sexual harassment;
- (7) How to detect and respond to signs of threatened and actual sexual abuse and how to distinguish between consensual sexual contact and sexual abuse between residents;

§ 115.331 Employee training (continued...)

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- 8) How to avoid inappropriate relationships with residents;
- (9) How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents; and
- (10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities;
- (11) Relevant laws regarding the applicable age of consent

§ 115.331 Employee training (continued...)

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- b) Such training shall be tailored to the unique needs and attributes of residents of juvenile facilities and to the gender of the residents at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male residents to a facility that houses only female residents, or vice versa.

§ 115.331 Employee training (continued...)

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- (c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.
- (d) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received.

§ 115.332 Volunteer and contractor training.

49

- (a) The agency shall ensure that all volunteers and contractors who have contact with residents have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.
- (b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with residents, but all volunteers and contractors who have contact with residents shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.
- (c) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.

§ 115.333 Resident education.

- (a) During the intake process, residents shall receive information explaining, in an age appropriate fashion, the agency's zero tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.
- (b) Within 10 days of intake, the agency shall provide comprehensive age-appropriate education to residents either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.

§ 115.333 Resident education (continued...)

- (c) Current residents who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the resident's new facility differ from those of the previous facility.

- (d) The agency shall provide resident education in formats accessible to all residents, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to residents who have limited reading skills.

§ 115.333 Resident education (continued...)

52

- (e) The agency shall maintain documentation of resident participation in these education sessions.
- (f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to residents through posters, resident handbooks, or other written formats.

§ 115.334 Specialized training: Investigations.

- (a) In addition to the general training provided to all employees pursuant to § 115.331, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.
- (b) Specialized training shall include techniques for interviewing juvenile sexual abuse victims, proper use of *Miranda* and *Garrity* warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

§ 115.334 Specialized training: Investigations (continued...)

54

- (c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.
- (d) Any State entity or Department of Justice component that investigates sexual abuse in juvenile confinement settings shall provide such training to its agents and investigators who conduct such investigations.

§ 115.335 Specialized training: Medical and mental health care.

55

- a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:
 - (1) How to detect and assess signs of sexual abuse and sexual harassment;
 - (2) How to preserve physical evidence of sexual abuse;
 - (3) How to respond effectively and professionally to juvenile victims of sexual abuse and sexual harassment; and
 - (4) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

§ 115.335 Specialized training: Medical and mental health care (continued...)

56

- (b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.
- (c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.
- (d) Medical and mental health care practitioners shall also receive the training mandated for employees under § 115.331 or for contractors and volunteers under § 115.332, depending upon the practitioner's status at the agency.

57

Screening for Risk of Sexual Victimization and Abusiveness

§ 115.341 Obtaining information from residents.

58

- (a) Within 72 hours of the resident's arrival at the facility and periodically throughout a resident's confinement, the agency shall obtain and use information about each resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident.
- (b) Such assessments shall be conducted using an objective screening instrument.

§ 115.341 Obtaining information from residents (continued...)

59

- (c) At a minimum, the agency shall attempt to ascertain information about:
 - (1) Prior sexual victimization or abusiveness;
 - (2) Any gender nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender, or intersex, and whether the resident may therefore be vulnerable to sexual abuse;
 - (3) Current charges and offense history;
 - (4) Age;
 - (5) Level of emotional and cognitive development;
 - (6) Physical size and stature;
 - (7) Mental illness or mental disabilities;
 - (8) Intellectual or developmental disabilities;
 - (9) Physical disabilities;
 - (10) The resident's own perception of vulnerability; and
 - (11) Any other specific information about individual residents that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other residents.

§ 115.341 Obtaining information from residents (continued...)

60

- d) This information shall be ascertained through conversations with the resident during the intake process and medical and mental health screenings; during classification assessments; and by reviewing court records, case files, facility behavioral records, and other relevant documentation from the resident's files.
- (e) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents.

§ 115.342 Placement of residents in housing, bed, program, education, and work assignments.

61

- a) The agency shall use all information obtained pursuant to § 115.341 and subsequently to make housing, bed, program, education, and work assignments for residents with the goal of keeping all residents safe and free from sexual abuse.
- (b) Residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative means of keeping all residents safe can be arranged.

§ 115.342 Placement of residents in housing, bed, program, education, and work assignments.

