

Third-Party Reporting Under the PREA Standards: A Fact Sheet for Corrections Officials

Sexual abuse in detention is a vastly underreported crime.¹ As in the community, many victims of sexual abuse behind bars do not report abuse due to shame, or a fear that they won't be believed. It is also common for victims to face retaliation for speaking out.² In recognition of these barriers, the Prison Rape Elimination Act (PREA) standards include provisions to make reporting safer and easier for victims of sexual abuse and sexual harassment. For example, the standards require that corrections agencies accept third-party reports of sexual abuse and sexual harassment.³

What does it mean to be a third-party reporter? A third-party reporter is someone who reports sexual abuse and sexual harassment but is neither the victim nor the abuser.⁴ This person may have been told by the victim about the abuse or harassment, or witnessed it first-hand. "Third party" includes other inmates, members of staff, family members, lawyers, contract employees, service providers, or community or religious volunteers, among others.^{5,6}

How can a third party report sexual abuse and sexual harassment? A third party can report abuse using the same channels as a victim of sexual abuse. Under the standards, an agency must accept all third-party reports received through: (1) a facility's grievance system; (2) verbal reports (made in-person or via telephone); (3) written communication such as a letter or email; (4) contact with agency officials; and (4) the agency's designated outside reporting entity, like a police department.⁷

A third party can submit a report without disclosing her or his name or that of the alleged victim or abuser. A report may be submitted in a language other than English. Also, a third party has the right to assist an inmate with completing and filing her or his own report of abuse or harassment.

What's the best way to educate people about their right to report sexual abuse? The PREA standards require agencies to distribute publicly information on how to file a third party report.⁸ An agency can communicate this information through its website, by distributing materials in the reception and visiting areas, by notifying legal counsel, and through inmate education programs. Agencies should educate potential third-party reporters – including inmates and staff – about the kind of information that is helpful when filing a report, such as the date, time, and location

of the incident and any involved parties. However, it should be made clear that no one piece of information is required to submit a report.

How should an agency respond to a third-party report? Agencies should respond to a report of sexual abuse or sexual harassment from a third-party in the same way that they would respond to one made by a victim. The protocols for responding to a report include keeping the victim safe from retaliation and informing that person about the progress of the investigation.^{9,10}

What if victims do not want to cooperate? Victims of sexual abuse or sexual harassment may not want to participate in an investigation – usually for the same reasons that they might not report the abuse or harassment directly. If staff members learn the name of victims through third-party reports – or through investigations – they should have a confidential conversation with the victims. In such cases, staff members should inform victims that they are under no obligation to cooperate with the investigation. Staff members should also explain to victims that, regardless of their participation in the investigation, they will be protected from retaliation, will not be punished, and will be provided with the opportunity to speak with a rape crisis advocate and afforded emergency and follow-up medical services, at no cost.

What should an agency do to prepare for third-party reports? Some agencies will not need to make many changes to existing policies, or may need to modify only a few of their practices. An agency's PREA Coordinator can use the below checklist to determine what steps, if any, need to be taken:

1. **Review** existing reporting policies to make sure that they allow for third-party reports. In particular, agencies should make sure that outside entities that receive sexual abuse or sexual harassment reports from inmates are aware that some of the reports may come from third parties.
2. **Train** staff members on receiving reports from third parties, explaining that such reports should be dealt with in the same way as those that come from victims themselves. Employees who are tasked with answering phones, letters, or email also should be trained on processing third-party reports.
3. **Educate** inmates about their rights to obtain help from a third-party in submitting a report of sexual abuse and sexual harassment and to have a third-party make a report on their behalf.
4. **Share** information about the agency's third-party reporting policies with inmates' family members, lawyers, community or religious volunteers, service providers, contract employees, and others. This information should be distributed through a variety of channels, and should include instructions

for contacting a senior agency official if it appears that the initial report has not been taken seriously.

¹ United States Dep't of Justice, *Regulatory Impact Assessment for PREA Final Rule*, at 17-18 (May 17, 2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf (concluding, based upon the Bureau of Justice Statistics' survey, Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09, that between 69 percent and 82 percent of inmates who reported sexual abuse in response to the survey stated that they had never reported an incident to corrections staff.)

² Allen J. Beck et al, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12* (Bureau of Justice Statistics, May 2013), available at www.bjs.gov/content/pub/pdf/svpjri1112.pdf.

³ The PREA standards require that all covered facilities allow for third-party reporting. Regulatory language can be found at 28 CFR 115.54/115.154/115.254/115.354 for adult jails and prisons, lockups, community confinement facilities, and juvenile facilities, respectively. Regulatory references throughout this fact sheet are to each of the four sets of standards. Unless noted, the requirements are the same for all covered facilities.

⁴ Consistent with the PREA standards, the terms 'victim' and 'abuser' are used throughout this fact sheet, in lieu of similar terms such as 'survivor' and 'perpetrator.'

⁵ In fact, staff members have not only the right, but an obligation to report abuse under 28 CFR 115.61/161/261/361.

⁶ The term 'inmate' in this fact sheet refers to inmates, detainees and residents.

⁷ Under 28 CFR 115.51/151/251/351(b), agencies must provide inmates with access to at least one reporting option outside of the agency, for example, a police department or other government investigative body.

⁸ This requirement is part of 28 CFR 115.54/154/254/354.

⁹ For example, 28 CFR 115.67/167/267/367 outlines the steps an agency must take to protect an alleged victim from retaliation by other inmates or staff members. Additionally, 28 CFR 115.61/161/261(b) and 115.361(c) requires staff not to "reveal any information related to a sexual abuse report to anyone other than to the extent necessary...to make treatment, investigation, and other security and management decisions."

¹⁰ For example, 28 CFR 115.73/273/373 details the categories of information that an agency must share with an inmate who makes an allegation of sexual abuse. This requirement does not apply to police lockups.