Reporting

Inmate Reporting

Standard 115.51 requires that **agencies** provide multiple ways for **inmates** to report **sexual abuse** and **harassment**, and at least one way for **inmates** to report to an entity that is not part of the **agency**. The standard also requires that **agencies** provide contact information to **inmates** detained solely for civil immigration purposes for relevant consular officials and officials at the Department of Homeland Security. Finally, **staff** must have a method to report privately **sexual abuse** and **harassment** of **inmates**, and **staff** must accept and promptly document reports that are made verbally, in writing, anonymously, and from third parties.

The DOJ provides guidance to **agencies** that addresses: (1) the types of entities that constitute "a public or private entity or office that is not part of the **agency**"; (2) the contractual arrangements recommended with the outside entity; (3) best practice in this area; and (4) the role required of the outside entity (pp. 101-103). Further, the DOJ provides explanation for the requirement of a "private" reporting method (p. 103).

Inmates with Disabilities and Inmates who are Limited English Proficient

Standard 115.16 requires **agencies** to ensure that **inmates** with disabilities have an equal opportunity to participate in or benefit from the **agency's** efforts to prevent, detect, and respond to **sexual abuse** and **sexual harassment**. It also requires that **inmates** who are limited English proficient have meaningful access to all such **agency** efforts. The standard gives a number of required steps that **agencies** must take in order to meet these requirements. These steps include providing access to appropriate interpreters for both **inmates** with disabilities and **inmates** who are limited English proficient, and formatting or communicating written materials to **inmates** with disabilities.

Finally, the standard requires that the **agency** not rely on **inmate** interpreters, **inmate** readers, or other types of **inmate** assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the **inmate's** safety, the performance of first-response duties under Standard 115.64, or the investigation of the **inmate's** allegations.

The DOJ specifies that this final standard does not, nor is it intended to, go beyond the relevant Federal civil rights laws,[1] and that it intends to protect all **inmates** while providing **agencies** with discretion over how to provide the requisite information and interpretation services (p. 63). The DOJ also recommends a number of options to **agencies** attempting to comply with this standard, as well as some recommended resources (pp. 64-67[2]).

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[1] Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101, 12131 *et seq.* (www.ada.gov/pubs/adastatute08.htm); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (http://uscode.house.gov/download/pls/29C16.txt); and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* (http://uscode.house.gov/download/pls/42C21.txt).

[2] Jail-related resources can also be found at the webpage of the Disability Rights Section of the Civil Rights Division of the United States Department of Justice, found at www.justice.gov/crt/about/drs/?r44b=no

Exhaustion of Administrative Remedies

Standard 115.52 outlines **agency** requirements for the **inmate** administrative grievance procedures. This standard does not apply if an **agency** does not have administrative procedures to address **inmate** grievances regarding **sexual abuse**.

The standard provides requirements for grievance procedure timelines, including submission of grievances, the issuing of **agency** decisions, length of **agency** time extensions, when **inmates** may consider their requests to be denied at that level, and similar timelines for emergency grievances. It also addresses **inmates**' rights to submit grievances alleging **sexual abuse** to someone other than the alleged abuser.

Finally, the standard requires the **agency** to allow third parties (e.g. fellow **inmates**, **staff** members, family members, attorneys and outside advocates) to assist **inmates** in filing requests for administrative remedies relating to allegations of **sexual abuse**, and to allow third parties to file such requests on behalf of **inmates**. The **facility** may require the alleged victim to agree to have the request filed on his or her behalf, and to pursue personally any subsequent steps in the administrative remedy process.

The DOJ addresses that a grievance system cannot be the only, or even primary, method for **inmates** to report abuse(p. 107).

Third-Party Reporting

Standard 115.54 requires that the **agency** establish a method to receive third-party reports of **sexual abuse** and **sexual harassment**, and publically distribute information on how to report **sexual abuse** and **sexual harassment** on behalf of an **inmate**.

The DOJ suggests using the **agency's** websites, postings at the **facility**, and printed pamphlets as options for publically distributing information (p. 115).

Staff and Agency Reporting Duties

Standard 115.61 requires all **staff** to report immediately any of the following: (1) knowledge, suspicion, or information regarding an incident of **sexual abuse** or **sexual harassment** that occurred in a **facility** (whether or not it is part of the **agency**); (2) retaliation against **inmates** or **staff** who reported such an incident; and (3) any **staff** neglect or violation of responsibilities that may have contributed to an incident or to retaliation.

"**Staff**" in this standard includes medical and mental health **staff** members and **contractors**, who are also required to inform **inmates** of their duty to report to the **agency**, as well as the limitations of confidentiality at the initiation of services. Additionally, the standard addresses confidentiality issues, and requires **agencies** to prohibit **staff** from revealing information about **sexual abuse** reports to anyone other than to the extent necessary, as specified in **agency** policy.

Finally, the standard requires **agencies** to report allegations of **sexual abuse** in which the alleged victim is under the age of 18 or considered a vulnerable adult to designated state or local services **agencies**, and for **facilities** to report all allegations of **sexual abuse** and **sexual harassment**, including third-party and anonymous reports, to the **facility's** designated investigators.

The DOJ notes that an individual who needs to know certain information relating to a **sexual abuse** report should receive only the information necessary to make treatment, investigation, and other security and management decisions (p. 118).

Protection Against Retaliation

Standard 115.67 requires **agencies** to establish a policy to protect all **inmates** and **staff** members from retaliation if they report **sexual abuse** and **sexual harassment** or to protect from retaliation those who cooperate with **sexual abuse** or **sexual harassment** investigations. The standard specifies what should be included in the policy and required actions to be taken by the **agency** to protect **inmates**, **staff**, and those who report they are in fear of retaliation; and further possible actions the **agency** could take to ensure the protection of such individuals.

The DOJ recognizes that, because of space restraints, some **facilities** will not be able to accommodate housing changes for **inmate** protection and may need to employ alternative protection measures (p. 128).

Click here for more suggested guidance regarding reporting allegations.

Resources

- The Project on Addressing Prison Rape. *Fifty State Survey of State Vulnerable Persons Statutes* (http://www.wcl.american.edu/endsilence/statesurveys.cfm)
- The Project on Addressing Prison Rape. *Fifty State Survey of State Mandatory Reporting Laws* (http://www.wcl.american.edu/endsilence/statesurveys.cfm)
- Colorado Department of Public Safety. *Building Blocks for Institutional Safety* (http://dcj.state.co.us/ors/pdf/PREA/Building_Block_Bulletins/BB_No3_SF_ver4FV.pdf)