

The Prison Rape Elimination Act: *Challenges and Updates*

Caleb Asbridge, Senior Consultant

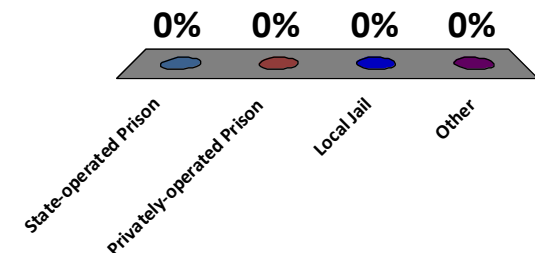


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Please select the facility type that is closest to where you work.

- A. State-operated Prison
- B. Privately-operated Prison
- C. Local Jail
- D. Other



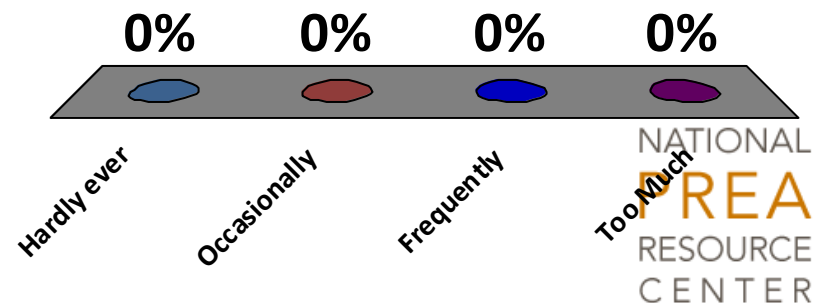
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How often to you encounter PREA in your job?

- A. Hardly ever
- B. Occasionally
- C. Frequently
- D. Too Much

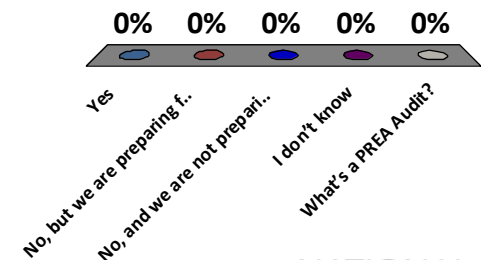


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Has your facility conducted a PREA audit yet?

- A. Yes
- B. No, but we are preparing for one
- C. No, and we are not preparing for one
- D. I don't know
- E. What's a PREA Audit?



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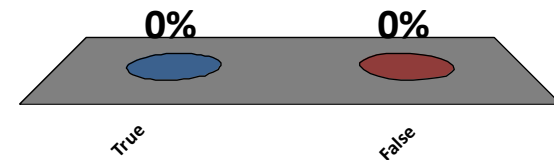


PREA: Fact or Fiction?

The PREA Standards require that video cameras be installed in any “blind spot” areas of a facility where inmates have access.

A. True

B. False

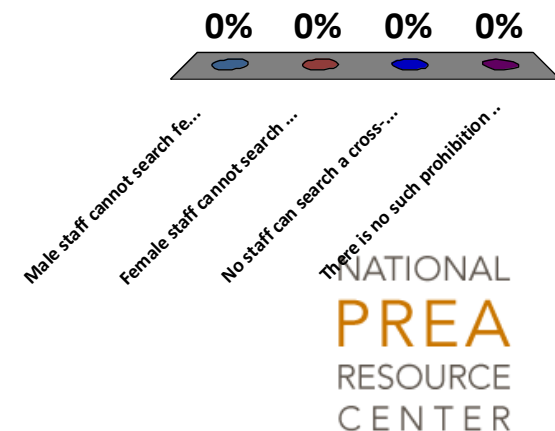


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What is the prohibition on cross-gender pat-down searches in the PREA Standards?

