

PREA Policy Template for Small Jails



TABLE OF CONTENTS

ACKNOWLEDGEMENTS

GUIDE TO USING THIS TEMPLATE

PREA POLICY

1. PURPOSE

2. ZERO TOLERANCE POLICY

3. PREA COORDINATOR

4. PREVENTING AND DETECTING SEXUAL ABUSE AND HARASSMENT

- A. Staffing Plan/Video Monitoring
- B. Unannounced Rounds
- C. Youthful Inmates
- D. Cross Gender Viewing and Searches/Searches of Transgender Inmates
- E. Inmates with Disabilities or Limited English Proficiency
- F. Screening of Inmates
- G. Protection of Inmates Facing Substantial Risk
- H. Hiring and Promotion Practices
- I. Upgrades to Facilities and Technologies

5. RESPONDING TO ALLEGATIONS OF SEXUAL ABUSE/HARASSMENT

- A. Procedures for Reporting Sexual Abuse / Sexual Harassment
 - (1) Inmates
 - (2) Staff
 - (3) Third Parties
- B. Coordinated Response to Report of an Incident
- C. Immediate Steps After Receiving a Report
- D. Medical and Mental Health Services
 - (1) Emergency
 - (2) Ongoing
- E. Support Services for Victims of Sexual Abuse
- F. Investigation of Incidents
- G. Protection of Inmates from Retaliation
- H. Sanctions Against Sexual Abusers When Allegations are Substantiated
- I. Notifying Other Confinement Agencies

6. STAFF TRAINING AND INMATE EDUCATION

- A. Employee Training
- B. Inmate Orientation and Education
- C. Contractor and Volunteer Training

7. DATA COLLECTION AND REVIEW

- A. Data Collection

- B. Data Review for Corrective Action**
- C. Data Storage, Publication, and Destruction**

8. COLLECTIVE BARGAINING AGREEMENTS

9. AUDITING AND CORRECTIVE ACTION

- A. Frequency and Scope of Audits**
- B. Auditor Qualifications**
- C. Audit Contents and Findings**
- D. Audit Corrective Action Plan**
- E. Audit Appeals**

ACKNOWLEDGEMENTS

This project was supported by Grant No. 2012-RP-BX-0001 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. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Just Detention International wishes to thank Lincoln County Jail Administrator Capt. Clint Tweden and Pitkin County Jail Administrator Deputy Don Bird for their invaluable feedback on this document.

For More Information

Colorado Jail Association (CJA) members can obtain additional project resources – including sample PREA staffing plans, staff training, and inmate education curricula – on the CJA website. Non-members can contact JDI directly for these materials.

Just Detention International is a health and human rights organization that works to end sexual abuse in all forms of detention. For more information on this project or on creating policies that comply with the Department of Justice's national PREA standards, contact Just Detention International at info@justdetention.org or (213) 384-1400.

GUIDE TO USING THIS TEMPLATE

This template is intended to be a starting point for small jails as they work to create or revise policies to comply with the Department of Justice's National Standards to Prevent, Detect, and Respond to Prison Rape (28 C.F.R. Part 115).

The template provides sample language, suggested policies, and strategies for implementing these policies. It is recommended that agencies analyze their operations, state laws, unique facility needs, designs, staffing, and budget issues as they use this template to customize their sexual abuse prevention, detection, and response policies.

This template PREA policy is written in gender-neutral language to be inclusive of jails' mixed-gender populations. Examples of gender-neutral language are "police officer" rather than "policeman" and "work the post" rather than "man the post." The use of inclusive language helps these important policies to apply to all inmates and staff equally.

DISCLAIMER: This document is not intended as legal advice. Agencies are encouraged to consult with counsel, as appropriate, regarding legal compliance and risk management issues.

How the Document is Organized

This policy template is organized by topic and groups various provisions of the PREA standards by subject area, instead of by numerical order. The topics identified and the way they are organized in the template represent only one approach; other approaches may also be suitable. Since sections are divided by color, this document should be printed in color, if possible. For each topic, there are three sections:

Black type: Black text contains sample policy language that agencies are encouraged to adapt to their facility. The text can be copied and edited to meet the specific needs of your facility. Definitions are included to assist agencies to understand key terms. Any text in brackets, such as [AGENCY], should be substituted with the appropriate corresponding information from your jail. Each of the sections begins with a citation to the applicable section(s) of the PREA standards.

It is important for the PREA Coordinator and others involved with drafting the PREA policy to read the full text of each standard, as well as the Department of Justice's commentary regarding the history and purpose of the standard (at pp. 1-184 in the PREA standards).

Blue type (Key Implementation Considerations): Blue text breaks down each topic into key points and provides guidance on issues to consider when creating your PREA policy. Considerations have been included for how small jails, in particular, can approach the development of policies that are in compliance with the PREA standards. In most instances, additional information is provided on how to implement the standard; in other places, this section summarizes the preceding standard. This section also contains information that can be used by agency staff when applying the standards on a day-to-day basis, as well as to facilitate staff training on these topics.

Green type (Action Steps): Green text suggests steps for jail administrators to implement the PREA policy. For example, some of the agency's existing procedures and protocols may need to be updated, or new ones created, in order to comply with the PREA standards.

This policy template was developed specifically for small jails. Not all of the template language will apply to your facility, so use your discretion when creating your PREA policy.

It is also be a good idea to cross-reference your current or existing policies with the PREA policy. For example, a jail may want to reference its medical policies in Section 5, part D of this PREA policy (below) regarding medical and mental health care for survivors of sexual abuse in the jail.

The policy template begins on the next page. The first six pages of this document are meant to provide guidance on the template and should not be included in your PREA policy.

[AGENCY] PREA Policy

1. PURPOSE

[AGENCY] is committed to zero tolerance of any form of sexual abuse and sexual harassment in facilities it operates directly or with which it holds contracts for the confinement of inmates.

The purpose of this policy is to describe [AGENCY'S] mandate of zero tolerance toward all forms of sexual abuse and sexual harassment; and to outline [AGENCY'S] approach to preventing, detecting, and responding to sexual abuse and harassment.

2. ZERO TOLERANCE POLICY [DOJ § 115.11(a)]

[AGENCY] mandates zero tolerance toward all forms of sexual abuse and sexual harassment. Sexual abuse of an inmate and sexual harassment of an inmate are prohibited.

A. Definitions

- (1) "Inmate" means any person incarcerated or detained in the jail;
- (2) "Staff" means an agency employee;
- (3) "Contractor" means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency; and
- (4) "Volunteer" means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.
- (5) "Consent" refers to cooperation in act or attitude pursuant to an exercise of free will and with full understanding of the nature of the act. Inmates cannot consent to sexual contact with staff members, volunteers or contractors.

B. Sexual Abuse

- (1) "Sexual abuse" includes—
 - (a) Sexual abuse of an inmate by another inmate; and
 - (b) Sexual abuse of an inmate by a staff member, contractor, or volunteer.
- (2) Sexual abuse of an inmate by another inmate includes any of the following acts, if the victim does not consent, is coerced into such an act by overt or implied threats of violence, or is unable to consent or refuse:
 - (a) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 - (b) Contact between the mouth and the penis, vulva, or anus;
 - (c) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
 - (d) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.
- (3) Sexual abuse of an inmate by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate:
 - (a) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 - (b) Contact between the mouth and the penis, vulva, or anus;
 - (c) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

- (d) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (e) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (f) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (a) through (e) of this section;
- (g) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate; and
- (h) Voyeurism by a staff member, contractor, or volunteer. Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

C. Sexual Harassment

- (1) "Sexual harassment" includes—
 - (a) Sexual harassment of an inmate by another inmate; and
 - (b) Sexual harassment of an inmate by a staff member, contractor, or volunteer.

- (2) Sexual harassment of an inmate by another inmate includes:
 - Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by an inmate directed toward another.

- (3) Sexual harassment of an inmate by a staff member, contractor, or volunteer includes:
 - Repeated verbal comments or gestures of a sexual nature to an inmate by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

3. PREA COORDINATOR [DOJ § 115.11(b)]

[AGENCY] has designated a PREA Coordinator with sufficient time and authority to develop, implement, and oversee its efforts to comply with the PREA standards. The PREA Coordinator shall be [TITLE] or someone designated by that person, in writing.

Key Implementation Considerations:

- The PREA Coordinator should be an upper level agency staff member and have both of the following:
 - (1) Access to agency/facility leadership on a regular basis; and
 - (2) Authority to work with other staff and supervisors to effect change.
- The PREA Coordinator does not have to be a full-time position.
- Small jails have a condensed chain of command, which means that the PREA Coordinator may be the Jail Administrator, in many cases.

Action Step(s):

- In a separate document to be attached to the policy, the agency head will appoint an employee to serve as the PREA Coordinator for the agency. The appointment should include the person's title (rather than his or her name) to avoid the need to continually update the document.
- This document should also include:
 - (1) The employee's position in the agency's organizational structure;
 - (2) The responsibilities assigned to him/her as PREA Coordinator;
 - (3) The dates of the appointment;
 - (4) The agency head's signature; and
 - (5) The effective date.

Note: "Agency head" is defined as the principal official of an agency.

4. PREVENTING AND DETECTING SEXUAL ABUSE AND HARASSMENT [DOJ § 115.11]

[AGENCY] shall adopt and implement the following measures to prevent and detect sexual abuse and sexual harassment in its facility:

A. Staffing Plan/Video Monitoring [DOJ §115.13]

- (1) In the process of creating and revising a staffing plan to provide for adequate levels of staffing and video monitoring to protect inmates against sexual abuse, [AGENCY] shall ensure that the following factors are taken into consideration:
 - (a) Generally accepted detention and correctional practices;
 - (b) Any judicial findings of inadequacy;
 - (c) Any findings of inadequacy from Federal investigative agencies;
 - (d) Any findings of inadequacy from internal or external oversight bodies;
 - (e) All components of the facility's physical plan;
 - (f) The composition of the inmate population;
 - (g) The number and placement of supervisory staff;
 - (h) Programs occurring on a particular shift;
 - (i) Any applicable State or local laws, regulations, or standards;
 - (j) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
 - (k) Any other relevant factors.
- (2) [AGENCY] shall make its best efforts to comply with the staffing and video monitoring plan and, in circumstances where it is not complied with, shall document and justify all deviations.
- (3) At least once every year, and in collaboration with the PREA Coordinator, [AGENCY] shall conduct an assessment to determine whether adjustments are needed to the staffing plan and the deployment of video monitoring systems and other technologies.

Key Implementation Considerations:

- The facility should create a plan that provides for adequate levels of staffing and video monitoring to protect inmates from sexual abuse.
 - The plan should be created in consultation with the PREA Coordinator.
 - No specific staffing ratios are mandated for adult facilities; this is left to the discretion of the agency.
 - The 11 factors enumerated in the policy [see 4A(1)(a) through (k) above] must be considered.
 - For assistance with drafting a PREA-compliant staffing plan, consult Just Detention International's *PREA Staffing Plan Template for Small Jails*. CJA members can find the template staffing plan and sample PREA staffing plans on the CJA website. Non-members can contact JDI directly for these documents.
- The facility should document any time it deviates from the plan.

- The facility should conduct and document a review of the plan at least once a year to determine whether it is necessary to make adjustments to:
 - The staffing plan;
 - Deployment of video monitoring systems; and
 - Available resources to assure adherence to the staffing plan.

Action Step(s):

- Create a separate document to be attached to the policy with a dated staffing and video monitoring plan. Refer to Just Detention International’s *PREA Staffing Plan Template for Small Jails* for additional guidance.

B. Unannounced Rounds [DOJ §115.13(d)]

- (1) Supervisors shall conduct and document unannounced rounds covering all shifts, and all areas of the facility, to identify and deter staff sexual abuse or harassment. [AGENCY] policy prohibits staff members who are aware of these rounds from alerting other staff as to when or where these rounds are occurring, unless related to the legitimate operational needs of the facility.

- (2) The PREA Coordinator shall determine how and when the unannounced rounds will be conducted and shall review all documentation from the rounds.

Key Implementation Considerations:

- Unannounced rounds to identify staff sexual abuse and harassment should be conducted by:
 - Intermediate-level supervisors; or
 - Higher level-supervisors.

- Rounds should be conducted on a regular basis.
 - The frequency of the unannounced rounds to detect staff sexual abuse and harassment is left to agency discretion but should be more than once per month.
 - Rounds should be conducted for night shifts, as well as day shifts.
 - The rounds should be documented.

- Many small jails have direct supervision layouts or staffing ratios that allow for frequent staff and inmate contact. Even in such facilities, unannounced, formal rounds are necessary for safety and to comply with this standard.

- Small jails may have few to no upper-level or supervisory staff on certain shifts. In these cases, the PREA Coordinator may want to consider changing a supervisor’s schedule on a weekly or monthly basis to allow overlap with all shifts in order to conduct the required rounds.

- While this should not take the place of unannounced rounds, small jails may want to consider using video monitoring or surveillance to provide additional supervision. For example, the jail supervisor can review the previous night’s video monitoring footage on a regular basis to detect any staff sexual abuse. Similarly, jail administrators may want to enlist the help of other law enforcement officials to enhance supervision in the jail. In some instances, sheriff’s deputies may be willing to visit the facility at irregular intervals to provide additional supervision for staff. Careful consideration should be given to the potential impact on staff morale and

relationships between the agencies if outside law enforcement officials provide this level of supervision in the jail.

- Actions by staff to alert colleagues that a supervisor is en route to conduct unannounced rounds are prohibited.

Action Step(s):

- Create and document a procedure for conducting unannounced rounds, which should be shared only with administrators and intermediate or higher level supervisors. Consider creating a form to document these rounds, which will be shared with the PREA Coordinator.

C. Youthful Inmates [DOJ §115.14]

- (1) A youthful inmate (defined as any person under the age of 18 who is under adult court supervision and incarcerated or detained in jail) shall not be placed in a housing unit in which they will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.
- (2) In areas outside of housing units, [AGENCY] shall either:
 - (a) Maintain sight and sound separation between youthful inmates and adult inmates, or
 - (b) Provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.

Note: “Direct staff supervision” means that security staff are in the same room with, and within reasonable hearing distance of, the youthful offender. “Security staff” means employees primarily responsible for the supervision and control of inmates and detainees in housing units, recreational areas, dining areas, and other program areas of the facility.

- (3) The facility shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, the agency shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.

Note: “Exigent circumstances” means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.

Key Implementation Considerations:

The standard imposes three requirements regarding youthful inmates:

- (1) Youthful inmates may not be placed in a housing unit in which they will have sight, sound, or physical contact with any adult inmate through use of a shared day room or other common space, shower area or sleeping quarters.
- (2) Outside of housing units, the facility must either:
 - Maintain sight and sound separation between youthful and adult inmates – in other words, prevent adult and youth inmates from seeing or communicating with each other;

Or

 - Provide direct staff supervision when youthful and adult inmates are together.
 - Youthful offenders must be within sight at all times.

- (3) To comply with this standard, the facility must make its best effort to avoid placing youth in

isolation.

- Instead of relying on isolation, agencies can:
 - Use dedicated units, wings, or tiers for youthful offenders;
 - Enter into agreements with other entities to hold youthful inmates;
 - Temporarily house youth in a juvenile facility; or
 - Construct partitions or make other low-cost facility alterations, such as repurposing another room for housing youthful offenders.
- If isolation is unavoidable, absent exigent circumstances, agencies must provide youth with:
 - Daily large-muscle exercise and any special education services otherwise mandated by law; and
 - Access to other programs and work opportunities to the extent possible.

Note: Jails that do not house youthful offenders should still consider adopting this policy since it also applies to non-housing areas. For example, if your jail processes juvenile arrestees, but does not house them, you will still need to comply with the provisions of this standard.

Action Step(s):

- Create an operating procedure, if needed, for the housing of youthful offenders.

D. Cross Gender Viewing and Searches/Searches of Transgender Inmates [DOJ §115.15]

(1) Searches

- (a) The facility shall not conduct cross-gender strip searches (meaning a search that requires a person to remove or arrange clothing so as to permit a visual inspection of their breasts, buttocks, or genitalia) 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.

Note: “Medical practitioner” means a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice.

- (b) Effective August 20, 2015 [or August 20, 2017 for a facility whose rated capacity does not exceed 50 inmates] the facility shall not permit cross-gender pat-down searches (a running of the hands over the clothed body of an inmate by an employee to determine whether the individual possesses contraband) of female inmates, absent exigent circumstances. The facility shall not restrict female inmates’ access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.
- (c) The facility shall document all cross-gender strip searches and body cavity searches of inmates and all cross-gender pat-down searches of female inmates.
- (d) No staff member shall conduct a search of a transgender or intersex inmate solely for the purpose of determining genital status. If the inmate’s genital status is unknown, it may be determined during conversations with the inmate, 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.

Note: “Transgender” means a person whose gender identity (internal sense of feeling male or female) is different from the person’s assigned sex at birth. “Intersex” means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.

Key Implementation Considerations:

Note: “Cross-gender” refers to the search of a female inmate by male staff and the search of a male inmate by female staff.

- Cross-gender strip searches are prohibited unless:
 - Exigent circumstances exist; or
 - The search is performed by a medical practitioner.
- Cross-gender body cavity searches are prohibited unless:
 - Exigent circumstances exist; or
 - The search is performed by a medical practitioner.
- Cross-gender pat down searches are:
 - Prohibited for female inmates (effective August 20, 2015 or August 20, 2017 for facilities with a rated capacity of less than 50 inmates) absent exigent circumstances;
 - Not prohibited for male inmates.
- Searches of transgender or intersex inmates are not permitted solely to determine genital status.
 - If an inmate’s genital status is unknown, it may be determined by:
 - Conversations with the inmate;
 - Reviewing medical records; or
 - A medical examination conducted as part of a regular medical examination required of or offered to, all inmates.
- Agencies will need to make a case-by-case determination about which gender staff would be appropriate to search a transgender inmate. Every effort should be made to consult with each transgender inmate to determine their preference for the gender of the staff member searching them, which may vary depending on their gender identity and previous experiences in detention.
- Documentation is required for:
 - All cross-gender strip searches;
 - All cross-gender visual body cavity searches; and
 - All cross-gender pat-down searches of female inmates.
- Small jails may have concerns about implementing this standard, given lower numbers of staff. For those jails that do not have deputies of both genders on every shift, consider keeping at least one deputy of each gender on-call at all times and offering flexible scheduling to accommodate the need for employees of both genders if a pat or strip search is required.

Note: Training of security staff on how to conduct cross-gender pat down searches, and searches of

transgender and intersex inmates, is discussed below in Section 6. A. (Employee Training).

Action Step(s):

- Create an operating procedure regarding who can conduct pat down, strip, and visual body cavity searches, as well as how to document cross-gender searches.

(2) Viewing [DOJ §115.15 (d)]

- (a) The facility shall enable inmates 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.
- (b) Staff members of the opposite gender shall announce their presence when entering an inmate housing unit.

Key Implementation Considerations:

- The prohibition against staff viewing inmates of the opposite gender includes staff members who monitor cameras. This means that no staff member may monitor a camera that is likely to view inmates of the opposite gender while they are showering, performing bodily functions, or changing clothing.
- Cross-gender viewing of transgender inmates is also prohibited. Similarly to Section D. 1. regarding cross-gender searches of transgender inmates, agencies will need to make a case-by-case determination about which gender of staff would be appropriate to view a transgender inmate in a state of undress. In general, a transgender woman should not be viewed by male staff, and transgender man should not be viewed by female staff when they are not fully clothed.
- If opposite-gender staff will be conducting rounds in housing units while inmates are asleep (such as male staff checking a female dorm), the opposite-gender staff member should announce that these rounds will occur prior to “lights out.”
- The policy requires regular, verbal notification. A sign or notice in an inmate handbook or other written materials is not sufficient. Opposite-gender staff must announce their presence to allow inmates sufficient time to adjust their clothing or cover their bodies.

Action Step(s):

- Create an operating procedure, if needed, regarding cross-gender viewing procedures.

E. Inmates with Disabilities or Who Have Limited English Proficiency

(1) Disabled Inmates [DOJ § 115.16 (a)]

- (a) [AGENCY] shall take appropriate steps to ensure that inmates with disabilities have an equal opportunity to benefit from all aspects of [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 inmates who are deaf or hard of hearing – providing access to interpreters who can interpret effectively, accurately, and impartially.

Note: Inmates with disabilities includes inmates who are deaf, hard of hearing, blind or have low vision, and those who have intellectual, psychiatric, or speech disabilities.

(b) In addition, [AGENCY] shall ensure that written materials are provided in formats and through methods that ensure effective communication with inmates with disabilities.

(2) Inmates Who Have Limited English Proficiency [DOJ § 115.16(b)]

[AGENCY] shall take reasonable steps to ensure meaningful access to all aspects of its efforts to prevent, detect, and respond to sexual abuse and sexual harassment to inmates who have limited English proficiency, including by providing interpreters who can interpret effectively, accurately, and impartially.

(3) Use of Inmate Interpreters [DOJ § 115.16(c)]

[AGENCY] shall not rely on inmate interpreters, inmate readers, or other types of inmate assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise an inmate's safety, the performance of first-responder duties, or the investigation of an inmate's allegations.

Key Implementation Considerations:

- Inmates with disabilities, or who are limited English proficient (LEP), must have equal access to the agency's efforts to prevent, detect and respond to sexual abuse and harassment.
- Interpreters:
 - Inmates who are deaf, hard of hearing or LEP should have access to interpreters.
 - Interpreters must be able to interpret effectively, accurately, and impartially.
 - Telephone and internet interpretation services may be used, and can be particularly helpful for small jails. Some video relay conferencing services can be installed for free and only charge a fee for use.
 - The American Jails Association (AJA) encourages jails with limited resources to contract with larger facilities to house inmates with disabilities. However, AJA cautions jails not to transfer an inmate to a distant facility that would deprive them of visitation by family members.
 - For small jails, this may be particularly challenging to manage. Most small jails are located in rural communities and the nearest jail may be hundreds of miles away. In these cases, consider online resources, a cooperative agreement to share interpreters, or reduced-fee interpretation services for inmates with disabilities or limited English proficiency.
 - Inmate interpreters may not be used unless a delay could compromise:
 - Inmate safety;
 - Performance of first-responder duties; or
 - Investigation the allegations.
- Written materials should be provided in formats that ensure effective communication with inmates who have cognitive disabilities, limited English reading skills, or who are blind. In general, it is best to provide written materials in simple language (6th grade level or below) and to make them available in a variety of formats, such as posters, brochures, and a handbook.