62

- During any period of isolation, agencies shall not deny residents daily large-muscle exercise and any legally required educational programming or special education services. Residents in isolation shall receive daily visits from a medical or mental health care clinician. Residents shall also have access to other programs and work opportunities to the extent possible.
- (c) Lesbian, gay, bisexual, transgender, or intersex residents shall not be placed in particular housing, bed, or other assignments solely on the basis of such identification or status, nor shall agencies consider lesbian, gay, bisexual, transgender, or intersex identification or status as an indicator of likelihood of being sexually abusive.

§ 115.342 Placement of residents in housing, bed, program, education, and work assignments.

63

- (d) In deciding whether to assign a transgender or intersex resident to a facility for male or female residents, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety, and whether the placement would present management or security problems.
- (e) Placement and programming assignments for each transgender or intersex resident shall be reassessed at least twice each year to review any threats to safety experienced by the resident.

§ 115.342 Placement of residents in housing, bed, program, education, and work assignments.

64

- (f) A transgender or intersex resident's own views with respect to his or her own safety shall be given serious consideration.
- (g) Transgender and intersex residents shall be given the opportunity to shower separately from other residents.
- (h) If a resident is isolated pursuant to paragraph (b) of this section, the facility shall clearly document:
 - ▣ (1) The basis for the facility's concern for the resident's safety; and
 - ▣ (2) The reason why no alternative means of separation can be arranged.
 - (i) Every 30 days, the facility shall afford each resident described in paragraph (h) of this section a review to determine whether there is a continuing need for separation from the general population.

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Reporting

§ 115.351 Resident reporting

- (a) The agency shall provide multiple internal ways for residents to privately report sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

§ 115.351 Resident reporting (continued...)

- b) The agency shall also provide at least one way for residents to report abuse or harassment to a public or private entity or office that is not part of the agency and that is able to receive and immediately forward resident reports of sexual abuse and sexual harassment to agency officials, allowing the resident to remain anonymous upon request. Residents detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

§ 115.351 Resident reporting (continued...)

- (c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.
- (d) The facility shall provide residents with access to tools necessary to make a written report.
- (e) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of residents.

§ 115.352 Exhaustion of administrative remedies.

69

- a) An agency shall be exempt from this standard if it does not have administrative procedures to address resident grievances regarding sexual abuse.

§ 115.352 Exhaustion of administrative remedies (continued...)

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- (b)
 - (1) The agency shall not impose a time limit on when a resident may submit a grievance regarding an allegation of sexual abuse.
 - (2) The agency may apply otherwise-applicable time limits on any portion of a grievance that does not allege an incident of sexual abuse.
 - (3) The agency shall not require a resident to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.
 - (4) Nothing in this section shall restrict the agency's ability to defend against a lawsuit filed by a resident on the ground that the applicable statute of limitations has expired.

§ 115.352 Exhaustion of administrative remedies (continued...)

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- (c) The agency shall ensure that—
 - (1) A resident who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and
 - (2) Such grievance is not referred to a staff member who is the subject of the complaint.
- (d)
 - (1) The agency shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.
 - (2) Computation of the 90-day time period shall not include time consumed by residents in preparing any administrative appeal.

§ 115.352 Exhaustion of administrative remedies (continued...)

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- 3) The agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the resident in writing of any such extension and provide a date by which a decision will be made.
- (4) At any level of the administrative process, including the final level, if the resident does not receive a response within the time allotted for reply, including any properly noticed extension, the resident may consider the absence of a response to be a denial at that level.

§ 115.352 Exhaustion of administrative remedies (continued...)

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- (e)
 - (1) Third parties, including fellow residents, staff members, family members, attorneys, and outside advocates, shall be permitted to assist residents in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of residents.
 - (2) If a third party, other than a parent or legal guardian, files such a request on behalf of a resident, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.
 - (3) If the resident declines to have the request processed on his or her behalf, the agency shall document the resident's decision.
 - (4) A parent or legal guardian of a juvenile shall be allowed to file a grievance regarding allegations of sexual abuse, including appeals, on behalf of such juvenile. Such a grievance shall not be conditioned upon the juvenile agreeing to have the request filed on his or her behalf.

§ 115.352 Exhaustion of administrative remedies (continued...)

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- (f)
 - (1) The agency shall establish procedures for the filing of an emergency grievance alleging that a resident is subject to a substantial risk of imminent sexual abuse.
 - (2) After receiving an emergency grievance alleging a resident is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours, and shall issue a final agency decision within 5 calendar days. The initial response and final agency decision shall document the agency's determination whether the resident is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

§ 115.352 Exhaustion of administrative remedies (continued...)

