

NATIONAL
PREA
RESOURCE
CENTER

IMPACT/JUSTICE
A National Innovation and Research Center

Power Hour: Chat with a PREA Expert
on PREA Standard 115.71 -
Criminal and administrative agency investigations

December 13, 2018

Welcome and Introductions



Michelle Duhart

Senior Project Manager

Training and Technical Assistance

**The National Prison Rape Elimination
Act Resource Center (PRC)**

The National PREA Resource Center - Mission

The mission of the PRC is to assist adult prisons and jails, juvenile facilities, lockups, community corrections and tribal facilities in their efforts to eliminate sexual abuse by increasing their capacity for prevention, detection, monitoring, responses to incidents and services to victims and their families.

Logistics - Technical Support

Technical Support

Please contact the ZoomPro Webinar support line at **(888)-799-9666** – select “2” when prompted to get support with technical difficulties.

Additionally, when asked provide the Webinar ID **(569-961-236)** so they know which event is associated with your technical issues.

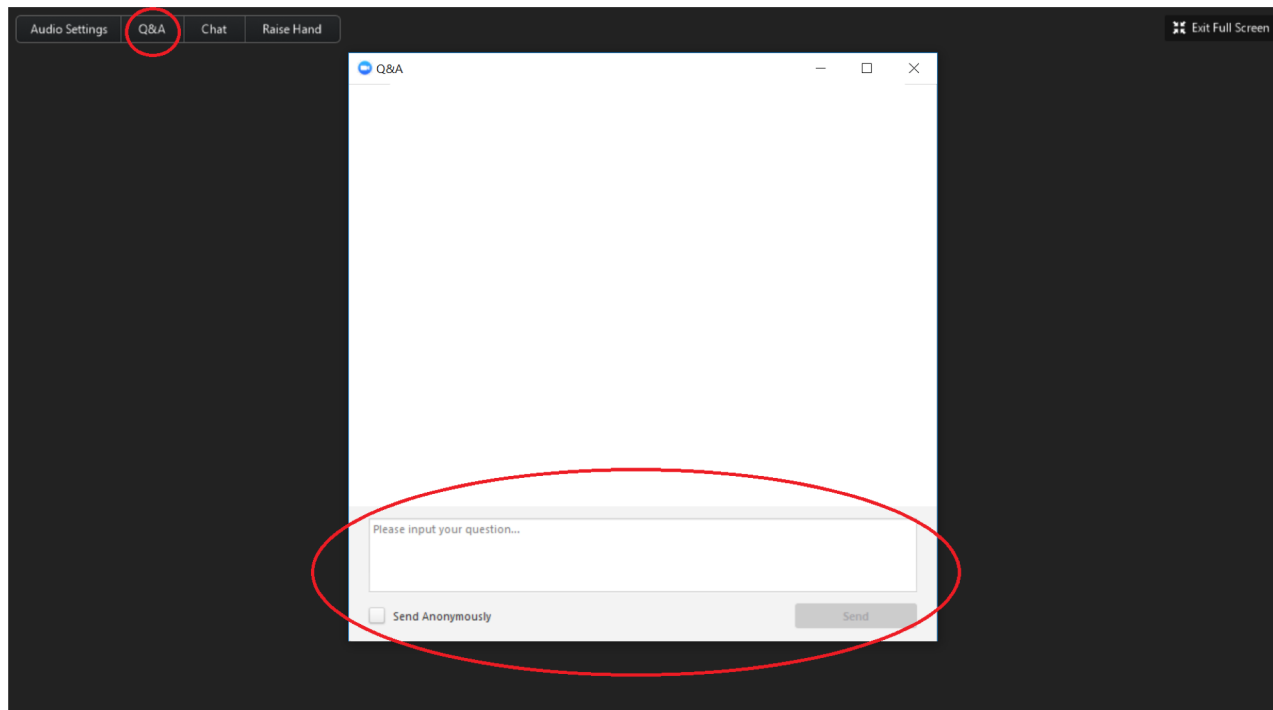
If you have trouble using this function, please contact Nicole McAllister at nmcallister@prearesourcecenter.org

Logistics – Submitting Questions

Submitting Questions

To submit a question during the Webinar, use the Q&A feature at the top of your Webinar screen, as seen below.