Action Step(s):

- Create an operating procedure for how the agency will comply with this provision to ensure that LEP inmates and those with disabilities are included in the agency's prevention, detection, and response to sexual abuse and sexual harassment.

F. Screening of Inmates

- (1) Screening for Risk of Victimization and Abusiveness [DOJ §115.41]
 - (a) All inmates shall be assessed during an intake screening and upon transfer from another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.
 - (b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.
 - (c) Such assessments shall be conducted using an objective screening instrument.
 - (d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization:
 - (d1) Whether the inmate has a mental, physical, or developmental disability;
 - (d2) The age of the inmate;
 - (d3) The physical build of the inmate;
 - (d4) Whether the inmate has previously been incarcerated;
 - (d5) Whether the inmate's criminal history is exclusively nonviolent;
 - (d6) Whether the inmate has prior convictions for sex offenses against an adult or child;
 - (d7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
 - (d8) Whether the inmate has previously experienced sexual victimization;
 - (d9) The inmate's perception of his or her own vulnerability to sexual abuse or sexual harassment; and
 - (d10) Whether the inmate is detained solely for civil immigration purposes.
 - (e) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to [AGENCY], in assessing inmates for risk of being sexually abusive.
 - (f) Within a set time period, [INSERT TIME PERIOD NO MORE THAN 30 DAYS FROM THE INMATE'S ARRIVAL TO THE FACILITY], the facility shall reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.
 - (g) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.
 - (h) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information related to, (d1), (d7), (d8) and (d9) above.
 - (i) [AGENCY] shall implement appropriate controls on the dissemination of responses to questions asked pursuant to this policy in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

Key Implementation Considerations:

- Timing of risk assessments:
 - During initial intake screening:
 - An assessment should be done within 72 hours of the inmate's arrival to determine risk of the inmate being sexually abused or abusive.
 - The agency should use the risk assessment to make provisional decisions about the inmate's placement.
 - Within a set time period, no more than 30 days after the inmate's arrival:
 - Reassessment must be done based upon additional, relevant information received since the intake screening.
 - Additional information may be obtained through staff interviews, assessments and observations of the inmate, as well as information received from other agencies or sources.
 - This reassessment will be fuller and more extensive than the initial screening and should be conducted:
 - When warranted due to a referral, request, incident of sexual abuse, or receipt of additional relevant information; or
 - Upon transfer to another facility.
- Method Used to Assess Inmates for Risk of Being Abused or Abusive:
 - An objective screening instrument must be used.
 - The screening instrument does not need to be validated previously through research or an accrediting body.
 - The Department of Justice encourages the use of an interdisciplinary team, including an appropriate mental health professional, to develop the instrument.
 - Assessment can be conducted by appropriately trained intake staff.
 - Assessment does not need to be done by medical or mental health professionals.
 - For risk of victimization, agencies must consider, at a minimum, the ten enumerated criteria to assess inmates.
 - For risk of being sexually abusive, agencies must consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse in assessing inmates
 - Agencies should not rely exclusively upon information previously gathered about a returning inmate.

Note: A "returning inmate" refers to a detainee who was incarcerated at the jail previously and has been rearrested. A "returning inmate" does not refer to someone who was transported away from the facility temporarily, such as for medical care or a psychiatric evaluation.

- The facility must ensure the risk assessment captures any changes since the inmate's previous incarceration and any current information available.
- Inmates may not be disciplined for refusing to answer questions, or for not disclosing complete information, related to:
 - Disabilities;
 - LGBTI status;
 - Gender nonconformity;

- Previous sexual victimization; or
 - Self-perception of vulnerability.
- The facility must limit the dissemination of information gathered during the assessment to ensure that sensitive information does not expose the inmate to harassment or danger. .

Action Step(s):

- Create an operating procedure for risk assessments, as well as the objective screening instrument used to determine risk of victimization and abusiveness.

(2) Use of Information Obtained from Screening [DOJ §115.42]

- (a) [AGENCY] shall use information from the risk screening 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.
- (b) [AGENCY] shall make individualized determinations about how to ensure the safety of each inmate.
- (c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate’s health and safety, and whether the placement would present management or security problems.
- (d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.
- (e) A transgender or intersex inmate’s own views with respect to his or her own safety shall be given serious consideration.
- (f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
- (g) [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 pursuant to a legal settlement or judgment.

Key Implementation Considerations:

- Information from the risk screening should be used to inform housing, bed, work, education, and program assignments to separate potential victims and potential abusers.
- Individualized determinations must be made about how to ensure the safety of each inmate.
- The following requirements apply to transgender and intersex inmates:
 - Decisions of where to assign a transgender or intersex inmate must consider whether a placement would ensure the inmate’s health and safety, and whether it would present any management or security problems on a case-by-case basis;
 - Assignments need to be reassessed at least twice each year;
 - The inmate’s own views with respect to his or her safety must be given serious consideration; and
 - Transgender and intersex inmates must be given the opportunity to shower separately

- from other inmates.
- Lesbian, gay, bisexual, transgender, or intersex (LGBTI) inmates should not be placed in a dedicated unit of facility solely on the basis of their being LGBTI, unless it is pursuant to a legal settlement or judgment.

Action Step(s):

- Create a procedure for how information obtained during the screening will be shared and used in the facility. Outline considerations for transgender and intersex inmates.

(3) Medical and Mental Health Screenings [DOJ Standards § 115.81]

- (a) If the screening required in Section 4. F(1) above indicates that an inmate has experienced prior sexual victimization, whether in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.
- (b) 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.
- (c) Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.

Key Implementation Considerations:

- If the screening required by Section 4. F(1) above indicates the inmate experienced prior sexual abuse in an institutional setting or in the community:
 - A follow-up meeting with a medical or mental health practitioner is required within 14 days of the screening to address immediate medical and mental health needs and security risks.
- Information related to prior sexual victimization or abusiveness that occurred in an institutional setting:
 - Should be strictly limited to medical and mental health professionals to inform treatment plans and to other staff as necessary to inform security and management decisions.
- Information about prior sexual victimization that did not occur in an institutional setting:
 - Should only be reported to agency officials after medical or mental health practitioners have obtained informed consent from the inmate, unless the inmate is under 18.

Action Step(s):

- Create a procedure for medical and mental health follow-up with survivors of previous sexual abuse.

G. Protection of Inmates Facing Substantial Risk

(1) Upon Learning of Substantial Risk [DOJ §115.62]

When [AGENCY] learns that an inmate is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate.

Key Implementation Considerations:

- The facility must act immediately to protect an inmate whenever it learns that he or she faces a substantial risk of imminent sexual abuse.
- Note: In *Farmer v. Brennan*, [511 U.S. 825 (1994)], the United States Supreme Court held that that a prison official may be liable under the Eighth Amendment of the U.S. Constitution - which prohibits cruel and unusual punishment - for acting with "deliberate indifference" to inmate health or safety if he or she:
 - Knows that an inmate faces a substantial risk of serious harm; and
 - Disregards that risk by failing to take reasonable measures to abate it.

Action Step(s):

- Create a procedure to address what steps will be taken when the agency believes an inmate is at substantial risk of imminent sexual abuse.

(2) Emergency Grievances [DOJ §115.52 (f)]

- (a) [AGENCY] shall establish procedures for the filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse.
- (b) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, [AGENCY] shall:
 - (b1) Immediately forward the grievance (or any portion of it that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken;
 - (b2) Provide an initial response within 48 hours; and
 - (b3) Issue a final decision within five (5) calendar days.
- (c) The initial response and final decision shall document [AGENCY's] determination of whether the inmate is at substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

Key Implementation Considerations:

- An emergency grievance procedure must be established.

Note: An "emergency grievance" is one that alleges an inmate is subject to a substantial risk of imminent sexual abuse.

- Include the following in the emergency grievance procedure:
 - An emergency grievance must be forwarded immediately to a level of review at which immediate corrective action can be taken;
 - An initial response must be provided within 48 hours; and
 - A final agency decision must be issued within 5 calendar days.

Note: Only the portion the grievance that involves an allegation of substantial risk of imminent sexual abuse needs to be treated as an emergency grievance.

- Documentation of the initial response and final agency decision must include:
 - The agency's determination of whether the inmate is in substantial risk of imminent sexual abuse;
 - The action taken in response to the emergency grievance; and
 - That such actions were taken within required timelines.
- Small jails that process all grievances immediately, and therefore do not use a formal emergency grievance procedure, should consider creating a procedure for grievances related to sexual abuse or harassment. Grievances should be forwarded to the PREA Coordinator for immediate response.

Action Step(s):

- Create an emergency grievance procedure for allegations that an inmate is subject to a substantial risk of imminent sexual abuse.

(3) Protective Custody [DOJ §115.43]

- (a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless [AGENCY] has assessed all available alternatives and has determined that there is no available alternative means of separation from likely abusers.
- (b) If the facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment. Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the fullest extent possible.
- (c) If the facility restricts access to programs, privileges, education, or work opportunities, it shall document:
 - (c1) The opportunities that have been limited;
 - (c2) The duration of the limitation; and
 - (c3) The reasons for such limitations.
- (d) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged. Such an assignment shall not ordinarily exceed a period of 30 days.
- (e) If an involuntary segregated housing assignment is made pursuant to this section, the facility shall clearly document:
 - (e1) The basis for the facility's concern for the inmate's safety; and
 - (e2) The reason why no alternative means of separation can be arranged.
- (f) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.

Key Implementation Considerations:

- Inmates at high risk for victimization may not be placed in involuntary segregated housing unless:
 - An assessment of available alternatives has been made; and
 - A determination has been reached that there is no available alternative means of separation from likely abusers.

Note: If a facility cannot conduct the assessment immediately, it may hold the inmate in involuntary

segregated housing for less than 24 hours while completing the assessment.

- To make such a placement, the following documentation is required:
 - The basis for the facility's concern for the inmate's safety; and
 - The reason why no alternative means of separation can be arranged.
- During the placement, inmates must have access to programs and work opportunities, to the extent possible. If such access is restricted, the facility must document:
 - The opportunities that have been limited;
 - The duration of the limitation; and
 - The reasons for the limitation.
- Inmates may be assigned to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged.
 - Such an assignment must not ordinarily exceed 30 days; and
 - The facility must conduct a review to determine whether there is a continuing need for separation of the inmate from the general population every 30 days.
- Small jails with limited housing options must consider where inmates who may be at high risk for sexual abuse can be housed. In the absence of dedicated wings or a unit for high-risk inmates, small jails can consider separating or segregating likely abusers, rather than likely victims.

Note: The above requirements also apply to use of segregated housing to protect an inmate who is alleged to have already suffered sexual abuse. See DOJ§ 115.43 and Section 5 of this policy below.

Action Step(s):

- Create an operating procedure about the use of involuntary segregated housing for inmates at high risk of being sexually abused and those who allege sexual abuse.

