

U.S. Department of Justice
National Institute of Corrections



PREA

PRISON RAPE ELIMINATION ACT

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By National Institute of Corrections & The Moss Group, Inc.

Prison Rape Elimination Act (PREA) Considerations for Policy Review

NIC
National Institute of Corrections
NIC/Moss Group Cooperative Agreement #11REO6GKG3

This policy review guide was developed by The Moss Group, Inc. under cooperative agreement with the National Institute of Corrections, U.S. Department of Justice.

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Purpose

As part of its mission to assist state and local correctional organizations in implementing the requirements of the Prison Rape Elimination Act (PREA), the National Institute of Corrections (NIC), under a cooperative agreement with The Moss Group, Inc., is offering assistance to jurisdictions in the review of policies developed to address sexual abuse. While the United States Attorney General has not yet promulgated the final standards required under the law, this guide is intended to assist agencies in developing policy that represents best practice and mirrors the core components of the PREA draft standards under review.

NIC began its work in addressing staff sexual misconduct in 1994. PREA addresses both staff sexual misconduct and inmate on inmate (or youth on youth) sexual abuse. This guide is informed by an ongoing evolution of practice that takes into consideration NIC's extensive work with the field, legal opinions, current research in addressing sexual abuse, and the publication of the most recent draft standards. It will be continually updated to reflect both the finalized PREA standards as well as advances in best practice. As practice continues to evolve, it is recommended that policy be similarly updated.

Developing policy in this important area of correctional management requires discussion in many areas of operation and practice. It is important for users of the guide to spend time discussing the scope of this work and determine the best approach in your agency to address operations comprehensively. Some agencies put all possible components related to PREA /Sexual Abuse in one policy. Most find that several policies are necessary. For instance, a separate investigative policy allows for a thorough step by step guide to the investigative process. All policies should take into consideration gender differences and differences in managing special populations.

This **Policy Review Guide** is designed to help you refine your PREA policies. Once a technical assistance request is approved by NIC, we ask that you review your policy using this guide to ensure that you have considered all aspects of the PREA law before submitting it.

Agencies can secure a review of the policies related to PREA by directing a request for technical assistance to the NIC PREA Program Manager, Dee Halley.

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Questions to Consider

Policy Organization

PREA covers issues related to inmate -on- inmate sexual assault as well as issues related to staff sexual misconduct. By responding to the questions in this guide, you will review the issues most important in establishing the management tools you need to address sexual abuse. The questions will guide you in a discussion of policy as well as practice. Be aware that some of the questions may not be applicable to your setting, i.e. some language is for agencies developing policy for multiple sites; others are for a single site. Similarly, not all of the questions will require detailed language in policy, but all will guide your practice. Further, we urge active involvement of the key stakeholders impacted by the development of policies addressing sexual abuse/PREA in your agency during this policy initiative. Effectively addressing PREA requires the collaboration of many of the key, functional areas both within, and external to, your agency.

If you are using this guide with an approved technical assistance request from NIC, a policy guide coach will review your final draft and be available for assistance during your technical assistance activity. The guide is designed with three categories related to each question. The first category is used to reflect the agency’s current status related to the question posed (i.e. Is the question already answered in policy? Is it being addressed by staff or a workgroup?). The second category is a place for agencies to document current policy, memoranda, laws, regulations, etc. that may address the question posed. The third category provides a space to document any follow-up needed such as assigning staff to address the issue, changing collective bargaining agreements, revising laws, etc.

Question	Status	Current/Related Documents	Follow-up Needed
1.1 Would a single policy covering PREA in general provide a more direct source of information? OR			
1.2 Should there be separate policies for staff sexual misconduct issues and inmate-on-inmate assault?			
1.3 If your agency oversees both adults and juveniles, should there be separate sexual abuse and harassment policies for each			

Question	Status	Current/Related Documents	Follow-up Needed
group of individuals?			
1.4 Is there a policy statement mandating zero tolerance toward all forms of sexual abuse and the compliance of all facilities with the PREA standards? (115.11)			
1.5 Is there a policy statement mandating the employment or designation of a PREA Coordinator to develop, implement and oversee agency efforts to comply with the PREA standards? (115.11)			
1.6 If the agency operates facilities whose total rated capacity exceeds 1000 residents, is the PREA coordinator a full-time position? (115.11)			
1.7 Does policy require any new contracts or contract renewals to include the contracting entity's obligation to adopt and comply with the PREA standards (115.12)			
1.8 Does policy provide for agency contract monitoring to ensure the contractor is complying with PREA standards? (115.12)			

Definitions

Question	Status	Current/Related Documents	Follow-up Needed
2.1 Are the definitions in policy consistent with those used in the PREA standards?			
2.2 Does policy reflect definitions of criminal acts related to staff sexual misconduct or assault in state law?			
2.3 Does policy include prohibitions which may go beyond those of a criminal nature in the definition of staff sexual misconduct, such as conversations or correspondence of a romantic or sexual nature?			
2.4 Does policy carefully stipulate who may be covered by the policy? For example, does the policy define who is included when discussing “staff,” “contractors,” “volunteers,” “visitors,” etc.? Are private correctional facilities covered by the policy? Are inmates under supervision in the community covered by the policy?			