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



Presenter



Marion Morgan

Senior Program Manager

Auditor Field Training Program

**The National Prison Rape Elimination
Act Resource Center (PRC)**

Certified PREA Auditor – Adult and
Juvenile Facilities

§115.71/171/271/371

Criminal and Administrative Investigations

Standard Requirements

- (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 pursuant to § 115.34.**
- (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) 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.
- (e) 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 inmate or staff. No agency shall require an inmate 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.

§115.71/171/271/371

Criminal and Administrative Investigations

Standard Requirements

(f) 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.**

(g) 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.

(h) **Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.**

(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for **as long as the alleged abuser is incarcerated or employed by the agency, plus five years.**

§115.71/171/271/371

Criminal and Administrative Investigations

Standard Requirements

- (j)** 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.**
- (k)** Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.
- (l)** 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.**

Purpose of the Standard

To ensure that **all allegations of sexual abuse and sexual harassment are investigated thoroughly and properly so that incidents are substantiated when they should be, both to deter these incidents and to increase reporting.**

Thorough and proper investigations (which require that **investigations be conducted by qualified and trained investigators**; that all evidence be gathered and preserved; and objectivity, **which means the credibility of an alleged victim must be assessed on a case by case basis** and opinions are **never formed on the basis of the fact that the victim is an inmate or that the perpetrator is a staff person**) enable an agency to substantiate actual incidents of sexual abuse and sexual harassment and **increase the chances that consequences will follow when sexual abuse and sexual harassment are reported. This will encourage reporting and deter sexual abuse and sexual harassment.**

To foster a reporting culture and deter sexual abuse and sexual harassment by ensuring that:

- 1) investigations are **documented and documentary evidence is preserved,**
- 2) investigations are completed **regardless of the status of the victim or perpetrator,** and
- 3) all substantiated allegations that **rise to the level of a criminal offense are referred for prosecution.**

Implementation

- Agencies must have a well-defined practice of investigating allegations of sexual abuse and sexual harassment.
 - **Investigations must be conducted promptly, thoroughly and objectively for all allegations, including third-party and anonymous reports.**
 - **Every agency should conduct an administrative investigation; criminal investigations are typically conducted by external entities but may also be conducted by the agency if that is the established practice in the jurisdiction.** If the agency has an internal inspector general or similar office, these experienced investigators (who frequently are law enforcement trained) often are the designated division to conduct the criminal investigation.
 - **Agencies must not screen allegations or select only certain allegations to refer for investigation; all allegations must be investigated and not ruled out by any “preliminary investigation” type policies and practices.** This includes “cold cases” which frequently arise (i.e., allegations that come to light long after the incident date). These allegations must be investigated just like an acute incident of sexual abuse.

Implementation

- **The agency and facility must distinguish the roles of first responders from investigators. First responders should not conduct any part of the investigation and their role is to protect the victim, separate the victim and alleged abuser (if applicable) and to protect and preserve the scene and any evidence that may exist at the scene or on the parties.**
- **All investigators who handle sexual abuse cases must be experienced and also must have specialized training in sexual abuse investigations as required by Standard 115.34.** Investigators have the responsibility of gathering and preserving evidence in the case; they must interview all parties (e.g., victims, perpetrators, witnesses, etc.) and review prior complaints and reports of sexual abuse involving the suspected perpetrator. **It is important to remember that all investigators must have the general training provided to all staff; additionally, investigators should have relevant experience and training in conducting investigations generally as a foundation upon which the specialized training in conducting sexual abuse investigations in confinement settings is added.**

Implementation

- **Administrative investigations must try to determine whether staff actions or failures to act contributed to the abuse.** These investigations must be documented in a written report that describes the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
- **Investigators must assess the credibility of an alleged victim, suspect, or witness on an individual basis and not based on the person's status as an inmate or staff.**
- **The agency must not require inmates who allege sexual abuse to submit to a polygraph examination or other such devices as a condition for proceeding with the investigation of the allegation. Additionally, if the alleged abuser or victim leave the employment or control of the facility or agency, this cannot be a basis for terminating the investigation.**
- **Criminal investigations must also be documented in a written report** that contains a thorough description of the physical, testimonial, and documentary evidence. Copies of all documentary evidence should accompany the report where feasible.