H. Hiring and Promotion Practices [DOJ §115.17]

- (1) [AGENCY] shall not hire or promote anyone who may have contact with inmates, or retain the services of any contractor who may have contact with inmates, who—
 - (a) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution; or
 - (b) Has been convicted of, or civilly or administratively adjudicated for, engaging or attempting to engage in sexual activity in the community facilitated by force, threats of force, or coercion, or if the victim did not consent or was unable to consent.
- (2) [AGENCY] shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to retain the services of any contractor, who may have contact with inmates.
- (3) Before hiring new employees who may have contact with inmates, [AGENCY] shall:
 - (a) Perform a criminal background records check; and

- (b) 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.
- (4) [AGENCY] shall also perform a criminal background records check before retaining the services of any contractor who may have contact with inmates.
- (5) [AGENCY] shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates, or have in place a system for otherwise capturing such information for current employees.
- (6) [AGENCY] shall ask all applicants and employees who may have direct contact with inmates about previous misconduct described in this section, in:
 - (a) Written applications and/or interviews for hiring or promotion; and
 - (b) Interviews or written self-evaluations conducted as part of reviews of current employees.
- (7) [AGENCY] shall impose on its current employees a continuing affirmative duty to disclose any of the misconduct described in this section.
- (8) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.
- (9) Unless prohibited by law, [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.

Key Implementation Considerations:

- Agencies may not hire, promote or contract with anyone who may have contact with inmates, who—
 - Has engaged in sexual abuse in an institution; or
 - Has been convicted of, or civilly or administratively adjudicated for, engaging or attempting to engage in sexual activity in the community by force, threats of force, coercion, or if the victim did not or was unable to consent
- Agencies must consider in hiring, promoting, and contracting with anyone who may have contact with inmates:
 - Any incidents of sexual harassment.
- Pre-hire/pre-contracting requirements:
 - Perform a criminal background records check for the prospective employee/contractor;
 - Make best efforts to contact all prior institutional employers of the prospective employee for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse; and
 - Ask all employment applicants directly about previous sexual misconduct in:
 - Written applications; or
 - Interviews for hiring.

- Material omissions regarding such misconduct, or providing materially false information, shall be grounds for termination.
- Post-hire requirements:
 - Conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates; or
 - Have in place a system for otherwise capturing such information for current employees.
 - Capturing this information from employees may be easier for small jails with limited staff, many of whom are well known to the jail administrator.
 - One way to ensure this information is captured on a regular basis is to make use of a background check system that would register staff members and notify the jail employer if an employee is arrested in another jurisdiction.
 - Ask all employees who may have contact with inmates directly about previous sexual misconduct in:
 - Written applications or interviews for promotions; and
 - Any interviews or written self-evaluations conducted as part of reviews of current employees.
 - Impose upon employees a continuing affirmative duty to disclose any such misconduct.
- Post-employment requirements:
 - Unless prohibited by law, the agency must 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 the employee has applied to work.

Action Step(s):

- Modify personnel policies, forms (such as the application for employment) and human resources procedures, as needed, to comply with this policy.

I. Upgrades to Facilities and Technologies [DOJ §115.18]

- (1) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, [AGENCY] shall consider the effect of the design, acquisition, expansion, or modification on its ability to protect inmates from sexual abuse.
- (2) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, [AGENCY] shall consider how such technology may enhance its ability to protect inmates from sexual abuse.

Key Implementation Considerations:

- These requirements are self-explanatory and should be read in conjunction with the standard regarding supervision and monitoring. See Section 4. A. above and specifically DOJ §115.13 (a)(5) related to the facility’s physical plant and areas where staff or inmates may be isolated, and §115.13 (a) and (c) (2) relating to video monitoring.

5. RESPONDING TO REPORTS OF SEXUAL ABUSE AND SEXUAL HARASSMENT

To respond to reported incidents of sexual abuse, we have adopted and implemented the following processes:

A. Procedures for Reporting Sexual Abuse and Sexual Harassment

(1) Inmate Reporting

(a) Ways for Inmates to Report Incidents [DOJ §115.51 (a), (b), and (c)]:

(a1) [AGENCY] shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse or sexual harassment, and staff neglect that may have contributed to such incidents. Inmates may report concerns by:

i. [INSERT VARIOUS METHODS FOR INMATES TO REPORT SEXUAL ABUSE AND SEXUAL HARASSMENT]

ii.

iii.

iv.

(a2) [AGENCY] shall also provide at least one way for inmates to report abuse, harassment, retaliation, and staff neglect to a public or private entity that is not part of [AGENCY], and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates may report concerns by:

i. [INSERT METHOD FOR INMATES TO REPORT ABUSE TO AN OUTSIDE AGENCY THAT CAN IMMEDIATELY FORWARD REPORTS TO THE AGENCY]

(a3) Staff shall accept reports made verbally, in writing, and anonymously. Staff shall promptly document any verbal reports.

Key Implementation Considerations:

Inmates must be able to report sexual abuse and harassment:

(1) **Internally**

- Multiple ways to report abuse must be provided.
 - For example, if your jail permits inmates to report sexual abuse or sexual harassment by verbally informing staff, filing a grievance, and by contacting an internal reporting line, that would count as three reporting methods.
- A grievance system (see below) cannot be the only method for inmates to report abuse.
- Staff must accept reports that are made:
 - Verbally (which should be promptly documented by staff);
 - In writing; and
 - Anonymously.

(2) Externally

- To at least one public or private entity which is:
 - Not part of the agency; and
 - Able to receive and immediately forward inmate reports to agency officials.
 - Examples of outside reporting agencies include municipal, district-level, or State law enforcement that are not within your agency, as well as an Office of the Ombudsman or an Office of the Inspector General.

Note: Outside reporting is distinct from third-party reporting, which is addressed later in Section 4.3. of this policy. The purpose of outside reporting is to provide a way for inmates to contact a separate entity that will immediately forward the report to your agency. The third-party reporting standard requires that agencies accept reports from people outside of the agency such as an inmate's loved ones or an attorney.

- In general, it is not advisable to use a rape crisis center or other victim service organization for outside reporting. Most rape crisis centers are required to provide confidential services to survivors; immediately forwarding an inmate report would violate this confidentiality.
- Rape crisis hotlines are not reporting lines. In the community, most victims of sexual abuse who contact a rape crisis hotline will be instructed in how to contact the appropriate law enforcement agency if they wish to make a report. Rape crisis centers generally do not make a report on behalf of a victim.
- If a rape crisis center or other victim service agency is the only available option for outside reporting, these organizations must take special care to get informed consent from all inmates before forwarding their reports to your agency.
- An inmate must be allowed to remain anonymous upon request.
 - "Anonymous" means that the inmate making the report should not be required to identify him or herself. Examples of anonymous reporting include an unsigned grievance alleging sexual abuse, a caller who does not identify him or herself, or an inmate disclosing suspected abuse to a staff member and asking that their name not be included in the report.

Action Step(s):

- Create, publish, and communicate to inmates the various ways in which inmates may report incidents of sexual abuse and harassment, including to an outside agency.

(b) Inmate Grievances [DOJ] § 115.52 (a), (b), (c), (e) and (g)]

(b1) [AGENCY] shall not impose a time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse.

(b2) [AGENCY] shall not require an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.

(b3) [AGENCY] shall ensure that—

i. An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and

ii. Such grievance is not referred to a staff member who is the subject of the complaint.

- (b4) [AGENCY] shall issue a final decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance. Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.
- (b5) [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. [AGENCY] shall notify the inmate in writing of any such extension and provide a date by which a decision shall be made.
- (b6) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.
- (b7) [AGENCY] may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith.

Key Implementation Considerations:

- If an agency has an inmate grievance procedure that applies to allegations of sexual abuse:
 - Agencies may not impose a time limit on when an inmate may submit or file a grievance alleging sexual abuse.
 - Time limits may be applied to any portion of a grievance that does not allege an incident of sexual abuse.
 - An agency may not mandate the use of any informal process to resolve an alleged incident of sexual abuse with staff.
 - An agency may not require an inmate to submit a grievance to a staff member who is the subject of the complaint.
 - An agency may not permit referral of a grievance to a staff member who is alleged to have committed sexual abuse or harassment.
- The agency must issue a final decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.
 - Computation of the 90-day time period shall not include any time consumed by the inmate in preparing an appeal.
 - 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 will notify the inmate in writing of any such extension and provide a date by which a decision will be made.
- If the inmate does not receive a timely response at any level of the process, it may be treated as a denial of the grievance at that level.
- The agency may not discipline an inmate for filing a grievance related to alleged sexual abuse unless it demonstrates that the inmate filed the grievance in bad faith.
 - An inmate should never be punished for reporting sexual abuse in cases where the allegation is substantiated or unsubstantiated, as there is no proof in these cases that the alleged sexual violence did not happen.
 - For unfounded allegations, a determination of bad faith should be driven by the particular factors of the case. Jail administrators will need to consider the totality of circumstances and all the facts together to determine if an inmate was intentionally

making a report or allegation that he or she knew was false.

- Small jails that do not have a formal written grievance procedure may want to consider creating one specifically for sexual abuse in order to ensure that inmates can submit their complaints in writing, if desired.

Action Step(s):

- Modify existing grievance procedures to include changes required by PREA for allegations of sexual abuse and sexual harassment.

(2) Staff Reporting Rules [DOJ §115.51(d) and §115.61]

- (a) Any staff member who has knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment; retaliation against inmates or staff who reported such an incident; and any staff neglect that may have contributed to such incident or retaliation, shall immediately report such incident or retaliation, in the manner specified by [AGENCY] policy.
- (b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone except as specified by [AGENCY] policy.

Note: Medical and mental health practitioners shall report knowledge, suspicion, or information regarding sexual abuse, sexual harassment, retaliation, or staff neglect pursuant to this section. This information shall be provided to inmates, in writing, at the initiation of services.

- (c) [AGENCY] shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates [DOJ §115.51 (d)]

Key Implementation Considerations:

- Staff members have a duty to report all information they become aware of regarding sexual abuse, sexual harassment, retaliation, and staff neglect that may have contributed to sexual abuse or harassment.
- Aside from such reporting, they must not reveal this information except as specified by agency policy.

Note: Medical and mental health practitioners have a duty under PREA to report sexual abuse that occurred in an institution. They must inform inmates of this duty and any other limitations on their ability to keep information confidential. They must obtain informed consent at the initiation of services.

- The agency must establish a method for staff to privately report information regarding sexual abuse and sexual harassment.
 - One way to ensure that staff can privately report information related to sexual abuse is to offer a reporting mechanism outside the chain-of-command, such as to the Internal Affairs department or to the agency head.
 - To ensure the privacy of staff reporters, it is also critical that agencies ensure that the information reported by staff regarding sexual abuse or sexual harassment is only shared with other officials on a need-to-know basis.

Action Step(s):

- Establish a procedure for staff to privately report information regarding sexual abuse and sexual harassment.

(3) Rules for Third Parties to Report Abuse and to Assist Inmates with Grievances [DOJ §115.51(c), §115.52 (e), and § 115.54]

- (a) [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 an inmate.
- (b) Staff shall accept reports made verbally, in writing, and anonymously from third parties and shall promptly document any verbal reports.
- (c) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.
- (d) If a third party files such a request on behalf of an inmate, 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. If the inmate declines to have the request processed on his or her behalf, [AGENCY] shall document the inmate's decision.

Key Implementation Considerations:

- The rules for third-party reports of abuse are:
 - The agency must:
 - Set up a method to receive third-party reports of incidents; and
 - Distribute information publicly on how to report on behalf of inmates.
 - Small jails may already have multiple, informal methods for receiving third party reports. As is required by this standard, small jails will want to formalize and document at least one method for receiving these reports from third parties.
 - Staff must accept reports from third parties, and promptly document any verbal reports.

Note: "Third parties" include fellow inmates, family members, attorneys, and outside advocates. As noted above in the policy, third-party reporting is distinct from outside reporting, which requires an external entity to forward reports to your agency immediately. In contrast, third-party reports are made directly to your agency.

- The rules for third parties assisting with and filing grievances are:
 - Third parties may:
 - Assist inmates in filing grievances; and
 - File grievances on behalf of inmates.
 - The alleged victim should be asked whether or not they agree to have a grievance filed on their behalf, and their decision should be documented.
 - The agency may require the alleged victim to personally pursue any

subsequent steps in the grievance process.

Action Steps(s):

- Set up a method to receive third-party reports of alleged sexual abuse and sexual harassment; distribute publicly information on how to make a report on behalf of an inmate; and modify existing grievance procedures, as appropriate.

B. Coordinated Response [DOJ § 115.65]

The facility shall develop a written 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.

Key Implementation Considerations:

- A written plan for a coordinated response to incidents of sexual abuse and harassment must be developed.
- As a general guide to ensuring that the victim receives the best possible care and that investigators have the best chance of apprehending the perpetrator, the Department of Justice recommends, but does not mandate, coordination of the following actions:
 - (1) Assessing the victim's acute medical needs;
 - (2) Informing the victim of his or her rights under relevant Federal or State law;
 - (3) Explaining the need for a forensic medical exam and offering the victim the option of undergoing one;
 - (4) Offering the presence of a victim advocate or a qualified staff member during the exam;
 - (5) Providing crisis intervention counseling;
 - (6) Interviewing the victim and any witnesses;
 - (7) Collecting evidence; and
 - (8) Providing for any special needs the victim may have.

Note: Small jails may want to consider creating a sexual assault response team (SART) to coordinate first responders within and outside of the agency, including: jail administrators, jail medical and mental health staff, agency investigators (if applicable), responding law enforcement agencies, rape crisis center/victim advocacy organizations, Sexual Assault Nurse Examiners, and prosecutors. Developing a written, coordinated response plan will assist all agencies to work together to respond effectively to allegations of sexual abuse or harassment within the jail.

- CJA members should refer to the CJA website for a template coordinated response protocol and sample protocols from small jails. Non-CJA members can contact JDI directly for these materials.

Action Steps(s):

- Develop a written plan for a coordinated response to incidents of sexual abuse.

C. Immediate Steps After Receiving Report of Incident [DOJ §115.64 and §115.82 (b)]

- (1) When a security staff first-responder learns that an inmate has been sexually abused, they shall take immediate action to protect the inmate. This includes:
 - (a) Separate the inmate from the alleged perpetrator;
 - (b) Preserve and protect any crime scene until appropriate steps can be taken to collect evidence; and
 - (c) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim—and ensure that the alleged abuser—not take any actions that could destroy physical evidence, including washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
 - (d) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall immediately notify the appropriate medical and mental health practitioners. [115.82 (b)]

- (2) When the first staff responder is not a security staff member, they shall request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

Note: The Department of Justice (DOJ) defines “first responder” as the staff person (or persons) who first arrive at the scene of an incident.

Key Implementation Considerations:
<p>Upon learning of an allegation that an inmate was sexually abused:</p> <ul style="list-style-type: none"> • The first security staff member to respond to the report is required to: <ul style="list-style-type: none"> ○ Separate the alleged victim and abuser; ○ Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence; ○ If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim - - and ensure that the alleged abuser - - not take any actions that could destroy physical evidence (such as drinking, eating, or bathing); and • If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, immediately notify the appropriate medical and mental health practitioners. • If the first staff responder is not a security staff member, he or she is are required to: <ul style="list-style-type: none"> ○ Request that the alleged victim not take any actions that could destroy physical evidence; and ○ Then notify security staff.
Action Step(s):
<ul style="list-style-type: none"> • Create an operating procedure which outlines the steps a staff first responder must take following a report of sexual abuse. Consider incorporating these steps into the coordinated response protocol mentioned above.

D. Medical and Mental Health Services

- (1) Emergency [DOJ §115.82]

- (a) Inmate 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) Inmate 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.
- (c) Treatment services shall be provided to the victim—without financial cost to the victim—and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

<p>Key Implementation Considerations:</p> <ul style="list-style-type: none"> • Inmate victims of sexual abuse will receive at no cost—and regardless of whether they name the abuser or cooperate with any investigation—timely access to: <ul style="list-style-type: none"> ○ Emergency medical treatment (including the provision of medication, if needed); ○ Crisis intervention services; ○ Emergency contraception where medically appropriate; and ○ Prophylaxis (i.e., post-incident treatment to reduce the risk of sexually transmitted diseases or pregnancy), where medically appropriate. • The nature and scope of the above services should be determined by medical and mental health practitioners. • In some cases, these services will be provided during the medical forensic exam (such as post-exposure prophylaxis). Therefore, all emergency medical and mental health interventions should be coordinated with the Sexual Assault Nurse Examiner (SANE) or other medical professional who administers the sexual assault forensic exam.
<p>Action Step(s):</p> <ul style="list-style-type: none"> • Create an operating procedure which outlines the steps medical and mental health staff will take immediately following an allegation of sexual abuse or sexual harassment. Consider incorporating this information into the coordinated response protocol, outlined above.

(2) Ongoing Medical and Mental Health Care [DOJ §115.83]

- (a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been sexually abused in a prison, jail, lockup, community corrections facility, or juvenile justice facility.
- (b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.
- (c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.
- (d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests, as medically necessary.
- (e) If pregnancy results from the conduct described in this section, victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-

related medical services, such as prenatal care and access to pregnancy termination services, where available.

- (f) Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections, as medically appropriate.
- (g) Ongoing treatment services shall be provided to the victim without financial cost to the victim and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

Key Implementation Considerations:

- The facility should offer ongoing/non-emergency medical and mental health evaluation and, as appropriate, treatment to inmates who have been sexually abused in custody, as follows:
 - Consistent with the community level of care;
 - Without financial cost to the victim; and
 - Regardless of whether the sexual abuse victim names the abuser or cooperates with any investigation.
- The evaluation and treatment should include, as indicated:
 - Follow-up services;
 - Treatment plans; and
 - When necessary, referrals for continued care following transfer to other facilities or release from custody.
- Inmate victims of vaginal penetration should:
 - Be offered pregnancy tests; and
 - If the inmate becomes pregnant as a result of the sexual abuse, receive timely and comprehensive information about, and timely access to all lawful pregnancy-related medical services, including any transportation that may be necessary for pregnancy-related procedures.
- Inmate victims of sexual abuse should be offered tests for sexually transmitted infections as medically necessary

Action Step(s):

- Create an operating procedure which outlines how and when medical and mental health evaluation and follow-up services will be offered. As was noted above, this information can be incorporated into the coordinated response protocol.

E. Support Services for Victims of Sexual Abuse

(1) Victim Advocate [DOJ § 115.21(d)(e) and (h)]

- (a) [AGENCY] shall attempt to make available to the victim an advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocacy services, [AGENCY] shall make available a qualified staff member from a community-based organization, or a qualified agency staff member to provide these services.

Note: A “qualified agency staff member” or a “qualified community-based staff member” means 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.

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

Key Implementation Considerations:

- The agency must attempt to make available to the victim an advocate from a rape crisis center.

Note: A “rape crisis center” refers to an entity that provides intervention and related assistance to victims of sexual assault. For a list of community-based rape crisis centers, contact your state’s sexual assault coalition.

- If no advocate is available from a rape crisis center, your agency must document its efforts to secure one, and can use instead either:
 - A qualified staff member from a community-based organization; or
 - A qualified agency staff member.
- A “qualified agency staff member” or a “qualified community-based staff member” means 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.
 - The Department of Justice suggests that the staff advocate receive the same training as that required for victim advocates in the State, which is usually a forty-hour training and is offered by many State sexual assault coalitions, usually several times throughout the year and at a reasonable cost. The qualified agency staff member may provide support to survivors at any agency facility.
 - A list of coalitions is available on the website of the Department’s Office on Violence Against Women at <http://www.ovw.usdoj.gov/statedomestic.htm>
- The agency may work with a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.
 - This means that your agency cannot rely on an advocate who is affiliated with a law enforcement agency or corrections agency (such as an advocate from the District Attorney’s Office or through the Sheriff’s Department), unless the advocate can offer confidentiality that is equal to a community-based advocate.
- If requested by the victim, the advocate will accompany and support the victim during the forensic medical examination process and investigatory interviews, and will provide emotional support, crisis intervention, information, and referrals. Note that the agency must let the victim know that services are available so that the victim can decide what services he or she needs.
- Contact Just Detention International for samples of written agreements between small jails

and victim service organizations that are willing to provide hospital accompaniment and crisis intervention services to inmate victims. CJA members can also view these sample agreements on the CJA website.

Action Step(s):

- Create an operating procedure, if needed, which outlines how the victim advocate will be contacted and how services will be coordinated with the agency. Consider incorporating this information into the coordinated response plan, as outlined above.

(2) Emotional Support Services [DOJ § 115.53]

- (a) The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates 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 inmates and these organizations and agencies, in as confidential a manner as possible.
- (b) The facility shall inform inmates, prior to giving them access to outside advocates, of the extent to which such communications shall be monitored and the extent to which reports of abuse shall be forwarded to authorities in accordance with mandatory reporting laws.
- (c) [AGENCY] shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates 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.

Key Implementation Considerations:

- The facility will provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by:
 - Giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available of local, State, or national victim advocacy or rape crisis organizations; and
 - Enabling reasonable communication between inmates and these organizations in as confidential a manner as possible.
 - The facility will inform inmates, prior to giving them access, of the extent to which:
 - Such communications will be monitored; and
 - Reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.
 - The Department of Justice encourages agencies to establish multiple avenues for inmate victims of sexual abuse to contact external victim services agencies.
 - While not ensuring optimal privacy, phones may provide the best opportunity for inmates to seek help in a timely manner.
 - Privacy concerns may be allayed through other methods, such as:
 - Allowing confidential correspondence between victims and victim service organizations;

- Opportunities for phone contact in more private settings; or
 - The ability of the inmate to request to contact an outside victim advocate through a chaplain, clinician, or other service provider.
- The agency will attempt to maintain agreements with community service providers who are able to provide inmates with confidential emotional support services related to sexual abuse.
 - Small jails should consider opportunities for in-person advocacy services for inmate victims. Generally, these services are more effective than support offered by phone or by mail and may feel safer for inmate victims. For more information about setting up these services and examples of confidential rape crisis counseling for jail inmates, contact Just Detention International.

Action Step(s):

- Create an operating procedure as well as written agreements with outside victim advocacy organizations.

F. Investigation of Incidents [DOJ §§ 115.21(a)(b)(c)(f) and(h) , 115.22, 115.71, 115.72, 115.73 and 115.86]

- (1) [AGENCY] shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.
- (2) It is [AGENCY'S] 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. [AGENCY] shall publish this policy on its website at [WWW....] and make the policy available through other means. [AGENCY] shall document all such referrals.
- (3) When [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.
- (4) Where sexual abuse is alleged, [AGENCY] shall use investigators who have received special training in sexual abuse investigations pursuant to Section 6. A. (Employee Training) of this policy.
- (5) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; interview alleged victims, suspected perpetrators, and witnesses; and review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- (6) When the quality of evidence appears to support criminal prosecution, [AGENCY] shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- (7) 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. [AGENCY] shall not require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with an investigation.

(8) Administrative investigations:

- (a) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and
- (b) 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.
- (c) Shall be referred for prosecution if there are substantiated allegations of conduct that appear to be criminal.
- (d) [AGENCY] shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated in administrative investigations.

(9) 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; and

(10) [AGENCY] shall retain all written reports required by this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

(11) 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.

(12) When other agencies investigate sexual abuse, [AGENCY] shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

(13) Evidence Protocol and Forensic Medical Exams [DOJ §115.21]:

- (a) To the extent [AGENCY] is responsible for investigating allegations of sexual abuse, it shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
- (b) [AGENCY] shall offer all victims of sexual abuse access to forensic medical examinations, without financial cost to the victim, 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. [AGENCY] shall document its efforts to provide SAFEs or SANEs for this purpose.
- (c) To the extent [AGENCY] is not responsible for investigating allegations of sexual abuse, it shall request that the investigating agency follow the requirements of this section.

- (14) Following an investigation into an inmate's allegation that he or she suffered sexual abuse, [AGENCY] shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
- (15) If [AGENCY] did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.
- (16) Following an inmate's allegation that a staff member committed sexual abuse against him or her, [AGENCY] shall subsequently inform the inmate whenever:
- (a) The staff member is no longer posted within the inmate's unit;
 - (b) The staff member is no longer employed at the facility;
 - (c) [AGENCY] learns that the staff member has been charged with or indicted on a charge related to sexual abuse within the facility; or
 - (d) [AGENCY] learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
- (17) Following an inmate's allegation that he or she has been sexually abused by another inmate, [AGENCY] shall subsequently inform the alleged victim whenever:
- (a) [AGENCY] learns that the alleged abuser has been charged with or indicted on a charge related to sexual abuse within the facility; or
 - (b) [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. [AGENCY'S] obligation to report under this standard shall terminate if the inmate is released from the agency's custody. [DOJ § 115.73]
- (18) Sexual abuse incident reviews [DOJ § 115.86]
- (a) [AGENCY] 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) The 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.
 - (d) The review team shall:
 - (d1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
 - (d2) 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;
 - (d3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
 - (d4) Assess the adequacy of staffing levels in that area during different shifts;
 - (d5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

- (d6) Prepare a report of its findings, including determinations made pursuant to this section, and any recommendations for improvement and submit the report to the facility head and the PREA Compliance manager or agency PREA Coordinator.
- (e) [AGENCY] shall implement the review team's recommendations for improvement, or document its reasons for not doing so.

Key Implementation Considerations:

- All reports of sexual abuse and harassment must be investigated.
 - This includes third-party and anonymous reports.
 - The investigation may not be terminated merely because the alleged abuser or victim is no longer employed or housed at the facility.
- The two main types of sexual abuse investigations are:
 - Administrative; and
 - Criminal.
- Administrative investigations by the agency must be conducted:
 - Promptly (without delay);
 - Thoroughly; and
 - Objectively.

Note: This requirement applies to both sexual abuse and sexual harassment investigations.

- Where sexual abuse is alleged, the agency must use investigators who have received specialized training in sexual abuse investigations. [See Section 6. A. below regarding training.]
- Investigators must:
 - Gather and preserve direct and circumstantial evidence (including physical and DNA evidence and any electronic monitoring data);
 - Interview alleged victims, suspected perpetrators, and witnesses; and
 - Review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- Before conducting compelled interviews when the quality of evidence appears to support criminal prosecution, the agency must consult with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
 - Compelled interviews refer to those interviews with staff during which an investigator would issue a *Garrity* warning to staff members.
 - Information obtained during compelled interviews is generally not admissible in a criminal investigation.
 - Prosecutors should be consulted if an initial assessment that the evidence does not support a criminal prosecution changes during the course of an administrative investigation, or in case of doubt at any point in the investigation.
- Investigations must include an effort to determine whether staff actions or failures to act contributed to the abuse.
- The credibility of an alleged victim, suspect, or witness must be assessed on an individual

basis and may not be determined by the person's status as an inmate or staff.

- The correct legal standard in administrative investigations is that allegations of sexual abuse or sexual harassment must be established by a preponderance of the evidence.
 - The preponderance of the evidence standard applies:
 - Only to administrative investigations (not to criminal investigations); and
 - To sexual harassment investigations as well as to sexual abuse investigations.
- The agency must not 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.
 - Agencies may, however, administer such tests to victims who request them.
- The agency must follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
 - The protocol must 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*.
 - Agencies must use the Department of Justice's *National Protocol* as a basis for their evidence collection protocols; however, they are free to adapt the protocol to their needs.
 - The *National Protocol* provides a set of minimum suggestions. Agencies that follow more comprehensive guidelines can continue using those, as long as they are consistent with the *National Protocol*.
 - Agencies should refer to the Department of Justice's *Recommendations for Administrators of Prisons, Jails, and Community Confinement Facilities for Adapting the U.S. Department of Justice's A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents*, which is available at: <http://www.ovw.usdoj.gov/docs/confinement-safe-protocol.pdf>.
- The agency must offer all victims of sexual abuse forensic medical examinations, whether on-site or at an outside facility, without financial cost to the victim, where evidentiarily or medically indicated.
 - The examinations will be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs), where possible.
 - If SAFEs or SANEs are not available, the examination can be performed by other qualified medical practitioners who have completed specialized training for treating sexual abuse victims.
 - The agency must document its efforts to provide SAFEs or SANEs.
- Administrative investigations must 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.
- The agency must have a policy that, if an allegation of sexual abuse involves potentially criminal behavior, it will refer the matter to an agency with the legal authority to conduct criminal investigations and will document the referral.
 - This policy must be published on the agency's website, including a description of the responsibilities of both the corrections agency and the investigating entity.
 - Even if criminal behavior is alleged, the agency may still take administrative action during the course of the criminal investigation.

- Criminal investigations must be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence. Copies of all documentary evidence must be attached, where feasible.
 - Substantiated allegations of conduct that appears to be criminal must be referred for prosecution.
- When outside agencies investigate sexual abuse, the agency must cooperate with outside investigators and should endeavor to remain informed about the progress of the investigation.

Retaining Reports

- The agency must retain written reports regarding investigations for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

Informing the Inmate

- Following an investigation into an inmate’s allegation that he or she suffered sexual abuse in an agency facility, the agency must inform the inmate:
 - Whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.

Note: “Unsubstantiated allegation” means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred. “Substantiated allegation” means an allegation that was investigated and determined to have occurred. “Unfounded allegation” means an allegation that was investigated and determined not to have occurred.

- If the corrections agency did not conduct the criminal investigation, it will request the relevant information from the investigating agency and inform the inmate.
- If the allegation involves sexual abuse by a staff member, unless the agency has determined that the allegation is unfounded, the agency will inform the inmate whenever:
 - The staff member is no longer posted within the inmate’s unit;
 - The staff member is no longer employed at the facility;
 - The agency learns that the staff member has been charged with or indicted on a charge related to sexual abuse within the facility; or
 - The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

Note: The facility is not required to disclose the reason why the staff member is no longer posted within the inmate’s facility or unit, or whether the staff member’s absence is due to a voluntary departure or an adverse employment action.

- If the allegation involves sexual abuse by another inmate, the agency will inform the victim whenever the agency learns that the alleged abuser has been:
 - Charged with or indicted on a charge related to sexual abuse within the facility; or
 - Convicted on a charge related to sexual abuse within the facility.
- All notifications or attempted notifications must be documented.
- The agency’s obligation to report under this standard will terminate if the inmate is released from its custody.

Incident Reviews

- The agency must conduct sexual abuse incident reviews at the conclusion of sexual abuse investigations:
 - Incident reviews are required when allegations have been substantiated or unsubstantiated, but not when the allegations have been determined to be unfounded.
 - The purpose of the review is to determine whether the facility's policies and procedures need to be changed in light of the alleged incident.
 - The review must ordinarily occur within 30 days of the conclusion of the investigation.
- A review team consisting of upper-level management officials must:
 - Obtain input from line supervisors, investigators, and medical or mental health practitioners;
 - Consider whether or not:
 - The allegation or investigation indicates a need to change a policy or practice to better prevent, detect, or respond to sexual abuse;
 - 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;
 - Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
 - Assess:
 - The adequacy of staffing levels in that area during different shifts;
 - Whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
 - Prepare a report of its findings, including determinations made, and any recommendations for improvement, and submit such report to the facility head and PREA Compliance Manager or the agency PREA Coordinator.
- The facility must implement the recommendations for improvement or document its reasons for not doing so.

Action Steps:

- Create an operational procedure for sexual abuse and sexual harassment investigations. Train investigators regarding sexual abuse and harassment investigations. Publish the agency's policy regarding referral of potential criminal cases on the agency's website.

G. Protection from Retaliation [DOJ §115.67]

Note: For rules regarding reporting by inmates and staff of retaliation after it has occurred, see Section 5. A. (Procedures for Reporting Sexual Abuse/Sexual Harassment) above.

- (1) [AGENCY'S] policy is to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff.
- (2) [AGENCY] shall employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with

investigations.

- (3) For at least 90 days following a report of sexual abuse, [AGENCY] shall monitor the conduct and treatment of inmates or staff who reported sexual abuse, and of inmates who were reported to have suffered sexual abuse, to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation.

[AGENCY] shall continue such monitoring beyond 90 days if the initial monitoring indicates an ongoing need. Monitoring shall include:

- (a) Periodic in-person conversations with inmates and/or staff;
- (b) Review of disciplinary incidents involving inmates;
- (c) Review of housing or program changes; and
- (d) Review of negative performance reviews or reassignments of staff.

- (4) Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the same requirements that are discussed above in Section 4.G(3) (Protective Custody).

Key Implementation Considerations:

- The agency must establish a policy to protect all inmates and staff members from retaliation who:
 - Report sexual abuse or harassment; or
 - Cooperate with sexual abuse or harassment investigations
- The agency must designate staff members to monitor retaliation.
 - The Department of Justice encourages agencies to develop policies to limit the number of staff who have access to the names of individuals under monitoring, and to be mindful of situations in which a staff member who poses a threat of retaliation may also be entrusted with monitoring responsibilities.
- For at least 90 days following a report of sexual abuse, the agency must monitor the conduct and treatment of:
 - Inmates or staff who reported sexual abuse; and
 - Inmates who were reported to have suffered sexual abuse.

Note: In the case of inmates, the monitoring must also include periodic status checks. If the initial monitoring indicates a continuing need, the agency must continue monitoring beyond 90 days.

- The agency should monitor:
 - Inmate disciplinary reports;
 - Housing or program changes; and
 - Negative performance reviews or reassignments of staff.
- An agency's obligation to monitor will terminate if an investigation determines that the allegation is unfounded.
- The agency must act promptly to remedy any retaliation using protection measures such as:
 - Housing changes or transfers for inmate victims or abusers;

- Removal of alleged staff or inmate abusers from contact with victims; and
- Emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

Note: For rules regarding reporting of retaliation after it has occurred , see Section 5.A. above

Action Steps:

- Establish an anti-retaliation policy, and a procedure to monitor for possible retaliation. Designate staff members to monitor possible retaliation.

H. Sanctions for Individuals Found to have Participated in Sexual Abuse or Harassment

(1) Disciplinary Sanctions for Staff [DOJ Standards §115.76]

- (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.
- (c) Disciplinary sanctions for violations of [AGENCY] policies relating to sexual abuse or sexual harassment 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.

Key Implementation Provisions:

- Staff who violate sexual abuse or sexual harassment policies are subject to discipline up to and including termination.
 - Termination is the presumptive disciplinary sanction for staff who have engaged in sexual abuse.
 - Exceptions should be made only in extraordinary circumstances.
 - The Department of Justice recognizes that, pursuant to collective bargaining agreements, final decisions may rest in the hands of an arbitrator.
 - Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment other than 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.
- 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, must be reported to any relevant licensing bodies and to law enforcement agencies, unless the activity

was clearly not criminal.

- Small jails whose human resources or personnel policies fall under a separate chain of command – such as the Sheriff’s Department – will need to consult with the proper authorities to ensure these policies are implemented.

Action Steps:

- Update staff disciplinary policies and inform staff of the changes, as needed.

(2) Corrective Action for Contractors and Volunteers [§115.77]

- (a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates 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 inmates, in the case of any other violation of [AGENCY] sexual abuse or sexual harassment policies by a contractor or volunteer.

Key Implementation Considerations:

- Any contractor or volunteer who engages in sexual abuse shall be:
 - Prohibited from contact with inmates; and
 - Reported to relevant licensing bodies and law enforcement agencies, unless the activity was clearly not criminal.
- If a contractor or volunteer violates any other sexual abuse or sexual harassment policy, the facility must:
 - Take appropriate remedial measures; and
 - Consider whether to prohibit further contact with inmates.

Action Steps:

- Create or modify volunteer or contractor disciplinary policies and inform volunteer and contractors of these changes, if needed.

(3) Disciplinary Sanctions for Inmates [DOJ Standards §115.78]

- (a) Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse.
- (b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate’s disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories.
- (c) The disciplinary process shall consider whether an inmate’s mental disability 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 require the offending inmate to participate in such interventions as a condition of access to programming or other benefits.

- (e) [AGENCY] may discipline an inmate 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, even if an investigation does not establish evidence sufficient to substantiate the allegation.

<p>Key Implementation Considerations:</p> <ul style="list-style-type: none"> • Inmates will be subject to disciplinary sanctions pursuant to a formal disciplinary process if there is an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse. • Sanctions must be commensurate with: <ul style="list-style-type: none"> ○ The nature and circumstances of the abuse committed; ○ The inmate's disciplinary history; and ○ The sanctions imposed for comparable offenses by other inmates with similar histories. <p><u>Note:</u> Whether an inmate's mental disability or mental illness contributed to his or her behavior should also be considered.</p> <ul style="list-style-type: none"> • If the facility offers therapy, counseling, or other interventions to address the underlying reasons for the abuse, it should consider whether to require the offending inmate to participate in such interventions as a condition of access to programming or other benefits. • The agency may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact. • The agency may prohibit all sexual activity between inmates and may discipline inmates for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced. • Discipline for reporting sexual abuse: <ul style="list-style-type: none"> ○ If a report of sexual abuse is made in good faith, based upon a reasonable belief that the alleged conduct occurred, it will not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.
<p>Action Steps:</p> <ul style="list-style-type: none"> • Create or modify existing disciplinary policies, if needed, and inform inmates of these changes.

I. Notifying Other Confinement Agencies [DOJ § 115.63]

- (1) Upon [AGENCY] receiving an allegation that an inmate was sexually abused while confined at another facility, the head of [AGENCY] shall notify the head of the facility or agency where the alleged abuse occurred.

(2) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

(3) [AGENCY] shall document that it has provided such notification.

Key Implementation Considerations:

- When an agency receives an allegation that an inmate was sexually abused while confined at another facility, the head of the agency must notify the head of the facility where the alleged abuse occurred.
 - The notification must occur as soon as possible, but no later than 72 hours after receiving the allegation.
 - The agency must document that it has provided the notification.

Action Steps:

- Establish or modify procedures, as needed, to notify other agencies if an inmate alleges sexual abuse at another facility.

6. TRAINING AND EDUCATION

[AGENCY] is committed to communicating to the inmates at its jail, to its employees, and to contractors and volunteers, the following information through the training, education and orientation programs described in this section:

- [AGENCY'S] zero tolerance policy;
- [AGENCY'S] policies to prevent, detect, and respond to sexual abuse and sexual harassment; and
- Other rights and obligations under this policy.

A. Employee Training [DOJ §115.31]

- (1) [AGENCY] shall train all employees who may have contact with inmates on:
 - (a) Its zero-tolerance policy for sexual abuse, sexual harassment and retaliation;
 - (b) How to fulfill their responsibilities regarding prevention, detection, reporting, and response to sexual abuse and sexual harassment;
 - (c) Inmates' right to be free from sexual abuse and sexual harassment;
 - (d) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
 - (e) The dynamics of sexual abuse and sexual harassment in confinement;
 - (f) The common reactions of sexual abuse and sexual harassment victims;
 - (g) How to detect and respond to signs of threatened and actual sexual abuse;
 - (h) How to avoid inappropriate relationships with inmates;
 - (i) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates;
 - (j) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
- (2) Security staff employees shall be trained in how to conduct cross-gender pat-down searches, and how to conduct searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.
- (3) Training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.
- (4) All current employees shall receive this training, and [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, [AGENCY] shall provide refresher information on current sexual abuse and sexual harassment policies.
- (5) Specialized Training: Investigators [DOJ §115.34]
 - (a) In addition to the general training provided to all employees, [AGENCY] shall ensure that, to the extent it conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing 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.

(6) Specialized Training: Medical and Mental Health Professionals [DOJ § 115.35]

[AGENCY] shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facility have been trained in:

- (a) How to detect and assess signs of sexual abuse and sexual harassment;
- (b) How to preserve physical evidence of sexual abuse;
- (c) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
- (d) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

If medical staff employed by [AGENCY] conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(7) [AGENCY] shall document, through employee signature or electronic verification, that employees have received and understand the training. In the case of investigators who investigate sexual abuse in the facility, it shall maintain documentation they have completed the required specialized training in sexual abuse investigations. In the case of medical and mental health practitioners, it shall maintain documentation that they have received the specialized training described in this section.

Key Implementation Considerations:

- The agency must train all employees who may have contact with inmates on the ten subjects listed in the PREA standard.
- The training must be tailored to the gender of the inmates at the employee's facility.
 - Most small jails house inmates of all genders, so employees should receive comprehensive training that covers the entire inmate population.
- Frequency of training:
 - The initial PREA training should have been completed by all employees by August 20, 2013.
 - Refresher training on the agency's current sexual abuse and sexual harassment policies and procedures must be provided every two years.
 - Refresher information on current sexual abuse and sexual harassment policies must be provided in years in which an employee does not receive refresher training.
- The agency must document, through employee signature or electronic verification that employees understand the training they have received from the agency or elsewhere.
- Refer to Just Detention International's *PREA Staff Training Template for Small Jails* for a sample PREA staff training. CJA members can access the training materials on the CJA website.

- In addition, specialized training must be provided as follows:
 - Investigator Training:
 - To the extent the agency itself conducts sexual abuse investigations, it will ensure investigators have received training in conducting those investigations in confinement settings.
 - The training will include techniques for interviewing 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 referrals.
 - Jail administrators may want to contact the Colorado Jail Association to inquire about any upcoming PREA investigator trainings.
 - The agency must maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.
 - Medical and Mental Health Care Providers:
 - The agency must ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained on the following :
 - How to detect and assess signs of sexual abuse and sexual harassment;
 - How to preserve physical evidence of sexual abuse;
 - How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
 - How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.
 - This training is required of all medical and mental health staff, including contracted medical providers who regularly work in the jail.
 - If medical staff employed by the agency conduct forensic examinations, they must receive the appropriate training to conduct such examinations.
 - The agency must maintain documentation that medical and mental health practitioners have received the training required in this standard either from the agency or elsewhere.
- The PREA Resource Center (PRC) – in conjunction with the National Commission on Correctional Healthcare (NCCHC) – released a comprehensive curriculum for the medical and mental health training required by PREA. Refer to the PRC website for the forthcoming publication: <http://www.prearesourcecenter.org/library/696/resources/curricula>.

Action Steps:

- Develop and implement a PREA training and information program for employees who have contact with inmates.

B. Inmate Orientation and Education [DOJ §115.33]

- (1) During the intake process, inmates shall receive information explaining [AGENCY'S] zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.
- (2) Within 30 days of intake, [AGENCY] shall provide comprehensive education to inmates 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 [AGENCY'S] policies and procedures for responding to such incidents.
- (3) Current inmates shall be educated and receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility.
- (4) [AGENCY] shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.
- (5) [AGENCY] shall maintain documentation of inmate participation in these education sessions.
- (6) In addition to providing such education, [AGENCY] shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

Key Implementation Considerations:

- During the intake process, inmates are to receive information explaining:
 - 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.

Note: The Department of Justice has clarified that information can be provided at intake through a handout or other written material.

- Within 30 days of intake, inmates are to receive comprehensive education 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
 - Agency policies and procedures for responding to incidents.
- Current inmates who have not received the comprehensive education must receive it immediately and upon transfer to a different facility if the policies and procedures of the inmate's new facility are not the same.
- In addition to providing education, key information must be continuously available or visible to inmates through:
 - Posters;
 - Inmate handbooks; or

- Other written formats.

- Inmate education must be provide in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.
- The agency must maintain documentation of inmate participation in education sessions.
- Refer to Just Detention International's *PREA Inmate Education Template for Small Jails* for sample inmate education materials that can be adapted to your jail. CJA members can access these materials – including sample inmate education materials - on the CJA website. Non-members can contact JDI directly for this information.

Action Steps:

- Develop and implement a PREA education and information program for inmates.

C. Volunteer and Contractor Training [DOJ § 115.32]

- (1) [AGENCY] shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under [AGENCY'S] sexual abuse and sexual harassment prevention, detection, and response policies and procedures.
- (2) The level and type of training provided to volunteers and contractors shall be based on the services they provide and the level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of [AGENCY'S] zero-tolerance policy regarding sexual abuse and sexual harassment and how to report such incidents.
- (3) [AGENCY] shall maintain documentation confirming that volunteers and contractors understand the training they have received.

Key Implementation Considerations:

- The agency must ensure that all volunteers and contractors who have contact with inmates are trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.
- The level and type of training should be based on the:
 - Services the volunteers and contractors provide; and
 - Level of contact they have with inmates.
- At a minimum, volunteers and contractors must be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report such incidents.
- The agency must maintain documentation that volunteers and contractors understand the training they have received.
- Refer to Just Detention International's *PREA Volunteer and Contractor Training Template for*

Small Jails for assistance with creating and delivering this training. CJA members can access the training template on the CJA website. Non-members can contact JDI directly for this information.

Action Steps:

- Develop and implement a PREA training and information program for volunteers and contractors.