Inmate Reporting

Question	Status	Current/Related Documents	Follow-up Needed
<p>3.1 Does policy detail the processes by which various entities report incidents of sexual abuse, retaliation by other inmates or staff for reporting sexual abuse, and staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse? (Staff, residents, volunteers, contractors, et cetera) (115.51)</p>			
<p>3.2 Does policy provide multiple internal channels for reporting incidents easily, privately, and securely? For example, is there a way to report outside one's chain of command or one's facility? (115.51)</p>			
<p>3.3 Does policy require the agency to make its best effort to provide at least one way for inmates to report abuse to an outside public entity, office not affiliated with the agency, or that is operationally independent from agency leadership, such as an inspector general or ombudsperson, that has agreed to receive reports and forward them to the agency officials? (115.51) If not successful are these efforts</p>			

Question	Status	Current/Related Documents	Follow-up Needed
documented?			
3.4 Does policy require staff to accept reports made verbally, in writing, anonymously, and from third parties? Does it require staff to promptly document all verbal reports? (115.51)			
3.5 Does policy ensure that inmates who are limited English proficient (LEP), deaf, or disabled can report sexual abuse and sexual harassment to staff directly, or through other established reporting mechanisms, such as abuse hotlines, without relying on resident interpreters, absent exigent circumstances? (115.15)			
3.6 Does policy provide a way for inmates to make reports anonymously? (115.51)			
3.7 Does policy provide a central location where reports can be documented from any source?			

Question	Status	Current/Related Documents	Follow-up Needed
<p>3.8 Does policy require the agency to maintain or attempt to enter into memoranda of understanding (MOUs) or other agreements with an outside public entity or office that is able to receive and immediately forward inmate reports of sexual abuse to the agency officials pursuant to 115.51, unless the agency enables inmates to make such reports to an internal entity that is operationally independent from the agency's chain of command, such as an inspector general or an ombudsperson who reports directly to the agency head? (115.22)</p>			
<p>3.9 Does policy require that the agency maintain or attempt to enter into MOUs or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse? (115.22)</p>			

Question	Status	Current/Related Documents	Follow-up Needed
3.10 Does policy require the agency to maintain copies of these agreements or documentation demonstrating the attempt to enter into such agreements described in Questions 3.9 and 3.10? (115.22)			
3.11 Is there a grievance policy in place for inmates that can be used to address staff sexual misconduct or inmate on inmate sexual assault?			
3.12 Does policy state that the agency shall provide an inmate a minimum of 20 days following the occurrence of an alleged incident of sexual abuse to file a grievance regarding such incident? (115.52)			
3.13 Does policy state that the agency shall grant an extension of no less than 90 days from the deadline for filing such a grievance when the inmate provides documentation, such as from a medical or mental health provider or counselor, that filing a grievance within the normal time limit was or would likely be impractical, whether due to physical or psychological trauma arising out of an incident of sexual abuse, the inmate having			

Question	Status	Current/Related Documents	Follow-up Needed
<p>been held for periods of time outside of the facility, or other circumstances indicating impracticality? Does policy state that such an extension shall be afforded retroactively to an inmate whose grievance is filed subsequent to the normal filing deadline? (115.52)</p>			
<p>3.14 Does policy state that the agency shall issue a final agency decision on the merits of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance, and that computation of the 90-day time period shall not include time consumed by inmates in appealing any adverse ruling? (115.52)</p>			
<p>3.15 Does policy state that an 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? (115.52)</p>			
<p>3.16 Does policy state that the agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made? (115.52)</p>			

Question	Status	Current/Related Documents	Follow-up Needed
<p>3.17 Does policy stipulate that whenever an agency is notified of an allegation that an inmate has been sexually abused, other than by notification from another inmate, it shall consider such notification as a grievance or request for informal resolution submitted on behalf of the alleged inmate victim for purposes of initiating the agency administrative remedy process? (115.52)</p>			
<p>3.18 Does policy stipulate that the agency shall inform the alleged victim that a grievance or request for informal resolution has been submitted on his or her behalf and shall process it under the agency's normal procedures unless the alleged victim expressly requests that it not be processed? Does policy state that the agency shall document any such request? (115.52)</p>			
<p>3.19 Does policy state whether the agency requires the alleged victim to personally pursue any subsequent steps in the administrative remedy process? (115.52)</p>			

Question	Status	Current/Related Documents	Follow-up Needed
<p>3.20 Does policy state that the agency shall also establish procedures to allow the parent or legal guardian of a juvenile to file a grievance regarding allegations of sexual abuse, including appeals, on behalf of such juvenile? (115.52)</p>			
<p>3.21 Does policy state that an agency shall establish procedures for the filing of an emergency grievance where an inmate is subject to a substantial risk of imminent sexual abuse, and, after receiving such an emergency grievance, does policy state that the agency shall immediately forward it to a level of review at which corrective action may be taken, provide an initial response within 48 hours, and a final agency decision within five calendar days? (115.52)</p>			
<p>3.22 Does policy state that the agency may opt not to take actions when an emergency grievance is filed if it determines that no emergency exists, in which case it may either:</p> <ul style="list-style-type: none"> (i) Process the grievance as a normal grievance; or (ii) Return the grievance to the inmate, and require the inmate to 			

Question	Status	Current/Related Documents	Follow-up Needed
follow the agency's normal grievance procedures? (115.52)			
3.23 Does policy state that the agency shall provide a written explanation of why the grievance does not qualify as an emergency? (115.52)			
3.24 Does policy state whether the agency disciplines inmates for intentionally filing an emergency grievance where no emergency exists? (115.52)			
3.25 Does policy state that the facility shall establish a method to receive third-party reports of sexual abuse, and that the facility shall distribute publicly information on how to report sexual abuse on behalf of an inmate? (115.54)			