75

- g) The agency may discipline a resident for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the resident filed the grievance in bad faith.

§ 115.353 Resident access to outside support services and legal representation.

- (a) The facility shall provide residents with access to outside victim advocates for emotional support services related to sexual abuse, by providing, posting, or otherwise making accessible mailing addresses and telephone numbers, including toll free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between residents and these organizations and agencies, in as confidential a manner as possible.

§ 115.353 Resident access to outside support services and legal representation.

77

- (b) The facility shall inform residents, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.
- (c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide residents with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

§ 115.353 Resident access to outside support services and legal representation.

78

- (d) The facility shall also provide residents with reasonable and confidential access to their attorneys or other legal representation and reasonable access to parents or legal guardians.

§ 115.354 Third-party reporting.

- The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of a resident.

80

Official Response Following a Resident Report

§ 115.361 Staff and agency reporting duties.

81

- a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information they receive 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 residents 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) The agency shall also require all staff to comply with any applicable mandatory child abuse reporting laws.

§ 115.361 Staff and agency reporting duties (continued...)

82

- (c) Apart from reporting to designated supervisors or officials and designated State or local services agencies, staff shall be prohibited from revealing 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.
- (d)
 - (1) Medical and mental health practitioners shall be required to report sexual abuse to designated supervisors and officials pursuant to paragraph (a) of this section, as well as to the designated State or local services agency where required by mandatory reporting laws.
 - (2) Such practitioners shall be required to inform residents at the initiation of services of their duty to report and the limitations of confidentiality.

§ 115.361 Staff and agency reporting duties (continued...)

83

- (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 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.

§ 115.361 Staff and agency reporting duties (continued...)

84

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

§ 115.362 Agency protection duties.

- When an agency learns that a resident is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the resident.

§ 115.363 Reporting to other confinement facilities.

86

- (a) Upon receiving an allegation that a resident was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred and shall also notify the appropriate investigative agency.
- (b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
- (c) The agency shall document that it has provided such notification.
- (d) The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

§ 115.364 Staff first responder duties.

- (a) Upon learning of an allegation that a resident was sexually abused, the first staff member to respond to the report shall be required to:
 - (1) Separate the alleged victim and abuser;
 - (2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;
 - (3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
 - (4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

§ 115.364 Staff first responder duties (continued...)

88

- (b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

§ 115.365 Coordinated response.

- The facility shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

§ 115.366 Preservation of ability to protect residents from contact with abusers.

- (a) Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with residents pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

§ 115.366 Preservation of ability to protect residents from contact with abusers (continued...)

91

- (b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern:
 - (1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.372 and 115.376; or
 - (2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

§ 115.367 Agency protection against retaliation.

92

- a) The agency shall establish a policy to protect all residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other residents or staff and shall designate which staff members or departments are charged with monitoring retaliation.

§ 115.367 Agency protection against retaliation (continued...)

93

- (b) The agency shall employ multiple protection measures, such as housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

§ 115.367 Agency protection against retaliation (continued...)

- c) For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct or treatment of residents or staff who reported the sexual abuse and of residents who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by residents or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any resident 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.

§ 115.367 Agency protection against retaliation (continued...)

95

- d) In the case of residents, 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.
- See also § 115.366 (a)

§ 115.368 Post-allegation protective custody.

96

- Any use of segregated housing to protect a resident who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.342.

97

Investigations

§ 115.371 Criminal and administrative agency investigations.

- (a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.
- (b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations involving juvenile victims pursuant to § 115.334.

§ 115.371 Criminal and administrative agency investigations (continued...)

- c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- (d) The agency shall not terminate an investigation solely because the source of the allegation recants the allegation.

§ 115.371 Criminal and administrative agency investigations (continued...)

100

- (e) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- (f) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as resident or staff. No agency shall require a resident who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

§ 115.371 Criminal and administrative agency investigations (continued...)

101

- (g) Administrative investigations:
 - (1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and
 - (2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
- (h) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

§ 115.371 Criminal and administrative agency investigations (continued...)

102

- (i) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.
- (j) The agency shall retain all written reports referenced in paragraphs (g) and (h) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years, unless the abuse was committed by a juvenile resident and applicable law requires a shorter period of retention.
- (k) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

§ 115.371 Criminal and administrative agency investigations (continued...)