VII. Data Collection and Review [DOJ §§ 115.87- 89]

A. Data Collection [DOJ § 115.87]

- (1) [AGENCY] shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.
- (2) [AGENCY] shall aggregate the incident-based sexual abuse data at least annually.
- (3) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.
- (4) [AGENCY] shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
- (5) [AGENCY] shall also obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.
- (6) Upon request, [AGENCY] shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

Key Policy Considerations:

- The agency must collect uniform data for every allegation of sexual abuse.
 - Agencies are not required to collect this data for allegations of sexual harassment.
 - A standardized instrument and set of definitions must be used.
 - The data collected should be from all available incident-based documents, including
 - Reports;
 - Investigation files; and
 - Sexual abuse incident reviews.
 - The data collected must be sufficient to answer all questions from the most recent version of the *Survey of Sexual Violence (SSV)* conducted by the Department of Justice.
 - The SSV only requests detailed information for substantiated incidents.
- The agency must aggregate the incident-based sexual abuse data at least annually.
- The agency must make the data available to the Department of Justice upon request.

Action Steps:

- Establish a procedure for collecting data on sexual abuse allegations and aggregating it annually.

B. Data Review for Corrective Action [DOJ § 115.88]

- (1) [AGENCY] shall review data collected and aggregated pursuant to Section 7. A. (Data Collection) above in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:
 - (a) Identifying problem areas;
 - (b) Taking corrective action on an ongoing basis; and
 - (c) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.
- (2) 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 [AGENCY'S] progress in addressing sexual abuse.
- (3) [AGENCY'S] report shall be approved by [AGENCY'S] head and made readily available to the public through its website or, if it does not have one, through other means.
- (4) [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 shall indicate the nature of the material redacted.

<p>Key Implementation Considerations:</p> <ul style="list-style-type: none"> • The agency must review the data collected to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: <ul style="list-style-type: none"> ○ Identifying problem areas; ○ Taking ongoing corrective action; and ○ Preparing an annual report of its findings and corrective actions for each facility and for the agency as a whole. • The agency's annual report must: <ul style="list-style-type: none"> ○ Include a comparison of the current year's data and corrective actions with those from prior years; ○ Provide an assessment of the agency's progress in addressing sexual abuse; ○ Be approved by the agency head; and ○ Be made readily available to the public through its website or, if it does not have one, through other means. <p><u>Note:</u> 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.</p>
<p>Action Steps:</p> <ul style="list-style-type: none"> ▪ Review the data collected. Identify problem areas. Take corrective action. Prepare an annual report of findings and corrective actions. Publish the report on the agency's website.

C. Data Storage, Publication, and Destruction [DOJ § 115.89]

- (1) [AGENCY] shall ensure that data collected pursuant to Section 7. A. are securely retained.
- (2) [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.
- (3) Before making aggregated sexual abuse data publicly available, the [AGENCY] shall remove all personal identifiers.
- (4) [AGENCY] shall maintain sexual abuse data collected pursuant to Section 7. A. for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

Key Implementation Considerations:

- The agency must ensure that data collected pursuant to Section 7.A are securely retained.
- The agency must make all aggregated sexual abuse data readily available to the public at least annually through its website or, if it does not have one, through other means.

Note: All personal identifiers must first be removed.

- The agency must maintain sexual abuse data collected pursuant to Section 7.A. for at least 10 years after the date of the initial collection.

Action Steps:

- Securely retain the data collected under Section 7. A. for 10 years. Publish aggregated data at least annually on the agency's website.

VIII. Collective Bargaining Agreements [DOJ § 115.66]

- A. [AGENCY] or any governmental entity responsible for collective bargaining on [AGENCY'S] behalf shall not enter into or renew any collective bargaining agreement or other agreement that limits [AGENCY'S] ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or a determination of whether and to what extent discipline is warranted.
- B. Nothing in this section shall restrict [AGENCY] entering into or renewing agreements that govern:
- (1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions in this policy relating to the standard of evidence for substantiating allegations of sexual abuse/harassment in Section 5. F. (Investigation of Incidents) and disciplinary sanctions for staff in Section V.H. (Sanctions Against Abusers When Allegations are Substantiated); 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.

Key Implementation Considerations:

- The agency may not 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 any inmates pending the outcome of an investigation or a determination of whether and to what extent discipline is warranted.
 - Governmental entities responsible for collective bargaining on the agency's behalf are also covered by this provision.
 - This provision applies not only to collective bargaining agreements, but to other agreements as well.
 - The agency must retain the ability to remove the alleged staff abuser from contact with any inmates, not just the alleged victim.
- Nothing in this policy restricts the agency from entering into or renewing agreements that govern:
 - The conduct of the disciplinary process, as long as it's not inconsistent with the provisions in the policy relating to:
 - The standard of evidence for substantiating allegations of sexual abuse and sexual harassment; and
 - Disciplinary sanctions for staff.
 - Whether a no-contact assignment that is imposed will be retained in the staff member's personnel file following a determination that the allegation is not substantiated.

Action Steps:

- Update agreements, as needed, and ensure that appropriate officials of the agency are aware of these requirements.

IX. Auditing and Corrective Action [DOJ § 115.401-405]

A. Frequency and Scope of Audits [DOJ § 115.401]

- (1) During the three-year period starting on August 20, 2013, and during each three-year period thereafter, [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.
- (2) During each one-year period starting on August 20, 2013, [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.
- (3) [AGENCY] shall bear the burden of demonstrating compliance with the standards.
- (4) [AGENCY] shall permit the auditor to:
 - (a) Review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility;
 - (b) Request and receive copies of any relevant documents (including electronically stored information).
 - (c) Conduct private interviews with inmates.
- (5) [AGENCY] shall make available to the auditor, at a minimum:
 - (a) A sampling of relevant documents and other records and information for the most recent one-year period;
 - (b) A sampling of any available videotapes and other electronically available data that may be relevant to the provisions being audited.
- (6) [AGENCY] shall ensure the auditor has access to all areas of the audited facilities.
- (7) [AGENCY] shall cooperate with the auditor to ensure a representative sample of inmates and of staff, supervisors, and administrators can be interviewed by the auditor.
- (8) [AGENCY] shall ensure at least one way for inmates to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.

Key Implementation Considerations:

- Corrections agencies are required to secure an audit of each of their facilities, including those that are run by a private organization on behalf of the agency, least once during every three year period.
- Starting on August 20, 2013, agencies must ensure that at least one-third of each of its facilities, or facilities operated by a private organization on behalf of the agency, is audited each year.
 - During the three-year cycle, the agency has to make sure that each facility operated by the agency (or by a private organization on behalf of the agency) is audited at least once.

- This means that small agencies that operate one or two jails will need to be audited every three years. For agencies that operate three or more facilities, one or more of its facilities will be audited annually.
- The Department of Justice may recommend an expedited audit if the Department has reason to believe that a facility may be experiencing problems relating to sexual abuse.
 - The recommendation may also include referrals to resources that can assist the agency with PREA-related issues.
- The Department of Justice released a *PREA Audit Instrument* for prisons and jails to provide guidance on the conduct and contents of the audit. Refer to the PREA Resource Center website for the *PREA Audit Instrument*: www.prearesourcecenter.org.
- The corrections agency being audited has to bear the burden of demonstrating compliance with the standards.
- Corrections agencies must permit the PREA auditor to:
 - Review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility;
 - Request and receive copies of any relevant documents (including electronically stored information).
 - Conduct private interviews with inmates.
- Corrections agencies should make available to the auditor, at a minimum:
 - A sampling of relevant documents and other records and information for the most recent one-year period;
 - A sampling of any available videotapes and other electronically available data that may be relevant to the provisions being audited.
- During a PREA audit, corrections agencies must:
 - Ensure the auditor has access to all areas of the audited facilities.
 - Cooperate with the auditor to ensure a representative sample of inmates and of staff, supervisors, and administrators can be interviewed by the auditor.
 - Ensure at least one way for inmates to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.
- The PREA auditor may retain and preserve all documentation (including, but not limited to, video tapes and interview notes) relied upon in making audit determinations. Such documentation must be provided to the Department of Justice upon request.

Note: Auditors will also attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.

Action Steps:

- Develop a plan to conduct required PREA audits and a protocol to ensure auditor access to all required locations, documentation, and people.

B. Auditor Qualifications [DOJ § 115.402]

- (1) [AGENCY] shall ensure that audits are conducted by a qualified auditor, which includes:
 - (a) A member of a correctional monitoring body that is not part of, or under the authority of, [AGENCY];
 - (b) A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or
 - (c) Other outside individuals with relevant experience.
- (2) All auditors shall be certified by the Department of Justice.
- (3) No audit shall be conducted by an auditor who has received financial compensation from [AGENCY], except for compensation received for conducting prior PREA audits, within the three years prior to the agency's retention of the auditor.
- (4) [AGENCY] shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to [AGENCY'S] retention of the auditor, with the exception of contracting for subsequent PREA audits.

Key Implementation Considerations:

- Qualified PREA auditors include:
 - 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);
 - A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or
 - Other outside individuals with relevant experience.
- All auditors must be certified by the Department of Justice. Refer to the *PREA Audit Instrument* for guidance on auditor qualifications. The *PREA Audit Instrument* can be found on the PREA Resource Center website at www.prearesourcecenter.org.
- 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.
- A corrections agency cannot 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
- The Department of Justice has clarified that two corrections agencies may not agree to audit each other, or do 'reciprocal audits.' See the PREA Resource Center FAQ: <http://www.prearesourcecenter.org/faq#n1053>.

Action Steps:

- Develop a plan to secure a qualified PREA auditor.

C. Audit Contents and Findings [DOJ § 115.403]

- (1) 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.
- (2) Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.
- (3) For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings:
 - (a) Exceeds Standard (substantially exceeds requirement of standard);
 - (b) Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period);
 - (c) Does Not Meet Standard (requires corrective action)
- (4) The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.
- (5) 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.
- (6) [AGENCY] shall ensure that the auditor's final report is published on [AGENCY'S] website if it has one, or is otherwise made readily available to the public.

Key Implementation Considerations:

- 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.
- Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.
- For each PREA standard, the auditor shall come to 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.
- 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.

Note: Auditors must 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.

- Your agency should 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.

Action Steps:

- Prepare to update the agency’s website with the auditor’s final report, or ensure some other way to make the report available to the public.

D. Audit Corrective Action Plan [DOJ § 115.404]

- (1) A finding of “Does Not Meet Standard” with one or more standards shall trigger a 180-day corrective action period.
- (2) The auditor and [AGENCY] shall jointly develop a corrective action plan to achieve compliance.
- (3) 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.
- (4) 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.
- (5) If [AGENCY] does not achieve compliance with each standard, it may request a subsequent audit once it believes that it has achieved compliance.

Key Implementation Considerations:

- A finding of “Does Not Meet Standard” with one or more standards shall trigger a 180-day corrective action period.
- The auditor and the agency shall develop jointly a corrective action plan to achieve compliance.
- 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.
- 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.
- 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.

Action Steps:

- Next steps will depend on the outcome of the PREA audit. Agencies should be prepared to follow a corrective action plan, if necessary.

E. Audit Appeals [DOJ § 115.405]

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

Key Implementation Considerations:

- 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.
- 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.
- The findings of the re-audit shall be considered final.

Action Steps:

- Agencies that wish to appeal a PREA audit should follow the steps as specified by the Department of Justice.