Implementation

- **The agency, facility, internal and external investigation divisions and local prosecutors must have an excellent working knowledge of the Garrity principle of compelled interviews.** The website www.garrityrights.org explains the principle and states:
 - **“Garrity Rights protect public employees from being compelled to incriminate themselves during investigatory interviews conducted by their employers.** This protection stems from the Fifth Amendment to the United States Constitution, which declares that the government cannot compel a person to be a witness against him/herself. For a public employee, the employer is the government itself. When questioned by their employer, they are being questioned by the government. Therefore, the Fifth Amendment applies to that interrogation if it is related to potentially criminal conduct. Garrity Rights stem not just from the Fifth Amendment, but also the Fourteenth Amendment. While the Fifth Amendment could be said to apply only to the federal government, the "equal protection" clause of the Fourteenth Amendment makes the Fifth Amendment applicable to state, county, and municipal governments as well (determined by the United States Supreme Court in 1964's *Malloy v. Hogan*). Garrity Rights originate from a 1967 United States Supreme Court decision, *Garrity v. New Jersey*.”

Implementation

- **If the evidence appears to support criminal prosecution, the agency must exercise caution regarding compelled interviews and consult with their prosecutor prior to conducting a compelled interview. Conducting a compelled interview without first discussing this with the prosecutor may jeopardize the future criminal case.**
- **Any substantiated allegation of criminal conduct must be referred to the prosecutor for a determination of whether criminal charges will be filed.**
- **The agency must retain administrative and criminal investigative reports for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.**
- **If a state entity or the Department of Justice conducts these investigations, the requirements of this standard must also be met.**
- **The facility has an obligation to cooperate with any outside investigators and must try to remain informed about the progress of the investigation.** It is important to maintain a good relationship based on trust and mutual respect with outside investigators and prosecutors; this will make it easier to obtain updates regarding cases.

Challenges

- **Ensuring that investigatory staff have the requisite qualifications, through experience, education, and specialized training, to conduct investigations in sexual abuse cases. The standards envision that the specialized training required in 115.34 is a high-level, advanced training for an individual who already brings strong investigatory skills and experience to the role of a PREA investigator. Persons who do not have a background in investigations, law enforcement or similar roles should not be put in a position of investigating sexual abuse cases.**
- **Implementing an investigatory process and practice in the facility that ensures that all investigations fully meet the requirements of the standard. A robust investigatory practice with experienced, well-trained investigators is a critical piece of the overall PREA effort and is key to creating an environment of sexual safety in the facility by allowing victims to have confidence in the process. Building trust in the investigatory process by inmates takes time, good communication, and transparent, timely, and effective investigations. When inmates and staff trust that investigations are comprehensive, objective and timely, they are more likely to report abuse, which is a deterrent to abuse overall.**

Challenges

- **Conducting investigations that are truly objective and not abbreviated or biased toward a victim or alleged perpetrator because of past conduct or because of their status as inmate or staff. Maintaining objectivity in a correctional setting can be challenging as victims may have made prior allegations of abuse that were unfounded or not substantiated; this fact should not cloud a current investigation which must be objective and not biased against the victim because of past cases. Similarly, an alleged abuser may have had multiple allegations filed in the past; the current allegation must be judged on the current facts and not biased because of prior allegations, whether founded or not previously.**
- **Maintaining complete, comprehensive, and well-organized investigation files and documentation that will demonstrate to auditors that the elements of the standard are clearly and consistently met by the facility's investigatory practice.**

Challenges

- **Coordinating with outside entities who conduct criminal (or administrative) investigations and keeping updated on the progression of a case. It is common for external entities to conduct the criminal case investigations** (e.g., local law enforcement, state police, inspector generals, etc.); occasionally, these external entities may conduct the internal administrative investigation (e.g., violation of state standards, etc.). Working closely with these external investigators and prosecutors is essential to ensure that cases do not fall through the cracks; additionally, this allows the facility to keep the victim updated as required by standards.

Best Practices

- **Provide regular, advanced training to all agency/facility investigators on the dynamics of investigating sexual abuse cases and working with victims of sexual abuse. There are a wide variety of ancillary topics that are important to reinforce for investigators on a periodic basis (*e.g., victim and abuser dynamics, interviewing skills, trauma informed investigations, LGBTI population dynamics, child sexual abuse cases, mental health dynamics, report writing, prosecution essentials, etc.*)**
- **Fully utilize the results of both criminal and administrative investigations to make any necessary changes in the facility operations to better improve sexual safety.** Comprehensive, detailed investigations can be one of the most important tools a facility has to correct or adjust practices, facility physical plant issues, training practices or policy directives that need enhancement or modification. Investigations and the information uncovered can form a basis for requests to agency leadership or governing entities for additional staff, technology, or needed facility physical plant improvements. **Review the results of investigations carefully and use the findings to support appropriation requests as appropriate.**

Best Practices

- **Use investigations for teaching purposes.** While investigation files and documents are confidential, **facility investigators should compile critical information into “generic” scenarios** (i.e., that do not identify any parties) that can be shared with trainers, supervisors and other key management staff for the purpose of staff training. For example, if an investigation uncovered supervision practices that were problematic, red flags for abuse that should have been a warning sign, or unique areas of the facility where problems can occur, **this information can be used to develop meaningful training scenarios for staff.**

Audit issues

- **Determining whether the individuals conducting investigations of sexual abuse and sexual harassment have the required experience and specialized training;** this training is important for a variety of reasons, not the least of which is ensuring the investigator understands how to work with victims of sexual abuse. This also requires the auditor review the agency's practice related to compelled statements, the use of polygraph or other truth-telling devices, document retention practices, and cooperation with outside investigations to assess compliance with this standard.
- **Assessing whether the agency's actual practice of conducting investigations complies with the requirements of this standard;** the auditor must determine whether the investigation was prompt, thorough and objective, and whether credibility assessments of the alleged victim, alleged perpetrator, and other witnesses were in any way compromised by bias. This is primarily determined through a comprehensive review of investigation files, which should include the written report and gathered evidence along with interviews by investigators. The auditor must also determine from the review of the investigation files whether the "preponderance of the evidence" standard is being utilized for administrative investigations as required by Standard 115.72.
- **Auditors should not assess compliance with obligations by external entities (i.e., a state entity or the Department of Justice). That is beyond the scope of the PREA audit.**

Standard Variations

Juvenile Facilities:

- Requires special training in sexual abuse investigations involving juvenile victims.
- Adds additional provision that states in Subsection (d):
“***The agency shall not terminate an investigation solely because the source of the allegation recants the allegation.***” This provision recognizes that juveniles could more easily be influenced to recant.
- The **records retention requirements** subsection contains additional language (emphasis added): (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.***”

§115.71/171/271/371

Criminal and Administrative Investigations

Resources

- [Frequently Asked Questions](#) (FAQs) on the PREA Resource Center (PRC) Website
- [PREA Essentials](#) on the National PREA Resource Center Webpage
- Always check the following sources for excellent training on PREA.
 - [National Institute of Corrections](#) (NIC)
 - [End Silence: The Project on Addressing Prison Rape](#)
- For a comprehensive list of archived webinars and resources related to this standard, please check the relevant [PREA Standard in Focus](#).

Questions & Answers



For More Information

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

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

Michela Bowman
PRC Co-Director

mbowman@prearesourcecenter.org

Jenni Trovillion
PRC Co-Director

jtrovillion@prearesourcecenter.org

Michelle Duhart
Sr. Program Manager
Training & Technical Assistance

mduhart@prearesourcecenter.org

Thank you!

Thank you

for taking time to participate in this webinar!

An email will be sent to you following this event with a link to provide feedback. Your input is important and will help to plan and coordinate future events and resources.

[Sign up for our mailing list](#) to be the first to hear about our next
Power Hour: Chat with a PREA Expert!

Notice of Federal Funding and Federal Disclaimer – This project was supported by Grant No. 2015-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.