103

- (l) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.
- (m) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

§ 115.372 Evidentiary standard for administrative investigations.

104

- The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

§ 115.373 Reporting to residents.

- (a) Following an investigation into a resident's allegation of sexual abuse suffered in an agency facility, the agency shall inform the resident as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
- (b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the resident.

§ 115.373 Reporting to residents (continued...)

106

- c) Following a resident's allegation that a staff member has committed sexual abuse against the resident, the agency shall subsequently inform the resident (unless the agency has determined that the allegation is unfounded) whenever:
 - (1) The staff member is no longer posted within the resident's unit;
 - (2) The staff member is no longer employed at the facility;
 - (3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
 - (4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

§ 115.373 Reporting to residents (continued...)

107

- d) Following a resident's allegation that he or she has been sexually abused by another resident, the agency shall subsequently inform the alleged victim whenever:
 - (1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
 - (2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
- (e) All such notifications or attempted notifications shall be documented.
- (f) An agency's obligation to report under this standard shall terminate if the resident is released from the agency's custody.

108

Discipline

§ 115.376 Disciplinary sanctions for staff.

109

- (a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.
- (b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.

§ 115.376 Disciplinary sanctions for staff (continued...)

110

- (c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.
- (d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

§ 115.377 Corrective action for contractors and volunteers.

111

- (a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with residents and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.
- (b) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with residents, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.

§ 115.378 Interventions and disciplinary sanctions for residents.

112

- a) A resident may be subject to disciplinary sanctions only pursuant to a formal disciplinary process following an administrative finding that the resident engaged in resident-on-resident sexual abuse or following a criminal finding of guilt for resident-on-resident sexual abuse.

§ 115.378 Interventions and disciplinary sanctions for residents (continued...)

113

- (b) Any disciplinary sanctions shall be commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories. In the event a disciplinary sanction results in the isolation of a resident, agencies shall not deny the resident daily large-muscle exercise or access to any legally required educational programming or special education services. Residents in isolation shall receive daily visits from a medical or mental health care clinician. Residents shall also have access to other programs and work opportunities to the extent possible.

§ 115.378 Interventions and disciplinary sanctions for residents (continued...)

114

- (c) The disciplinary process shall consider whether a resident's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.
- (d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to offer the offending resident participation in such interventions. The agency may require participation in such interventions as a condition of access to any rewards-based behavior management system or other behavior-based incentives, but not as a condition to access to general programming or education.

§ 115.378 Interventions and disciplinary sanctions for residents (continued...)

115

- e) The agency may discipline a resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
- (f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

§ 115.378 Interventions and disciplinary sanctions for residents (continued...)

116

- (g) An agency may, in its discretion, prohibit all sexual activity between residents and may discipline residents for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

117

Medical and Mental Care

§ 115.381 Medical and mental health screenings; history of sexual abuse.

118

- (a) If the screening pursuant to § 115.341 indicates that a resident has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the resident is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

§ 115.381 Medical and mental health screenings; history of sexual abuse (continued...)

119

- (b) If the screening pursuant to § 115.341 indicates that a resident has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the resident is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.

- (c) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.

§ 115.381 Medical and mental health screenings; history of sexual abuse (continued...)

120

- (d) Medical and mental health practitioners shall obtain informed consent from residents before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the resident is under the age of 18.

§ 115.382 Access to emergency medical and mental health services.

121

- (a) Resident victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.
- (b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, staff first responders shall take preliminary steps to protect the victim pursuant to § 115.362 and shall immediately notify the appropriate medical and mental health practitioners.

§ 115.382 Access to emergency medical and mental health services (continued...)

122

- (c) Resident victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.
- (d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

§ 115.383 Ongoing medical and mental health care for sexual abuse victims and abusers.

123

- (a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all residents who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.
- (b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

§ 115.383 Ongoing medical and mental health care for sexual abuse victims and abusers.

124

- (c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.
- (d) Resident victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.
- (e) If pregnancy results from conduct specified in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

§ 115.383 Ongoing medical and mental health care for sexual abuse victims and abusers.

125

- (f) Resident victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.
- (g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.
- (h) The facility shall attempt to conduct a mental health evaluation of all known resident-on-resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

126

Data Collection and Review

§ 115.386 Sexual abuse incident reviews.

- (a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.
- (b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.
- (c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.

§ 115.386 Sexual abuse incident reviews (continued...)