- A. Male staff cannot search female inmates
- B. Female staff cannot search male inmates
- C. No staff can search a cross-gender inmate
- D. There is no such prohibition in the standards



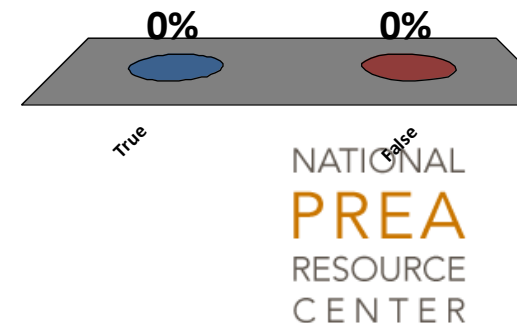
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The PREA Standards require that all administrative investigators are to be trained on how to issue Miranda warnings and collect evidence following a reported sexual abuse incident.

A. True

B. False



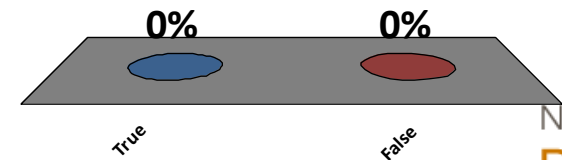
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The PREA Standards require all employers to ask applicants who may have contact with inmates directly about previous sexually abusive behavior during interviews.

A. True

B. False



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Audits

Early Adult PREA Audits Review

- State-run adult corrections facilities

Of the 30 reviewed:

- 26 passed all standards
- 4 had corrective action plan requirements

- Federal facility audits

Of the 9 reviewed:

- 3 passed all standards
- 6 required corrective action plans



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Auditor Breakout

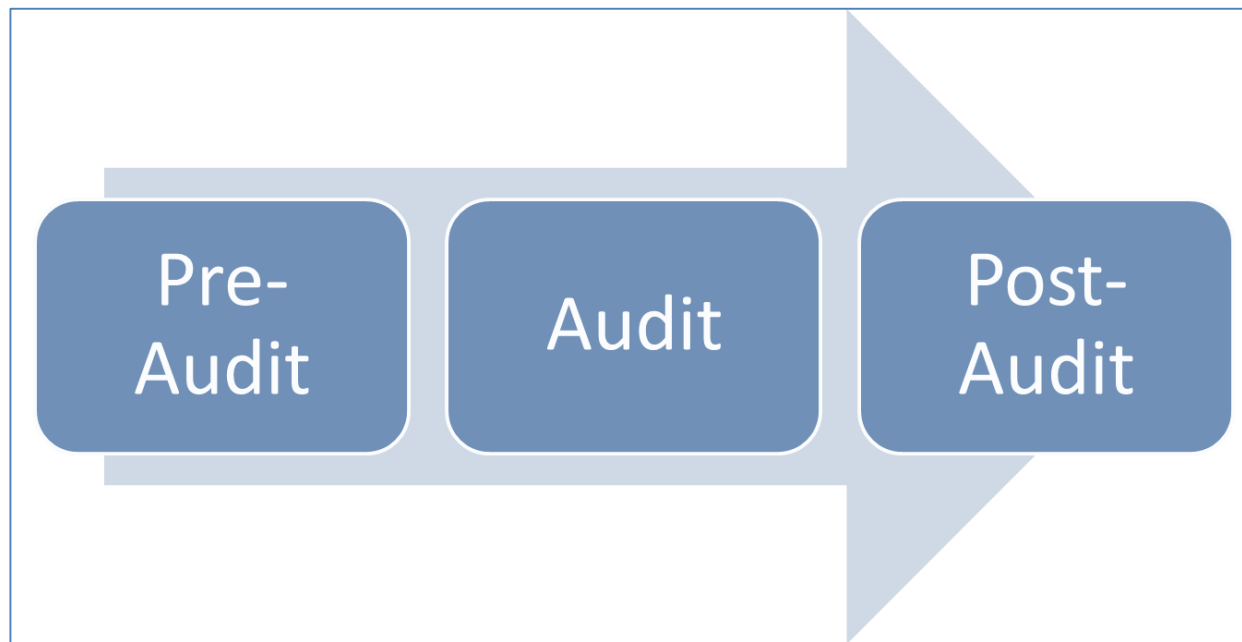
- Adult Facility Auditors
(Prisons/Jails/Community Confinement/Lockup): 296
- Juvenile Facility Auditors: 116



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Audit Phases



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Pre-Audit Phase

Identification of Auditor

- Audit period began August 20, 2013
- DOJ has published a list of certified auditors
- Agency is responsible for selecting an auditor






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Pre-Audit Questionnaire

PREA AUDIT: PRE-AUDIT QUESTIONNAIRE ADULT PRISONS & JAILS

  		Original date completed: Dates revised: Completed by: Title: Date of last agency PREA audit (if applicable): Date of last facility PREA audit:
AGENCY INFORMATION (IF APPLICABLE)		
Name of agency:		
Governing authority or parent agency: (if applicable)		
Physical address:		
Mailing address: (if different from above)		
Telephone number:		
The agency is:	<input type="checkbox"/> Military <input type="checkbox"/> County <input type="checkbox"/> Federal <input type="checkbox"/> Private for profit <input type="checkbox"/> Municipal <input type="checkbox"/> State <input type="checkbox"/> Private not for profit	
Agency mission: (attach additional pages if necessary)		Upload Attachment
Agency Chief Executive Officer		
Name:	Title:	
Email address:	Telephone number:	
Agency-Wide PREA Coordinator		
Name:	Title:	
Email address:	Telephone number:	
PREA coordinator reports to:		
Number of compliance managers who report to PREA coordinator:		
Agency website with PREA information:		
Is the agency accredited by any other organization? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Other		
Number of volunteers and individual contractors currently authorized to enter the facility:		
Number of investigators the agency currently employs for investigating allegations of sexual abuse:		



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Pre-Audit Phase

Initial Auditor Review and Discussions with PREA Coordinator/Compliance Manager

- Auditor reviews agency/facility responses to pre-audit questionnaire and has follow-up call(s) with PREA Coordinator/Compliance Manager to get clarification and explain the audit process



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Pre-Audit Phase

Audit Process

- Auditor will have to provide the facility official notification of the on-site portion of the audit at least 60 days in advance of the visit
- Facility will post official notification so staff and inmates are aware that the auditor will be on-site



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Audit Phase

On-Site Visit

Facility Tour

- Instructions/ Guidance for Conducting Tour
- Additional Document Review
- Staff/Inmate Review



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Audit Phase

Auditor Compliance Tool

- Auditor begins “Auditor Compliance Tool”
- Information from agency/facility questionnaire will auto-populate to the compliance tool

PREA Audit: Auditor Compliance Tool
Adult Prisons and Jails



Facility audited:
Date completed:
Dates revised:
Completed by:
Title:
Dates of PREA audit:

PREVENTION PLANNING	
§115.11 - Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.	
Auditor Findings	Verification Documents/Data for Auditor Review
115.11 (a) The 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.	<div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> Yes <input type="checkbox"/> No</div><div>Pre-Audit: QUESTIONNAIRE: The agency has a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment in facilities it operates directly or under contract. YES or NO (FROM 115.11(a)-1) The facility has a policy outlining how it will implement the agency's zero-tolerance approach to preventing, detecting, and responding to sexual abuse and sexual harassment. YES or NO (FROM 115.11(a)-2) The policy includes definitions of prohibited behaviors regarding sexual assault and sexual harassment. YES or NO (FROM 115.11(a)-3) The policy includes sanctions for those found to have participated in prohibited behaviors. YES or NO (FROM 115.11(a)-4) The policy includes a description of agency strategies and responses to reduce and prevent sexual abuse and sexual harassment of inmates. YES or NO (FROM 115.11(a)-5) POLICY: ZERO TOLERANCE (FROM 115.11(a)-1) Refer to page/section: (FROM 115.11(a)-1) POLICY OUTLINING IMPLEMENTATION PLAN (FROM 115.311(a)-2) Refer to page/section: (FROM 115.311(a)-2) AUDITOR NOTES: Audit: AUDITOR NOTES:</div></div>

PREA AUDIT: AUDITOR COMPLIANCE TOOL

1



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Audit Phase

People to be interviewed

- Agency Head (or Designee)
- PREA Coordinator
- PREA Compliance Manager
- Warden (or Designee)
- Random Sample of Staff
- Specialized Staff

Inmate Interviews

- Random
- Youthful Inmates
- Disabled and LEP
- LGBTI
- In Segregated Housing
- Who Have Reported Sexual Abuse
- Disclosed Sexual Victimization During Risk Screening



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Post-Audit Phase

Auditor Summary Report

Response for each measure based on:

- Review of policies/procedures
- Review of documentation
- Review of data
- Interviews with Inmates & Staff
- Tour of facility

Auditor uploads additional documentation gathered on site



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Post-Audit Phase

Findings

- There will be determination of findings for each subsection
- Exceeds Standard
- Meets Standard
- Does Not Meet Standard
- Auditors provide commentary with justification for decision



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Audit Findings

Auditor Summary Report

- Following the on-site portion of the audit, the auditor will finalize the Auditor Summary Report
- May require follow-up communication with PREA Compliance Manager or other staff



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Audit Findings

Auditor Summary Report

- After compliance report is completed, Auditor Summary Report is finalized
- Findings will summarize # of standards that meet standard, exceed standard and do not meet standard
- Will contain standard-by-standard report on findings, including need for corrective action



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Corrective Action Plans

Corrective Action Period

- Upon receipt of the auditor's report, a 180-day corrective action period begins
- Agency and auditor shall jointly develop a plan to achieve compliance



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Corrective Action Plans

Corrective Action Period

- Agency must correct the issue and auditor shall verify that the standard is met within the period
- Auditor verification could include an on-site visit if necessary
- If the agency does not meet standards upon verification, it can request another audit once it believes it has achieved compliance



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Audit Appeal

- Agency may lodge an appeal with DOJ regarding any audit finding
- Must be lodged within 90 days of the auditor's final determination
- If DOJ determines there is good reason for re-evaluation, there may be a re-audit
 - Agency bears cost of the re-audit
- Findings of the re-audit are final and cannot be appealed
- Process and compliance measures for re-evaluation are the same as for the original audit



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Requirements

- **Auditor Education/Experience Requirements**



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Who Will Be Auditors?

PREA Standard § 115.402

Qualifications

Auditors must be:

- A member of a correctional monitoring body not part of (or under the authority of) the agency;
- A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency;
- Other outside individual with relevant experience



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Auditor Qualifications

- Auditor must have 3 years of significant auditing, monitoring, quality assurance, investigations, or substantially similar experience
- Bachelor's from accredited college/university or equivalent work experience
- 2 references from professionals in field that applies to set of standards for which they are seeking certification
- Criminal records background check



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Who Will Be Auditors?

PREA Standard § 115.402

Certification

- All auditors shall be certified by DOJ (normally within 30 days of training)
- DOJ shall develop and issue procedures regarding the certification process, which shall include training requirements



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Auditor Certification

- Auditors will be certified in two categories:
 - Adult Facilities
 - Juvenile Facilities
- *Adult Facilities:* Prisons, Jails, Community Confinement, Lockups
- Auditors will only be able to audit facility types that they are certified to audit.



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Reciprocal Auditing

- A certified auditor who is employed by one correctional agency can conduct an audit of another agency **only if**:
 - ✓ The auditor has not conducted an audit within the other agency in the past twelve months
- Some agencies considering multiple-agency consortiums to provide auditing



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Auditor Ethics

Auditor Compensation

PREA Standard § 115.402

- Auditor can not have received financial compensation from the agency being audited (except for PREA audits) during the three years previous to the audit
- Following the audit, auditor can not receive other financial compensation from the agency being audited (except for the conduct of the audit) for three years



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Auditor Compensation

- Terms of participation negotiated between agency and auditor
 - Compensation
 - Number of facilities
 - Scheduling of audit activities
 - Staff
- DOJ will not set auditor fees
- Agencies are encouraged to have significant discussions with auditors prior to contracting



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Audit Contents and Findings

PREA Standard § 115.403

- Audit Contents and Findings
- Each audit report 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.



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Auditor Training

- Auditor trainings occurred in June and November 2013 and January 2014
- 5 more classes in 2014



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Auditor Review

- DOJ will utilize experienced auditors to conduct peer review spot checks of the audit methodology and process
 - Spot checks could be at random and/or initiated due to an issue (e.g. complaint, frequency of appeal, etc.)

Review could result in retraining or decertification

DOJ can decertify auditors at its discretion



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Challenging Standards

Most Challenging Standards

1. Cross gender viewing and searches § 115.15
2. Screening for victimization and abusiveness § 115.41
3. Referring all incidents for investigation § 115.22
4. Employee training § 115.31
5. Protecting against retaliation § 115.67



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Cross Gender Viewing and Searches

§ 115.15



§ 115.15 Limits to Cross-Gender Viewing and Searches

Prohibition of:

- Cross-gender strip or visual body cavity searches except in exigent circumstances or when performed by medical practitioners
- Cross-gender pat-down searches of female inmates, absent exigent circumstances
- Facilities shall NOT restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision
- All such searches must be documented



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§ 115.15 Limits to Cross-Gender Viewing and Searches

- Facility shall implement policies and procedures enabling inmates to shower, perform bodily functions and change clothes without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia.

EXCEPT

- In exigent circumstances
- 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 an inmate housing unit.



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§ 115.15 Limits to Cross-Gender Viewing and Searches

Transgender and Intersex Inmates

- Searching or physically examining transgender or intersex individuals solely to determine genital status is prohibited.
- If the genital status is unknown, the facility may determine it through:
 - Conversation with the inmate
 - Review of medical records
 - Learning that information as part of a broader medical examination conducted in private by a medical practitioner.
- The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates,
 - in a professional and respectful manner,
 - in the least intrusive manner possible,
 - consistent with security needs.



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Screening for Victimization and Abusiveness



§ 115.41 Screening for Risk of Victimization and Abusiveness

- During an intake screening and upon transfer to another facility, all inmates are screened to assess their risk of victimization or abusiveness
- Intake screening shall ordinarily take place within 72 hours of arrival at the facility.
- Assessment shall be conducted using an objective screening instrument



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§ 115.41 Screening for Risk of Victimization and Abusiveness

Initial classification process should consider, at a minimum:

- Mental, physical or developmental disabilities
- Age
- Physical build
- Whether inmate has been previously incarcerated
- Inmate's criminal history (exclusively non-violent?)
- Prior convictions for sex offenses against adults or children
- Whether inmate is, or is perceived to be, LGBTI or gender non-conforming
- Previous experiences of sexual victimization
- The inmate's own perception of vulnerability
- Whether inmate is detained solely for civil immigration purposes



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§ 115.41 Screening for Risk of Victimization and Abusiveness

In addition, initial screening should consider:

- prior acts of sexual abuse,
- prior convictions for violence offenses,
- history of prior institutional violence or sexual abuse
- Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, facility reassesses inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.
- Inmates will be rescreened when warranted, due to
 - Referral
 - Request
 - Incident of sexual victimization
 - Receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness



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§ 115.41 Screening for Risk of Victimization and Abusiveness

- Inmates may not be disciplined for refusing to answer particular questions or for not disclosing complete information in response to questions asked pursuant to this standard.
- The agency shall implement appropriate controls on the dissemination 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



§ 115.42 Use of Screening Information

- The agency uses information obtained during the risk screening required in § 115.41 to:
 - Inform housing, bed, work, education and program assignments
 - With the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive
- Agency shall make individual determinations about how to ensure the safety of each inmate.



§ 115.42 Use of Screening Information

- The agency shall consider whether to assign transgender and intersex inmates to male or female facilities on a case-by-case basis, dependent on considerations of an inmate's health and security, and whether the placement would present management or security problems
- Placement and programming assignments for such inmates shall be reassessed at least twice each year to review any threats to safety.
- Inmate's own views with respect to his or her own safety shall be given serious consideration.



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§ 115.42 Use of Screening Information

- Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
- The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates



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Investigations

§ 115.15



§ 115.22 Policies to Ensure Referrals of Allegations for Investigations

- The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.
- Need to have a policy in place to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to do so, unless allegation does not involve potentially criminal behavior
 - Policy will be published to website OR if it does not have one, make the policy available through other means.
 - The agency shall document all such referrals.
 - If a separate entity is responsible for the investigations, the website publication will describe the responsibilities of both the agency and the investigating entity



§ 115.71 Criminal and Administrative Agency Investigations

Investigations are prompt, thorough, objective for all allegations, including third-party and anonymous reports

- Where sexual abuse is alleged, investigations are conducted by investigators who have received special training in sexual abuse investigations (§ 115.34)
- An investigation will not be terminated solely because the alleged abuser or victim departs the employment or control of the agency
- 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.



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§ 115.71 Criminal and Administrative Agency Investigations

Investigators shall:

- Gather and preserve all direct and circumstantial evidence
 - Available physical & DNA evidence, electronic monitoring data
- Interview alleged victims, perpetrators, witnesses
- Review prior complaints and reports of sexual abuse involving the suspected perpetrator
- Assess the credibility of an alleged victim, suspect or witness on an individual basis
- Conduct compelled interviews when the quality of evidence appears to support criminal prosecution, only after consulting with prosecutors



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§ 115.71 Criminal and Administrative Agency Investigations

Administrative Investigations:

- Include efforts to determine if staff actions/failures contributed to the abuse;
- Shall be documented in written reports that include
 - a description of the physical and testimonial evidence,
 - reasoning behind credibility assessments, and
 - investigatory findings.

Criminal investigations:

- Shall be documented in written reports that include
 - Thorough description of physical, testimonial and documentary evidence
 - Attached copies of all documentary evidence where feasible



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§ 115.71 Criminal and Administrative Agency Investigations

- Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution
- The agency shall retain written reports referenced in this standard for as long as the alleged abuser is incarcerated or employed by the agency, plus 5 years
- When investigations are conducted by outside investigators, the facility will cooperate with investigators and endeavor to remain informed of the investigation
- State/DOJ entities conducting investigations shall do so pursuant to above requirements



§ 115.73 Reporting to inmates

- Following an investigation into an inmate's allegation of sexual abuse, the agency shall inform the inmate of the conclusions of the investigation (substantiated, unsubstantiated, unfounded).
 - If the agency did not conduct the investigation, it will request the relevant information from the investigative agency



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§ 115.73 Reporting to inmates

- Following an inmate's allegation against a staff member, the agency shall inform the inmate whenever:
 - The staff member is no longer posted within the inmate's unit or is no longer employed at the facility
 - The agency learns that the staff member has been indicted or convicted with a charge related to sexual abuse within the facility

Note: Does not apply to allegations that have been determined to be unfounded



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§ 115.73 Reporting to Inmates

- Following an inmate's allegation against another inmate, the agency shall inform the inmate whenever:
 - The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
 - The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
- All such notifications or attempted notifications shall be documented.
- An agency's obligation to report under this standard shall terminate if the inmate is released from the agency's custody.



Protection Against Retaliation

§ 115.67



§ 115.67 Agency Protection Against Retaliation

- Agency shall establish a policy that:
 - protects all inmates and staff that report sexual abuse or sexual harassment or cooperate with an investigation from retaliation from other inmates or staff
 - designates which staff members or departments are charged with monitoring retaliation.
- Agency employs multiple protection measures, such as:
 - Housing changes or transfers
 - Removal of alleged abusers from contact with victims
 - Emotional support for inmates/staff who fear retaliation



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§ 115.67 Agency Protection Against Retaliation

- Agency monitors conduct or treatment of 1) reporters, and 2) inmates reported to have suffered from sexual abuse for at least 90 days following the report
 - Agency shall act promptly to remedy any such retaliation.
 - Agency shall continue monitoring for another 90 days if the initial monitoring indicates a need

Monitor include -

- For inmates:
 - Monitoring of disciplinary reports, housing or program changes,
 - Periodic status checks
- For staff:
 - negative performance reviews or reassignments of staff



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§ 115.67 Agency Protection Against Retaliation

- 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.
- An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.




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Questions & Answers



THANK
YOU!

Thank You!



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