

Credibility Assessments in Investigations

What are credibility assessments?

Credibility assessments are not just a checklist. To find the truth, an investigator gathers all information that may relate to an allegation. But gathering information is only the beginning. Competent investigators also:

- Assess all information gathered to determine the credibility of the persons involved, whether as victim, suspect, or witness
- Apply evidence to each piece of information in order to make a finding.

Assessing credibility during investigations is a thorough critical thinking process concerning each person contacted, each piece of evidence, and all information collected or obtained during the investigation. To assess credibility, investigators do more than just ask, “Do I trust this person, this item?” They must also assess, among other things:

- Why they do or do not trust the person, evidence, and information.
- What supporting evidence there is.
- How the evidence supports the findings.

What are credibility assessments?

1. The PREA Standards require it.

The PREA Standards specifically state that investigators of sexual harassment and sexual abuse allegations shall assess the credibility of witnesses, victims, and suspects as part of investigations into sexual abuse and sexual harassment; and delineate the reasoning behind these credibility assessments (see below for the particular PREA Standard). Delineating the reasoning behind credibility assessments involves describing each piece of evidence (from interviews and physical evidence), tying it to the allegation, and analyzing whether it corroborates or refutes elements of the allegation.

Investigations § 115.71 Criminal and administrative agency investigations

(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person’s status as inmate or staff.

(f) Administrative investigations:

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

2. Part of a competent, sound, and thorough investigative process.

Allegations without outside witnesses

In many cases, particularly with sexual harassment cases, the alleged behavior occurs out of sight and sound of anyone except the perpetrator and victim. These are the “this person-said/that person-said” type of allegations. It is all too common that these investigations slam to a stop at the point where the statements of the two persons conflict. Although there may be no other eye-witness, there most likely are others who could provide indirect information that may support or refute an allegation. Investigations must be complete and thorough, and stopping at just the two statements from the victim and perpetrator is not a complete investigation.

If we just stop at two statements—one from the alleged victim and one from the alleged perpetrator—without any other form of investigation seeking evidence, we have completely missed the opportunity to protect those in our care, custody, and control. This also demonstrates a lack of proper response on the part of the facility, which sends the message that those in our facilities can do whatever they choose without consequences. Thorough, timely investigations by properly trained, competent investigators with specific skills at conducting investigations of sexual abuse and sexual harassment is one of the most critical parts of a sound prevention plan. Particularly in a setting such as a confinement facility, there are a multitude of other areas that can be explored in such a situation. For example, consider this:

A confined person reported sexual harassment from another confined person, but their statements are completely contradictory. Where do you go from here?

- *Perhaps there are other confined people in the unit who knew both of these individuals.*
- *You interview them to determine what the general relationship and interactions are like between these individuals. (NOTE: This should include their observations and knowledge both BEFORE and AFTER the alleged incident.)*
- *Other confined people tell you that they frequently noticed the alleged perpetrator making such comments and bullying behavior, not only toward the alleged victim but also to other confined people over the past few weeks.*

- Others tell you that they have seen an increased aggressiveness from the alleged perpetrator toward the alleged victim.
- The investigator reviews the files of both the alleged victim and perpetrator, including any history of mental health or medical issues; disabilities such as language or cognitive challenges; history of being abusive or experiencing abuse; movements among different housing assignments for both and the reasons for such movements, etc.
- Perhaps you find out that the alleged victim simply didn't "like" the alleged perpetrator.
- The alleged victim has made statements or indications that they were going to "get back at them."

All of these factors, and others, may not only produce more evidence but may also provide more information about the credibility of the alleged victim's statement.

Reaching strong, objective, and reasonable conclusions

Particularly in administrative (non-criminal) cases, where the alleged behavior does not rise to a violation of any law, assessing credibility is extremely significant since the level (preponderance of evidence) required to support an administrative allegation is much less than the standard required to prove criminal behavior (beyond a reasonable doubt). Well thought-out credibility assessments can help the investigator assess the reliability of these conflicting statements to reach a sound and appropriate finding.

Facility safety and security

Conducting competent and thorough investigations into all allegations of sexual harassment and sexual abuse is one of the most critical aspects of prevention and proper response and helps preserve the safety and security of our facilities and those who work and are housed therein. Credibility assessments are a significant component of competent investigations and are important for reaching supported findings.

What are the barriers to assessing credibility?

- Bias, both positive and negative, toward an individual or a situation. This includes giving more weight to the statement of staff over a confined person simply because they are staff, or finding a story more believable if it comes from someone the investigator "relates to" more.
- Conflict of interest.
- Lack of understanding of brain neurology (how the brain controls thoughts and behaviors) and the impact of trauma on responses and behaviors.
- Inability to separate personal/moral beliefs from the situation.

- False belief that a victim, accused, or witness statement requires full corroboration to be credible. (Remember, preponderance of the evidence is the standard for administrative cases.)
- Failure to properly prepare and gather information, particularly before conducting interviews.
- Failure to document reasoning behind credibility assessments through a description of the evidence used in reaching a finding.
- Lack of experience and skill in conducting interviews with victims of sexual abuse and sexual harassment.

The keys to credibility assessments:

Preparation

After assuring that injuries are addressed and that action has been taken to ensure that there is no immediate danger of continuing harmful behavior, it is prudent to quickly gather some preliminary information before starting interviews.

- Do I possess the proper training and skills in basic investigative protocols?
- Did I gather preliminary information, such as camera footage, logbooks, etc.?
- Have I fully researched the person's history, particularly their vulnerability or potential for abusiveness, their history of abuse, or physical/mental disabilities that might impact how they act or respond, etc.?
- Do I understand how these issues may affect the person being interviewed?
- Have I received the proper training in conducting interviews of victims of sexual abuse, providing me with complete understanding of the nature of trauma and how trauma can impact how victims recall events?
- Am I fully informed about the impact of trauma on how a victim may recall information, and how they may respond to me as an investigator during our interviews?
- Do I fully understand that there are certain functions within the brain that are involuntary for a victim of trauma?
- Am I the right person to conduct this investigation, or do I have a bias or conflict of interest that makes it more appropriate for someone else to be assigned to the matter?

Plausibility

The likelihood that the alleged behavior could have occurred. (This is different from believability or conclusions.)

- Would it be reasonable that what someone tells me could be true?
- Could this have actually happened?

NOTE: This does not mean that you conclude anything at this point—just that the allegation is plausible

Observation (Demeanor)

Awareness of how the person being interviewed reacts or responds during the interview.

- Have I noticed physical responses or behaviors that may have an impact on credibility?
- How do they impact my assessment of credibility, and **why** do they impact it?
- Is it possible I could be wrong?
- Is there some physical, cognitive, or mental health issue that may be the cause of certain physical responses?
- Do I fully understand the nature of trauma and how this impacts physical responses?
- Have I created a trauma-informed and safe atmosphere in which an interviewee would feel comfortable disclosing important information?
- Do I use extreme caution to not assume that certain observations (such as failing to make eye contact, nervousness or fidgeting, loss of attention, confusion, etc.) are indications of lying?
- Am I objectively noting my observations as part of the larger picture of the situation, as opposed to making assumptions about those observations?

CAUTION: Interviewers must have sufficient information about how survivors of trauma may respond when discussing the event, AND if there are any physical or mental issues that could impact responses. For example, a person on the autism spectrum may have difficulty maintaining eye contact. Different cultures may also have different norms from what you are accustomed to. Do NOT assume that a person's demeanor is an absolute indication of truth-telling or lying.

Motivation

The reason(s) that a person may be truthful or untruthful about an allegation.

- What are possible motivations for being truthful or untruthful?
- Are there outside factors that might influence what the person is telling me?
 - Have I researched their mental health status; physical health issues; cognitive challenges; language ability; ability to understand?
 - How would these factors impact their response to me and their ability to communicate and understand me?
 - Could a fear of retaliation from either another confined person or staff member impact what the person is telling me?

- Have I researched other cases to see if retaliation is an issue in this facility?

History of abuse

A person's history of prior abuse (whether in custody or not); and those outcomes; history of perpetrating abuse; disciplinary history.

- If the person has a history of either making prior complaints or of being victimized, how does this impact my assessment of their credibility? (CAUTION: prior complaints that are unsubstantiated are part of but NOT the sole reason to question someone's credibility!)
- When I review past reports or incidents involving the alleged victim and alleged perpetrator, have I considered every report and every incident **individually on its merits first**, before I apply that information to my assessment?
- Have I considered that past unsubstantiated or unfounded allegations may not have been conducted by competent investigators, thoroughly and without bias?

NOTE: Keep in mind that those who have survived prior abuse are much more likely to be victimized again.

Inconsistencies

Conflicting information from the person being interviewed, or between/among different persons being interviewed.

- Keeping in mind that trauma impacts a person's memory and their chronology of events, have I discovered any inconsistencies in information gathered from either the alleged victim or alleged perpetrator?
- Is there something that might account for these inconsistencies that may not necessarily indicate a lack of truthfulness (retaliation, mental health, trauma, fear, "flashbacks" of prior trauma, etc.)?

NOTE: Use caution when considering inconsistencies. Avoid using "TV techniques" that appear to trick or intimidate witnesses, subjects, etc.

Bias*

Any potential biases on the part of either the investigator or the person being interviewed. Bias is favoritism or partiality about a person.

- Do my criteria for assessing a person's credibility represent fairness and a lack of bias?
- Is it possible that I don't realize that I have some level of bias?
- Have I examined my own biases in an effort to avoid having them influence my assessments?
- Have I managed any bias I may have such that I will not be influenced in the investigation?
- Would an outsider conclude that my approach to this investigation is objective and without bias?
- Do I fully understand conflict of interest and the appearance of conflict of interest?
- Am I assured that I have absolutely no conflict of interest in any investigation for which I am responsible?
- Have I consulted another trusted investigator or person about whether I could have a bias or conflict of interest that makes me inappropriate to conduct this investigation?

Culture

The totality of attitudes and behaviors within a particular group; what is considered acceptable and unacceptable.

- Have I considered the culture issues (inmate culture, staff culture, facility culture) that might have an impact on a person's motivation to be truthful or untruthful (i.e., acts of retaliation, a fear of retaliation, gang activity, gaining favors, etc.)?
- Have I educated myself sufficiently about the cultures of the people I am interviewing to avoid applying my own culture-informed assumptions to my interpretations of credibility?
- Do I have a clear understanding of the culture within this particular facility, including previous issues within the facility, current legal issues, and how this may impact responses during interviews?

Omissions

Facts that a victim, suspect, or witness failed to tell you.

- If I find that information was omitted during an interview, why would this have occurred?
- What is the nature and significance of the possible omission?
- Have I conducted the interview with enough skill that the person has an opportunity to provide uncomfortable or embarrassing information?

- Did I feel the need to just keep talking and not take advantage of pauses or silences to allow the person being interviewed to have time to respond?
- Have I avoided re-interviewing the alleged victim when not necessary (i.e., only for clarity and additional information)?

NOTE: *Having a victim repeat the details of the incident can cause additional trauma.*

Corroboration

Supporting evidence that would support or refute information already gathered.

- What evidence have I found that may corroborate or refute the information I have gathered (e.g., interviews, camera footage, telephone calls/logs, logbooks, witness accounts, previous history, etc.)?
- Have I thoroughly described each piece of evidence and how it impacts and relates to the findings?

General considerations

- What is the significance of how I obtained the information?
- Can I trust the source of the information? Why or why not?
- How should I prioritize information?
- Is one piece of information more important than another? Why or why not?
- What patterns have I noticed and how do they impact credibility?
- Do I know and understand all of the laws of the state and local jurisdiction that may apply to the allegation?
- Do I know all of the agency policies, rules, and procedures that may apply to the allegation?

THE BIG PICTURE

- Have I obtained a complete picture of the nature of this information?
- Have I used objective criteria to assess credibility?
- Have I looked carefully at the evidence and information as a whole, assuring that corroborating evidence is linked to my findings?
- Would a reasonable person look at the evidence and information and come to the same findings?
- Would I be able to objectively and understandably explain how I came to my assessment of credibility and my findings?

NOTE: Investigators should not make statements in a report about whether they think someone is being truthful or lying, or if they believe that one person's information is "stronger" or "weaker" than another's. Investigators should describe the evidence obtained so that the findings are based on whether the evidence supports or refutes the allegation.

***Another word about bias in investigations:**

The PREA Standard for conducting sexual abuse incident reviews also includes a requirement to consider if bias could have been a motivation for the allegation or incident. (See the highlighted section of § 115.86 below.)

§ 115.86 Sexual abuse incident reviews

- (a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.
- (b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.
- (c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
- (d) The review team shall:
 - (1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
 - (2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
 - (3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
 - (4) Assess the adequacy of staffing levels in that area during different shifts;
 - (5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
 - (6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.
- (e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

Note that the list of possible motivating factors, which are forms of bias, includes “other group dynamics at the facility.” This could be many other types of bias that may be unique to the facility for certain reasons. During the investigative process, the investigator should include an assessment of bias—not only their own biases, but bias of the alleged victim and the alleged perpetrator, and bias within the inmate population and staff that could impact credibility. It follows that since the investigator is required to provide input during the sexual abuse incident review (SAIR), potential motivating factors should be thoroughly discussed at this point as well.

Note to PREA Auditors:

When auditing the investigative PREA Standards and the sections that involve credibility assessments, keep in mind that a credibility assessment is a THOUGHT and ANALYSIS process and **not a written checklist or summary**. To determine if an investigator has properly and competently assessed credibility, look for a full description of each piece of evidence in the report. This includes interviews and physical evidence. Did the investigator clearly describe this evidence and provide their reasoning for how it supports, corroborates, or refutes the allegation? Are you able to clearly see how the investigator arrived at the findings?

EXAMPLE: Inmate A reported that Inmate B followed her into the showers on a certain date and time and assaulted her. Inmate B states that she never even went into the showers when Inmate A was there. The investigator reviewed all of the camera footage for that date and time (and probably other dates and times), and saw Inmate A enter the shower, followed two minutes later by Inmate B. This description of the evidence is actually part of a credibility assessment. It shows that yes, this could have happened, as opposed to it could not have happened because Inmate B was never in the shower with Inmate A. The investigator would indicate that this particular camera footage supported the statement by Inmate A that Inmate B was in the shower with her. Further evidence would be required to support or refute what actually happened in the shower, but this piece of evidence corroborates the possibility that the assault could have occurred.

Assessing physical evidence

In addition to assessing the credibility of victims, suspects and witnesses as required in the PREA standards, thorough investigations must also consider physical evidence. Evidence you gather during the investigation will almost certainly be used to corroborate or refute what you may have gathered during interviews.

Evidence gathered may include, but not be limited to: written grievances or statements; written allegations of the victim; video footage, logbooks, other written/documentary items;

photographs; phone records and recordings; etc. Consider where you obtained these, how you obtained these, and how they corroborate or refute the allegation or another witness' statement; all of these are critical factors. For example, one item of physical evidence might be a timesheet submitted by a staff person concerning their time of arrival and departure. Certainly, this is evidence, but is it accurate? Who completed the timesheet? Was it altered at some point? Could there have been an error or a purposeful misrepresentation? If this evidence is used in reaching a finding, the reliability of the evidence should be assessed.

Expertise

- Do I have the proper and formal training in collection of evidence techniques?
- Where did I find each piece of evidence?
- What is the significance of the location of the evidence?
- Is there ANY potential that the evidence may have been contaminated? How, when, and by whom?

NOTE: Particularly in criminal investigations, this is critical. Investigators must know when search warrants may be needed. Search warrants may or may not be necessary in all situations, depending on facility/agency rules and procedures. But where there may be some doubt about whether a search would be permissible and usable as evidence later, it is the safest way to assure the evidence can be used and obtained within the requirements of the constitution.

Protocols

- Have I documented and described each piece of evidence collected?
- Has the evidence been stored and maintained in such a manner to assure that there is no contamination, and no break in the chain of custody?
- Where else can I look to find evidence? Have I fully exhausted all possible places?
- Did I collect the evidence or did someone else collect it?
- If collected by someone else, did they have formal training in the collection of evidence?
- Has the chain of custody been fully documented and maintained so that there is no moment when the evidence was not accounted for, or could not be touched or contaminated by anyone?

Collaboration

- Have I asked other investigators or supervisors to review the investigative file to ensure that I have looked in all possible places for evidence?
- What could I have missed?

Analysis

- How does each piece of evidence corroborate or contradict other possible items in the investigation such as interviews and other information?
- Have I described each piece of evidence and information clearly so that the finding can be reasonably understood based on the evidence?
- Have I analyzed each piece of evidence for its value and relation to the allegations?

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