128

- (d) The review team shall:
 - (1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
 - (2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
 - (3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

§ 115.386 Sexual abuse incident reviews (continued...)

129

- (4) Assess the adequacy of staffing levels in that area during different shifts;
 - (5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
 - (6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.
- (e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

§ 115.388 Data review for corrective action.

- (a) The agency shall review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:
 - (1) Identifying problem areas;
 - (2) Taking corrective action on an ongoing basis; and
 - (3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole

§ 115.388 Data review for corrective action (continued...)

131

- (b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.
- (c) The agency's report shall be approved by the agency head and made readily available to the public through its website or, if it does not have one, through other means.

§ 115.388 Data review for corrective action (continued...)

132

- (d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

§ 115.389 Data storage, publication, and destruction.

- (a) The agency shall ensure that data collected pursuant to § 115.387 are securely retained.
- (b) The agency shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means.

§ 115.389 Data storage, publication, and destruction (continued...)

134

- (c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.
- (d) The agency shall maintain sexual abuse data collected pursuant to § 115.387 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

Auditing and Corrective Action



§ 115.401 Frequency and scope of audits.

- (a) During the three-year period starting on [**INSERT DATE ONE YEAR PLUS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], and during each three-year period thereafter, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once.
- (b) During each one-year period starting on [**INSERT DATE ONE YEAR PLUS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], the agency shall ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, is audited.

§ 115.401 Frequency and scope of audits.

- (c) The Department of Justice may send a recommendation to an agency for an expedited audit if the Department has reason to believe that a particular facility may be experiencing problems relating to sexual abuse. The recommendation may also include referrals to resources that may assist the agency with PREA-related issues.
- (d) The Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit.
- (e) The agency shall bear the burden of demonstrating compliance with the standards.

§ 115.401 Frequency and scope of audits (continued...)

138

- (f) The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type.
- (g) The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.
- (h) The auditor shall have access to, and shall observe, all areas of the audited facilities.

§ 115.401 Frequency and scope of audits (continued...)

139

- (i) The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).
- (j) The auditor shall retain and preserve all documentation (including, e.g., video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request.
- (k) The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators.

§ 115.401 Frequency and scope of audits (continued...)

140

- (l) The auditor shall review a sampling of any available videotapes and other electronically available data (e.g., Watchtour) that may be relevant to the provisions being audited.
- (m) The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees.

§ 115.401 Frequency and scope of audits (continued...)

141

- (n) Inmates, residents, and detainees shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.
- (o) Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.

§ 115.402 Auditor qualifications.

- (a) An audit shall be conducted by:
 - (1) A member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government);
 - (2) A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or
 - (3) Other outside individuals with relevant experience.
- (b) All auditors shall be certified by the Department of Justice. The Department of Justice shall develop and issue procedures regarding the certification process, which shall include training requirements.

§ 115.402 Auditor qualifications (continued...)

143

- (c) No audit may be conducted by an auditor who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years prior to the agency's retention of the auditor.
- (d) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.

- See § 115.401, 115.403

§ 115.403 Audit contents and findings.

144

- (a) Each audit shall include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the agency under review.
- (b) Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.
- (c) For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.

§ 115.403 Audit contents and findings (continued...)

145

- (d) Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and shall include recommendations for any required corrective action.
- (e) Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to the agency upon request, and may provide such information to the Department of Justice.
- (f) The agency shall ensure that the auditor's final report is published on the agency's website if it has one, or is otherwise made readily available to the public.

§ 115.404 Audit corrective action plan.

- (a) A finding of “Does Not Meet Standard” with one or more standards shall trigger a 180-day corrective action period.
- (b) The auditor and the agency shall jointly develop a corrective action plan to achieve compliance.
- (c) The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility.

§ 115.404 Audit corrective action plan (continued...)

147

- (d) After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.
- (e) If the agency does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

§ 115.405 Audit appeals.

- (a) An agency may lodge an appeal with the Department of Justice regarding any specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor's final determination.
- (b) If the Department determines that the agency has stated good cause for a re-evaluation, the agency may commission a re-audit by an auditor mutually agreed upon by the Department and the agency. The agency shall bear the costs of this re-audit.
- (c) The findings of the re-audit shall be considered final.

149

State Compliance

§ 115.501 State determination and certification of full compliance.

- (a) In determining pursuant to 42 U.S.C. 15607(c)(2) whether the State is in full compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits.
- (b) The Governor's certification shall apply to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch.