

115.63

Reporting to other confinement facilities

Standard in Focus

Reporting to other confinement facilities

§ 115.63

- a) Upon receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.
- b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
- c) The agency shall document that it has provided such notification.
- d) The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

Purpose

- To ensure that allegations of custodial sexual abuse that are reported to any facility are timely investigated by the facility where the abuse allegedly occurred. The intent of the standard is to require facility heads to send the notification to an individual or office that will ensure that the facility takes immediate steps to investigate the allegation appropriately and promptly. It is important that the person receiving the report of sexual abuse at the facility understands the seriousness and gravity of the allegation, and that the communication originated at the highest level of the reporting facility.
- The standard recognizes that inmates may be reluctant to report sexual abuse during their confinement in the facility where the abuse occurred but may feel safer disclosing the prior abuse once they are housed in a different facility. The standard's importance is underscored by the fact that it requires the attention of the highest-ranking staff at the facility that received the allegation, and the head of the facility (or the head of the appropriate office of the agency) where the alleged abuse occurred, so that the reports are referred as soon as possible for prompt and thorough investigation in accordance with §§ 115.71 and 115.72.

Implementation

- To implement this standard, facilities must be able to both refer reports of sexual abuse that occurred in another facility back to that facility *and* receive reports from other facilities about

sexual abuse reported to have occurred in their own facility and ensure that a full investigation occurs.

- As an initial matter, all staff must be aware of their responsibilities to accept reports of sexual abuse that occurred in different facilities and to handle these reports in accordance with facility procedures requiring that these reports are provided to the facility head, so that this person can comply with the notification requirements in this standard. Facility staff must ensure that their facility head receives these reports of sexual abuse that occurred in different facilities as soon as possible, so that the reports can be conveyed to the facility where the abuse occurred.
- Facilities must be able to identify and accept reports of alleged sexual abuse that occurred in other facilities in the same ways that they must accept reports of alleged sexual abuse in their own facilities. Please see the reporting requirements in §§ 115.51, 115.54, and 115.61.
- Once a facility head receives an allegation of sexual abuse that occurred in another facility, the facility head must comply with the notification requirements listed in the box below:

NOTIFICATION REQUIREMENTS

Who makes the notification: The facility head. This notification must be made either:

1. Directly by the facility head; or
2. At the direction of the facility head in a manner that appears to have originated with the facility head. For example, the facility head could instruct an administrative assistant to send the notification on the facility head's letterhead and with the facility head's signature, or to send the notification from the facility head's email address. It is not sufficient for the facility head to be copied, or "cc'd" on a notification. **(See FAQ dated 5-9-2017)**

Who receives the notification: The head of the facility or of the appropriate office of the agency where the alleged abuse occurred. The "appropriate office" is one that will ensure that the facility where the alleged sexual abuse occurred takes immediate steps to investigate the allegation appropriately and promptly in accordance with §§ 115.71 and 115.72.

Notifications made to the facility head where the alleged sexual abuse occurred, this facility's PREA Compliance Manager, the agency's PREA Coordinator, and the Office of the Agency Head would be presumptively valid recipients. **(See FAQ dated 5-9-2017)**

When must the notification be made: As soon as possible, but no later than 72 hours after receiving the allegation.

How must the notification be made: The standard does not specify how to provide notifications. Facilities may use in-person meetings, phone calls, fax, email, or regular mail to provide notifications. Regardless of how the initial notification is made, facilities must ensure that the notifications are fully documented.

Document the notification: The referring facility must be able to document that the referral was made.

- Any facility that receives notification of an alleged incident of sexual abuse from another facility must investigate that allegation in the same manner that it would investigate an allegation received from any other source. See §§ 115.71 and 115.72 for these investigation requirements.

Challenges

- Ensuring that staff understand that any allegations of abuse they receive, including alleged abuse that occurred in other facilities, must be reported in a timely fashion and in a way that allows the facility head to carry out the notification requirements in this standard.
- Ensuring that facilities investigate allegations of sexual abuse that occurred in their own facility, that were received from other facilities, even if the alleged victim may not be present or available to be interviewed.
- Ensuring that timely notification of alleged abuse in another facility is provided by the facility head where the abuse was reported to the facility head (or to the head of the appropriate office of the agency) where the abuse occurred, and ensuring that accurate and timely documentation of the method of notification occurs by both parties (i.e., the referring party and the receiving party), especially regarding in-person or telephone referrals.

Best Practices

- Although the standard does not require it, a written policy is often the most effective way to ensure that staff and facility leaders are aware of their obligations under this standard.
- The standard also does not require written notification to other facilities. Often, the best way to provide timely notification to another facility may be in-person or by telephone, which should be encouraged. However, requiring all notifications to be in writing, either initially or as a follow-up to non-written notification as appropriate, will ensure that all relevant information has been accurately conveyed to the receiving facility, and will also document that the notification occurred as required by the standard. Documentation should also establish that the notification took place within 72 hours of receiving the allegation.
- The reporting component of staff PREA training in agencies and facilities should incorporate the requirement to accept and transmit reports of abuse in other confinement facilities. This requirement is also a good topic for shorter refresher trainings.
- Ensure that the PREA Compliance Manager and PREA Coordinator are aware of any reports received about abuse in other facilities to the same extent as they are made aware of allegations of abuse in their own facility or agency. PREA Compliance Managers and PREA Coordinators can then ensure that any such reports are referred appropriately. Similarly, facilities and agencies should ensure that their PREA Compliance Manager and PREA Coordinator receive all notifications from other facilities alleging abuse in their own facility.
- Ensure that facility heads are aware of their responsibilities, requirements, and obligations under this standard, both as the party that makes a referral about alleged abuse that occurred in another facility and potentially as the receiver of allegations of abuse in their own facility, received from another facility head. PREA Coordinators are usually in the best position to educate facility heads on these protocols.

Audit Issues

- Determining whether the facility has an institutionalized practice of notifying other facility heads (or the heads of the appropriate office of the agency) when it receives allegations of sexual abuse that occurred in other facilities. While the standard does not require a policy, the auditor will review any written policy that exists concerning reports of sexual abuse in other facilities, in addition to interviews of staff.
- The auditor will review records of any allegations the facility received of an inmate being abused in a different facility in the past 12 months and will ensure that:
 - The facility head made notifications within 72 hours of receiving the allegation; and
 - The facility has documented all notifications, including the date, time, and manner of the notification and to whom the notification was made.
- In facilities that have received no allegations regarding abuse in other facilities, the auditor will have to rely on other evidence to show compliance; this may include a detailed policy and/or operational protocol on this issue, robust staff training on this topic, and strong staff interview evidence supporting what the facility's practice would be if allegations are received in the future.
- Reviewing agency records of any notifications the facility received from other facilities, to ensure that the facility investigates these allegations in accordance with the standards and with facility policy, just like any other allegation of sexual abuse received by the facility. Auditors will interview staff to ensure that they understand their reporting obligations concerning the receipt of allegations of sexual abuse in other facilities.

Standard Variations

The following variations in the standard are noted for **Lockups**, **Community Confinement Facilities**, and **Juvenile Facilities**. The variations are discussed in summary fashion below, but readers are encouraged to consult the full text of the specific set of standards to ensure a complete understanding of the differences.

- **Lockups:** No differences.
- **Community Confinement:** No differences.
- **Juvenile:** The juvenile standards require that the head of the facility that received the allegation must also notify the appropriate investigative agency because of mandatory child abuse reporting laws.

Resources

Frequently Asked Questions (FAQs) on the PREA Resource Center (PRC) website:

→ www.prearesourcecenter.org/frequently-asked-questions

The Department of Justice has issued guidance regarding reporting obligations. Visit the PREA Resource Center's FAQ page and search under Standard 115.63 for the many related FAQ responses provided by the Department of Justice. The FAQs to date are as follows:

- **May 9, 2017.** Facility-to-facility notifications of alleged abuse that occurred at an inmate's prior facility pursuant to Standard 115.63(a) must be made to "the head of the facility or appropriate office of the agency where the alleged abuse occurred." What constitutes "an appropriate office at the agency?"
→ <http://www.prearesourcecenter.org/node/5285>
- **May 9, 2017.** Does Standard 115.63(a) require that notification of an incident of sexual abuse that took place at a prior facility be made directly from the head of the facility receiving the allegation, or can some other designated person make the notification?
→ <http://www.prearesourcecenter.org/node/5284>

Additional Training Resources:

Always check the following sources for excellent training on PREA.

- National Institute of Corrections
→ nicic.gov/training/prea
- End Silence: The Project on Addressing Prison Rape
→ www.wcl.american.edu/endsilence

Notes and Federal Disclaimer

Note: Standards in Focus (SIFs) are not intended for use by the Department of Justice PREA auditors to evaluate PREA compliance. SIFs are a tool designed to help agencies and facilities implement, educate, and become familiar with the PREA standards and some related best practices, but are not a compliance checklist. They contain guidance about implementation best practices that may not be required and thus it would not be appropriate for auditors to audit against the SIF. SIFs also do not exhaust implementation guidance for every requirement in every standard.

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