Staff and Agency Reporting

Question	Status	Current/Related Documents	Follow-up Needed
4.1 Does policy provide a method for staff to privately report the sexual abuse and sexual harassment of inmates? (115.31)			
4.2 Does policy require all staff to immediately report (according to agency policy) any knowledge, suspicion, or information they receive regarding 1) any incident that has occurred in an institutional setting; 2) retaliation against inmates or staff who reported abuse; and 3) any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or retaliation? (115.61)			
4.3 Does the policy stipulate that, apart from reporting to designated supervisors or officials, all staff should only reveal information to those individuals who have a need-to-know, as specified in the policy, to make treatment, investigation, other security and management decisions? (115.61)			

Question	Status	Current/Related Documents	Follow-up Needed
4.4 If state law addresses a duty to report, is that referenced in the policy?			
4.5 Does policy require medical and mental health practitioners to report sexual abuse to designated supervisors and officials as well as the designated state or local services agency, unless otherwise precluded by Federal, State, or local law to do so? (115.61)			
4.6 Does policy require medical/mental health practitioners to inform inmates of their duty to report at the initiation of services (unless otherwise precluded by Federal, state, or local law)? (115.61)			
4.7 If the victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, does policy state that the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws? (115.61)			

Question	Status	Current/Related Documents	Follow-up Needed
4.8 Does policy state that the facility shall report all allegations of sexual abuse, including third-party and anonymous reports, to the facility's designated investigators? (115.61)			
4.9 Does your policy stipulate procedures to address reports of sexual abuse which occurred at other confinement facilities, including notifying the agency head of the other facility or the appropriate central office of the agency in which the abuse occurred in writing within 14 days of receiving an allegation as well as notifying the appropriate investigative agency? (115.62)			
4.10 Does policy state that, upon notification from another facility or agency that an inmate has reported an incident of abuse occurring within your facility or agency, the facility head or central office that receives such notification shall ensure that the allegation is investigated in accordance with the PREA standards? (115.62)			

Protection from Retaliation

Question	Status	Current/Related Documents	Follow-up Needed
5.0 Is there language in policy prohibiting retaliation for the filing of a complaint?			
5.1 Does policy stipulate the agency's protection of all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse investigations from retaliations from other inmates or staff? (115.65)			
5.2 Does policy employ multiple protection measures, including 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 cooperating with investigations? (115.65)			
5.3 Does policy stipulate that the agency monitors the conduct and/or treatment of inmates or staff that have reported sexual abuse or cooperated with investigations (including any inmate disciplinary reports, housing, or program changes) for at least 90 days following their			

Question	Status	Current/Related Documents	Follow-up Needed
<p>report or cooperation to see if there are changes that may suggest possible retaliation by inmates or staff? (115.65)</p>			
<p>5.4 Does policy stipulate that the agency shall act promptly to remedy any such retaliation and continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need? (115.65)</p>			

Hiring and Staffing

Question	Status	Current/Related Documents	Follow-up Needed
<p>6.0 Does policy state that the agency shall not enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff abusers from contact with victims pending an investigation? (115.65)</p>			
<p>6.1 Does policy prohibit the agency from hiring or promoting anyone who has engaged in sexual abuse in an institutional setting, who has been convicted of engaging in sexual activity in the community facilitated by force, the threat of force, or coercion, or who has been civilly or administratively adjudicated to have engaged in such activity? (115.16)</p>			
<p>6.2 Before hiring new employees, does policy require the agency to:</p> <ul style="list-style-type: none"> • Perform a criminal background check; and • Consistent with Federal, State, and local law, make its best effort to contact all prior institutional employers for information on substantiated allegations of sexual abuse? (115.16) 			

Question	Status	Current/Related Documents	Follow-up Needed
6.3 Does policy require the agency to either conduct criminal background checks of current employees at least every five years or have in place a system for otherwise capturing such information for current employees? (115.16)			
6.4 Does policy require the agency to ask all applicants and employees directly about previous misconduct in written applications for hiring or promotions, in interviews for hiring or promotions, and in any interviews or written self-evaluations conducted as part of reviews of current employees? (115.16)			
6.5 Does policy state that material omissions, or the provision of materially false information, shall be grounds for termination? (115.16)			

Question	Status	Current/Related Documents	Follow-up Needed
<p>6.6 Does policy state that, unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse involving a former employee upon receiving a request form an institutional employer for whom such employee has applied to work? (115.16)</p>			
<p>6.7 Does policy state that, for each facility, the agency shall determine the adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse? In addition, does policy state that, in calculating such levels, agencies shall take into consideration the physical layout of each facility, the composition of the inmate population, and any other relevant factors? (151.13)</p>			
<p>6.8 Does policy state that the facility shall also establish a plan for how to conduct staffing and, where applicable, video monitoring, in circumstances where the levels established in the above-mentioned assessment are not attained? (151.13)</p>			

Question	Status	Current/Related Documents	Follow-up Needed
<p>6.9 Does policy state that, each year, the facility shall assess, and determine whether adjustments are needed to the following?</p> <ul style="list-style-type: none"> • The staffing levels established in the above-mentioned assessment; • Prevailing staffing patterns; and • The agency’s deployment of video monitoring systems and other technologies? (151.13) 			
<p>6.10 Does policy dictate that facilities have in place security policies and protocols that support the prevention and detection of sexual abuse? If so, identify them (i.e. cameras, recorders, authorization for issuance of keys, sign-in requirements, etc.)</p>			
<p>6.11 Does policy state that the facility shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds during both night and day shifts to identify and deter staff sexual abuse and sexual harassment? (151.13)</p>			

Viewing and Searches

Question	Status	Current/Related Documents	Follow-up Needed
<p>7.0 Does agency policy prohibit cross-gender strip and visual body cavity searches, except in the case of emergency or when performed by medical practitioners? In addition, does policy require the agency to document all such searches? (151.14)</p>			
<p>7.1 Does agency policy state that the facility shall implement policies and procedures that 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 case of emergency, by accident, or when such viewing is incidental to routine cell checks? (151.14)</p>			

Question	Status	Current/Related Documents	Follow-up Needed
<p>7.2 Does policy require only medical practitioners to conduct examinations of transgender individuals to determine their genital status? Does policy specify that these examinations shall be done only in private settings and only when an individual's genital status is unknown? (115.14)</p>			
<p>7.3 Does policy state that, following classification, the agency shall implement procedures to exempt from non-emergency cross-gender pat-down searches those inmates who have suffered documented prior cross-gender sexual abuse while incarcerated? (115.14)</p>			
<p>7.4 Does policy state that the agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender inmates, in a professional and respectful manner, and in the least intrusive manner possible that is consistent with security needs? (115.14)</p>			

Staff, Volunteer, and Contractor Training

Question	Status	Current/Related Documents	Follow-up Needed
<p>8.1 Does policy require training of employees who may have contact with inmates on the agency zero-tolerance policy for sexual abuse and sexual harassment as well as how to fulfill their responsibilities under agency sexual abuse prevention, detection, reporting, and response policies and procedures? (115.31)</p>			
<p>8.2 Does policy require all employees who may have contact with inmates to be trained to communicate effectively and professionally with all inmates, including lesbian, gay, bisexual, transgender, or intersex inmates? (115.31)</p>			
<p>8.3 Does policy require all employees who may have contact with inmates to be trained on inmates' right to be free from sexual abuse and sexual harassment, the right of inmates and employees to be free from retaliation for reporting sexual abuse, the dynamics of sexual abuse in confinement, and the common reactions of sexual abuse victims? (115.31)</p>			

Question	Status	Current/Related Documents	Follow-up Needed
8.4 Does policy require all employees who may have contact with inmates to be trained on how to detect and respond to signs of threatened and actual sexual abuse and how to avoid inappropriate relationships with inmates? (115.31)			
8.5 Does policy state that this training will be tailored to the gender of the inmate population? (115.31)			
8.6 Does policy indicate that current employees who have not received such training be trained within one year of the effective date of the PREA standards? Does policy ensure that refresher training is provided on an annual basis to ensure all employees know the agency's current sexual abuse policies and procedures? (115.31)			
8.7 Are employees aware in policy that they may be subject to search of their person, car, computer email, etc. (the answer may depend on laws and collective bargaining agreements in each jurisdiction)?			

Question	Status	Current/Related Documents	Follow-up Needed
8.8 Does policy require the agency to document, via employee signatures or electronic verification that employees understand the training they have received? (115.31)			
8.9 Does your policy stipulate that all volunteers and contractors who have contact with inmates must be trained on their responsibilities under the agency's sexual abuse prevention, detection, and response policies and procedures? (115.32)			
8.10 Does policy stipulate that the level and type of training provided to volunteers and contractors be based on the services they provide and level of contact they have with inmates? (115.32)			
8.11 Does policy also require all volunteers and contractors who have contact with inmates to be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed of how to report sexual abuse? (115.32)			

Question	Status	Current/Related Documents	Follow-up Needed
8.12 Does the policy stipulate that the agency maintain written documentation confirming that volunteers and contractors understand the training they have received? (115.32)			
8.13 Is staff trained in the constitutional requirements associated with investigative interviews (i.e. Miranda, Garrity, Weingarten)?			
8.14 Does agency policy stipulate that, in addition to the general training provided to all employees pursuant to 115.31, the agency shall ensure that agency investigators conducting sexual abuse investigations have received training in conducting such investigations in confinement settings (to the extent that the agency itself conducts sexual abuse investigations)? (115.34)			
8.15 Does agency policy require the investigator training to include 1) techniques for interviewing sexual abuse victims, 2) proper use of Miranda- and Garrity-type warnings, 3) sexual abuse evidence collection in confinement settings, and 4) the			

Question	Status	Current/Related Documents	Follow-up Needed
criteria and evidence required to substantiate a case for administrative action or prosecution referral? (115.34)			
8.16 Does agency policy require the agency to maintain documentation that investigators have completed the required specialized training in conducting sexual abuse investigations? (115.34)			
8.17 Does agency policy ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in 1) how to detect and assess signs of sexual abuse and 2) how to preserve physical evidence of sexual abuse and 3) how to respond effectively and professionally to victims of sexual abuse and 4) how and to whom to report allegations or suspicions of sexual abuse? (115.35)			
8.18 If medical staff employed by the agency conduct forensic examinations, does policy require such medical staff to receive the appropriate training to conduct such examinations?			

Question	Status	Current/Related Documents	Follow-up Needed
(115.35)			
8.19 Does agency policy stipulate that the agency maintains documentation that medical and mental health practitioners have received this specialized training either from the agency or elsewhere? (115.35)			

Inmate Education

Question	Status	Current/Related Documents	Follow-up Needed
<p>8.20 Does policy state that staff, during the intake process, shall inform inmates of 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? (115.33)</p>			
<p>8.21 Does policy and practice make accommodations to convey all written information about sexual abuse and sexual harassment policies, including how to report sexual abuse, verbally to inmates with limited reading skills or who are visually impaired? (115.15)</p>			
<p>8.22 Does policy state that, within 30 days of intake, the agency shall provide comprehensive education to inmates (either in-person or via video) regarding 1) their rights to be free from sexual abuse and sexual harassment, 2) their rights to be free from retaliation for reporting such abuse or harassment and 3) the agency's sexual abuse response policies and procedures? (115.33)</p>			

Question	Status	Current/Related Documents	Follow-up Needed
8.23 Does policy state that current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and that the agency shall provide refresher information to all inmates at least annually and whenever an inmate is transferred to a different facility, to ensure that they know the agency's current sexual abuse policies and procedures? (115.33)			
8.24 Does policy state that the agency shall maintain documentation of inmate participation in these education sessions? (115.33)			
8.25 Does policy state that the 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? (115.33)			
8.26 Does policy state that, in addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate			

Question	Status	Current/Related Documents	Follow-up Needed
handbooks, or other written formats? (115.33)			

Inmate Intake and Classification

Question	Status	Current/Related Documents	Follow-up Needed
<p>9.2 Does agency policy ensure that all inmates are screened during the intake process and during the initial classification process to assess their risk of being sexually abused by other inmates or sexually abusive toward other inmates? (115.41)</p>			
<p>9.3 Does agency policy state that such screening shall be conducted using an objective screening instrument, blank copies of which shall be made available to the public upon request? (115.41)</p>			
<p>9.4 Does agency policy require the initial classification process to consider, at a minimum, the following criteria to screen inmates for risk of sexual victimization?</p> <ul style="list-style-type: none"> • Whether the inmate has a mental, physical, or developmental disability; • The age of the inmate, including whether the inmate is a juvenile; • The physical build of the inmate; • Whether the inmate has previously been incarcerated; • Whether the inmate’s criminal history is exclusively nonviolent; 			

Question	Status	Current/Related Documents	Follow-up Needed
<ul style="list-style-type: none"> • Whether the inmate has prior convictions for sex offenses against an adult or child; • Whether the inmate is gay, lesbian, bisexual, transgender, or intersex; • Whether the inmate has previously experienced sexual victimization; • The inmate’s own perception of vulnerability; and • Whether the inmate is detained solely on civil immigration charges. (115.41) 			
<p>9.5 Does the initial classification process consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in screening inmates for risk of being sexually abusive? (115.41)</p>			
<p>9.6 Does policy require the agency to conduct such initial classification within 30 days of the inmate’s confinement? (115.41)</p>			
<p>9.7 Does policy state that inmates shall be rescreened when warranted due to a referral,</p>			

Question	Status	Current/Related Documents	Follow-up Needed
request, or incident of sexual victimization? (115.41)			
9.8 Does policy also state that inmates may not be disciplined for refusing to answer particular questions or for not disclosing complete information? (115.41)			
9.9 Does policy state that the agency shall implement appropriate controls on the dissemination of responses to screening questions within the facility in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates? (115.41)			
9.10 Does policy state that inmates shall be asked about prior sexual victimization and abusiveness during intake or classification screenings? (115.81)			
9.11 Does policy state that, if an inmate discloses prior sexual victimization or abusiveness, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up reception with a medical or mental health			

Question	Status	Current/Related Documents	Follow-up Needed
practitioner within 14 days of intake screening? (115.81)			
9.12 Does policy state that 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 required by agency policy and Federal, State, or local law, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments? (115.81)			
9.13 Does policy state that 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? (115.81)			
9.14 Does policy state that the agency shall use the 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			

Question	Status	Current/Related Documents	Follow-up Needed
being sexually victimized from those at high risk of being sexually abusive? (115.42)			
9.15 Does policy state that these decisions shall be individualized to ensure the safety of each inmate? (115.42)			
<p>9.16 Does policy state that the agency, when deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, shall consider on a case-by-case basis</p> <ol style="list-style-type: none"> 1) whether a placement would ensure the inmate's health and safety and 2) whether the placement would present management or security problems? (115.42) 			
9.17 Does policy state that the placement and programming assignments for transgender and intersex inmates shall be reassessed at least twice each year to review any threats to safety experienced by the inmate? (115.42)			
9.18 Does policy also state that such inmate's own views with respect to his or her own safety shall be given serious consideration?			

Question	Status	Current/Related Documents	Follow-up Needed
(115.42)			
9.19 Is agency procedure for considering inmate cell change requests designed to promote housing changes which would help prevent or stop inmate sexual assaults?			
9.20 Does the facility provide adequate numbers of protective custody or single cell beds to protect inmates reporting sexual abuse?			
9.21 Does policy state that inmates at high risk for sexual victimization may be placed in involuntary segregated housing only after an assessment of all available alternatives has been made, and then only until an alternative means of separation from likely abusers can be arranged? (115.43)			
9.22 Does policy state that inmates placed in segregated housing for this purpose shall have access to programs, education, and work opportunities to the extent possible? (115.43)			
9.23 Does policy state that the agency shall not ordinarily assign an			

Question	Status	Current/Related Documents	Follow-up Needed
<p>inmate at high risk for sexual victimization to segregated housing involuntarily for a period exceeding 90 days? (115.43)</p>			
<p>9.24 If an extension is necessary, does policy state that the agency shall clearly document 1) the basis for the agency's concern for the inmate's safety and 2) the reason why no alternative means of separation can be arranged? (115.43)</p>			
<p>9.25 Additionally, does policy state that every 90 days, the agency shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population? (115.43)</p>			

Agency and Staff Response to Inmate Reports

Question	Status	Current/Related Documents	Follow-up Needed
10.0 Does policy dictate the steps taken by first responders and the correct order of these steps regarding notification of superiors, notification of medical/mental health, notification of investigators, etc.?			
10.1 Does policy dictate the provision of check-lists to staff to ensure that, in the event that they must act as first responders, they have it clear directions to follow in fulfilling their duties?			

<p>10.2 Does agency policy stipulate that, upon learning that an inmate was sexually abused within a time period that still allows for the collection of physical evidence, the first security staff member to respond to the report is required to:</p> <ul style="list-style-type: none"> • separate the alleged victim and abuser; • seal and preserve any crime scene(s); and • instruct the victim not to take any actions that could destroy physical evidence, including washing, brushing his or her teeth, changing his or her clothes, urinating, defecating, smoking, drinking, or eating? (115.63) 			
<p>10.3 Does policy dictate a protocol for ensuring that all physical evidence is secured?</p>			
<p>10.4 Does agency policy stipulate that, if the first staff responder is a non-security staff member, he or she is required to instruct the victim not to take any actions that could destroy physical evidence and then notify security staff? (115.63)</p>			

<p>10.5 Does agency policy stipulate that all actions taken in response to an incident of sexual abuse are coordinated among staff first responders, medical and mental health practitioners, investigators, and facility leadership? (115.64)</p>			
<p>10.6 Does policy state that any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of 115.43 (see: Inmate Intake and Classification)? (115.66)</p>			

Investigations

Question	Status	Current/Related Documents	Follow-up Needed
11.0 Does policy reflect the impact state statutes, administrative regulations, or collective bargaining agreements may have on the investigative process?			
11.1 Does policy dictate the following? 1) who is given authority to initiate an investigation, 2) who has the authority to conduct an investigation and 3) who has the authority to act on the investigators' findings.			
11.2 Does policy dictate who authorizes the use of investigative tools – covert, warrants, phone call monitoring, DNA samples, polygraph, etc?			
11.3 Does policy specify a protocol for notifying mental health staff for assistance with questioning of victims and perpetrators in the investigative process?			
11.4 Does policy specify when outside medical or mental health staff are used in the investigative or treatment process?			
11.5 Does policy dictate that the agency will use investigators who have received special training in sexual abuse investigations pursuant to 115.34 (see: Staff Training), and shall investigate all allegations of sexual abuse, including			

Question	Status	Current/Related Documents	Follow-up Needed
third-party and anonymous reports? (115.71)			
11.6 Does policy dictate how investigators are chosen for particular investigations? Does policy dictate if the gender of the victim is considered when assigning an investigator?			
11.7 When investigators are internal to the agency, does policy dictate if they are assigned to headquarters or if they work out of a facility? If they are locally based, does policy dictate when non-resident investigators are brought in?			
11.8 Does policy dictate when outside (non-agency) investigators are used?			
11.9 Does policy dictate the type of memorandum of understanding or other agreement established to outline outside investigator's authority, protocol, etc.?			
11.10 Does policy dictate that, if outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation? (115.71)			
11.11 In the event that an investigation is conducted internally, does policy dictate that investigators shall 1) gather and preserve direct and circumstantial evidence and any suitable electronic			

Question	Status	Current/Related Documents	Follow-up Needed
<p>monitoring data, 2) interview alleged victims, suspected perpetrators and witnesses and 3) shall review prior complaints and reports of sexual abuse involving the suspected perpetrator? (115.71)</p>			
<p>11.12 In the event that an investigation is conducted internally, does policy dictate that the credibility of a 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? (115.71)</p>			
<p>11.13 In the event that an investigation is conducted internally, does policy dictate that, if the quality of the evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution? (115.71)</p>			
<p>11.14 In the event of an internal administrative investigation, does policy dictate that these investigations shall 1) include an effort to determine whether staff actions or failures to act facilitated the abuse; and 2) be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind</p>			

Question	Status	Current/Related Documents	Follow-up Needed
credibility assessments, and investigative findings? (115.71)			
11.15 In the event of an internal criminal investigation, does policy dictate the investigation 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? (115.71)			
11.16 Does policy dictate that substantiated allegations of conduct that appears to be criminal shall be referred for prosecution? (115.71)			
11.17 Does policy dictate how the system deals with a large number of inconclusive investigations?			
11.18 Does policy state that the agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse are substantiated? (115.72)			
11.19 Does policy dictate that 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? (115.71)			

Question	Status	Current/Related Documents	Follow-up Needed
11.20 Does policy dictate that the agency retains such investigative records for as long as the alleged abuser is incarcerated or employed by the agency, plus five years? (115.71)			
11.21 How is the status of an ongoing investigation communicated with various entities such as staff, inmates, and/or the media?			
11.22 Does policy consider any requirements under state statutes, administrative regulations, or collective bargaining agreements dictating when the subject of an investigation must be notified?			
11.23 Does policy dictate how the results of completed investigations are communicated with various entities such as staff, inmates or the media?			
11.24 Does policy dictate how witnesses are protected during and after the investigation?			
11.25 Does policy dictate how victims are protected during and after the investigation?			
11.26 Does policy dictate that, following an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, the agency shall inform the inmate as to whether			

Question	Status	Current/Related Documents	Follow-up Needed
the allegation has been determined to be substantiated, unsubstantiated, or unfounded? (115.73)			
11.27 Does policy dictate that, if the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate? (115.73)			
11.28 Does policy state that, following an inmate's allegation that a staff member has committed sexual abuse that has been found to be either substantiated or unsubstantiated (but not unfounded), the agency subsequently informs the inmate whenever 1) the staff member is no longer posted within the inmate's unit, 2) the staff member is no longer employed at the facility, 3) the agency learns that the staff member has been indicted or convicted on a charge related to sexual abuse in the facility? (115.73)			
11.14 Does policy dictate that results of investigations be recorded according to PREA requirements for reporting purposes?			
11.15 Does policy dictate that the results of investigations are recorded according to the requirements of Uniform Crime Reports for reporting purposes?			

Question	Status	Current/Related Documents	Follow-up Needed
11.16 Is there a process for reporting information to the appropriate licensing organizations (i.e., medical staff, attorneys, etc.)?			

Staff and Inmate Discipline

12.0 Does policy dictate that staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies? (115.76)			
12.1 Does policy dictate that termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual touching? (115.76)			
12.2 Does policy state that sanctions on staff 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? (115.76)			

<p>12.3 Does policy state that all terminations for violations of agency sexual abuse or sexual harassment policies, or resignations of 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? (115.76)</p>			
<p>12.4 Does policy state that 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? (115.77)</p>			
<p>12.5 Does policy state that inmate 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? (115.77)</p>			

<p>12.6 Does policy state that the disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed? (115.77)</p>			
<p>12.7 Does policy state that, 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? (115.77)</p>			
<p>12.8 Does policy state that 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? (115.77)</p>			

<p>12.9 Does policy state that, 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 or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation? (115.77)</p>			
<p>12.10 Does policy state that any prohibition on inmate-on-inmate sexual activity shall not consider consensual sexual activity to constitute sexual abuse? (115.77)</p>			

Medical and Mental Health Care

Question	Status	Current/Related Documents	Follow-up Needed
<p>13.0 Does agency policy stipulate that inmate victims of sexual abuse have 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? (115.82)</p>			
<p>13.1 Does agency policy stipulate that treatment services must be provided free of charge to the victim and regardless of whether the victim names the abuser? (115.82)</p>			
<p>13.2 Does agency policy ensure that 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 take preliminary steps to protect the victim pursuant to 115.63 (see: Staff and Agency Response) and immediately notify the appropriate medical and mental health practitioners? (115.82)</p>			
<p>13.3 Does policy state that inmate victims of sexual abuse while</p>			

Question	Status	Current/Related Documents	Follow-up Needed
<p>incarcerated shall be offered timely information about and access to all pregnancy-related medical services that are lawful in the community and sexually transmitted infections prophylaxis, where appropriate? (115.82)</p>			
<p>13.4 Does policy specify that, to the extent that the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative and criminal proceedings? Is this protocol adapted from or otherwise based on the 2004 U.S. Department of Justice’s Office on Violence Against Women publication, “A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,” subsequently updated editions, or similarly comprehensive and authoritative protocols developed after 2010? (115.21)</p>			
<p>13.5 Does agency policy state that the agency shall offer all victims of sexual abuse access to forensic medical exams</p>			

Question	Status	Current/Related Documents	Follow-up Needed
performed by qualified medical practitioners, whether onsite or at an outside facility, without financial cost, where evidentiarily or medically appropriate? (115.21)			
13.6 Does agency policy dictate that the agency shall make a) a qualified staff member (someone who is employed by a facility and has received education concerning sexual assault and forensic examination issues in general) or b) a victim advocate available from a community-based organization that provides services to sexual abuse victims available to the victim? (115.21)			
13.7 Does agency policy dictate that, to the extent that the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall inform the investigating entity of these policies? (115.21)			
13.8 Does policy dictate that the facility shall inform inmates, prior to giving them this access, of the extent to which such communications will be monitored? (115.53)			
13.9 Does agency policy state that, as requested by the victim,			

Question	Status	Current/Related Documents	Follow-up Needed
<p>the qualified staff member or victim advocate described in 13.8 shall accompany and support the victim through the forensic medical exam process and the investigatory process and shall provide emotional support, crisis intervention, information, and referrals? (115.21)</p>			
<p>13.10 Does policy provide inmates with access to outside victim advocates for emotional support 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 by enabling reasonable communication between inmates and these organizations, as confidential as possible, consistent with agency security needs? (115.53)</p>			
<p>13.11 Does agency policy ensure that the facility offers ongoing medical and/or mental health evaluation and treatment to all inmates who, during their present term of incarceration, have been victimized by sexual abuse? (115.83)</p>			

Question	Status	Current/Related Documents	Follow-up Needed
<p>13.12 Does agency policy ensure that the evaluation and treatment of sexual abuse victims include appropriate follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities or their release from custody? (115.83)</p>			
<p>13.13 Does agency policy ensure that the level of medical and mental health care provided to inmate victims of sexual abuse is consistent with the community level of care? (115.83)</p>			
<p>13.14 Does agency policy ensure that the facility conducts a mental health evaluation of all known inmate abusers within 60 days of learning of such abuse history and offers treatment, when deemed appropriate by qualified mental health practitioners? (115.83)</p>			
<p>13.15 Does policy state that inmate victims of sexual abusive vaginal penetration while incarcerated shall be offered pregnancy tests? (115.83) Does policy state that, if pregnancy results, such victims shall receive timely information</p>			

Question	Status	Current/Related Documents	Follow-up Needed
about and access to all pregnancy-related medical services that are lawful in the community? (115.83)			

Monitoring

Question	Status	Current/Related Documents	Follow-up Needed
<p>14.0 Does policy state that the facility conducts sexual abuse incident reviews 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? (115.86)</p>			
<p>14.1 Does policy state that the review team shall include upper management officials, with input from line supervisors, investigators, and medical/mental health practitioners? (115.86)</p>			
<p>14.2 Does agency policy ensure that the review team evaluates each incident of sexual abuse to identify any policy, training, or other issues related to the incident that indicate a need to change policy or practice to better prevent, detect, and/or respond to incidents of sexual abuse? (115.86)</p>			

<p>14.3 Does agency policy ensure that the review team considers whether incidents were motivated or otherwise caused by race, ethnicity, sexual orientation, gang affiliation, or other group dynamics at the facility? (115.86)</p>			
<p>14.4 Does agency policy ensure that the review team examines the area in the facility where the incident allegedly occurred to assess 1) whether physical barriers in the area may enable abuse; 2) the adequacy of staffing levels in that area during different shifts; 3) whether monitoring technology should be deployed or augmented to supplement supervision by staff? (115.86)</p>			
<p>14.5 Does policy dictate that the review team prepares a report of its findings and any recommendations for improvement and submits the report to the facility head and PREA coordinator, if any? (115.86)</p>			

<p>14.6 Does agency policy ensure that the agency collects accurate, uniform data for every reported incident of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions? (115.87)</p>			
<p>14.7 Does agency policy ensure that the agency aggregates the incident-based sexual abuse data at least annually, and that the incident-based data collected includes, at a minimum, the data necessary to answer all questions from the most recent version of the BJS Survey on Sexual Violence? (115.87)</p>			
<p>14.8 Does agency policy ensure that the data are obtained from multiple sources, including reports, investigation files, and sexual abuse incident reviews and obtains incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates? (115.87)</p>			

<p>14.9 Does agency policy state that, upon request, the agency shall provide all such data from the previous year to the Department of Justice no later than June 30? (115.87)</p>			
<p>14.10 Does agency policy ensure that the agency reviews all data collected and aggregated pursuant to 115.87 (see above), in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including 1) identifying problem areas, 2) taking corrective action on an ongoing basis, and 3) preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole? (115.88)</p>			
<p>14.11 Does agency policy ensure that the report shall include a comparison of the current year's data and corrective actions with those from prior years and provides an assessment of the agency's progress in addressing sexual abuse? (115.88)</p>			

<p>14.12 Does agency policy stipulate that the agency’s report be approved by the agency head and made readily available to the public through its website or, if it does not have one, through other means? (115.88)</p>			
<p>14.13 Does agency policy state that the agency may redact specific material from the reports when publication would present a clear and present threat to the safety and security of a facility, but must indicate the nature of the material redacted? (115.88)</p>			
<p>14.14 Does agency policy state that the agency ensures that the collected sexual abuse data are securely retained for at least 10 years after the date of its initial collection unless Federal, state, or local law requires otherwise? (115.89)</p>			

<p>14.15 Does agency policy state that 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? Does agency policy state that, before making aggregated sexual abuse data available, the agency shall remove all personal identifiers? (115.89)</p>			
<p>14.16 Does agency policy ensure that all of its facilities, including contract facilities, are audited to measure compliance with the PREA standards? (115.93)</p>			

<p>14.17 Does agency policy ensure that audits are conducted by independent organizations that fall into one of the three following categories?</p> <ol style="list-style-type: none"> 1) a correctional monitoring body that is not part of the agency but that is part of, or authorized by, the relevant State or local government; 2) an auditing entity that is within the agency but separate from its normal chain of command, such as an inspector general or ombudsperson who reports directly to the agency head or to the agency's governing board; or 3) other outside individuals with relevant experience (115.93) 			
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<p>14.18 Does agency policy state that no audit may be conducted by an auditor who has received financial compensation from the agency within the three years prior to the agency's retention of the auditor, and that the agency shall not 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 audits? (115.93)</p>			
<p>14.19 Does agency policy require the auditor to have been certified by the Department of Justice to conduct such audits, and ensure that the auditor, if retained again, has been re-certified every three years? (115.93)</p>			
<p>14.20 Does agency policy state that the agency shall enable the auditor to enter and tour facilities, review documents, and interview staff and inmates to conduct a comprehensive audit? (115.93)</p>			

14.21 Does agency policy ensure that the report of the auditor's is published on the appropriate agency's Web site if it has one or is otherwise made readily available to the public? (115.93)			
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List of Resources for Guidance on the Prison Rape Elimination Act

1. Here are just a few of the many resources available to help you develop your response to PREA: National Institute of Corrections:
www.nicic.org
2. National Institute of Corrections/Washington College of Law Project on Addressing Prison Rape:
American University
Washington College of Law
4801 Massachusetts Ave NW
Washington, DC 20016
Phone: 202-274-4385
Website: www.wcl.american.edu/nic
Email: nic@wcl.american.edu
nicresearch@wcl.american.edu
3. The Moss Group, Inc.: www.mossgroup.us
4. Bureau of Justice Statistics Reports on Sexual Violence: <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=20>
5. Bureau of Justice Assistance: www.ojp.usdoj.gov/BJA
6. ACA's "Performance-Based Standards for Adult Local Detention Facilities": www.aca.org
7. Just Detention International: <http://www.justdetention.org/>
8. "Staff Sexual Misconduct with Inmates: A Policy Development Guide for Sheriffs and Jail Administrators":
www.ncic.org/pubs/2002/017925.pdf
9. To request technical assistance from NIC:
Dee Halley, *NIC Program Manager*
320 First Street NW, Room 5007
Washington, D.C. 20534
dhalley@bop.gov
1-800-995-6423 ex. 40374