Investigations—Further Guidance

Fundamental to addressing the issue of sexual abuse – both staff sexual misconduct and inmate-on-inmate sexual abuse - is the role of the investigative process. Without a sound and trustworthy investigative process, it will be extremely difficult for agencies and facilities to detect and respond to incidents of sexual abuse.

Reporting

The PREA Standards outline a duty to report incidents of sexual abuse (Standard 115.61) and require that facilities ensure there are multiple ways for inmates to report (including a method to report anonymously) and at least one method for staff to report (Standard 115.51). These reporting standards are extremely important, however, it is clear that staff and inmates will be reluctant to report if they do not understand what will happen next. The next step is the investigative process. If staff and inmates do not have a basic understanding of the investigative process they will be unlikely to turn over a fellow staff member or inmate, especially if they only have a suspicion with no real proof. Facilities need to ensure that all staff and inmates understand the investigative process which will not only assist them if they are under investigation themselves but will also build trust in the process to facilitate reporting on others. People do not trust things they do not understand – in order to enhance reporting it is crucial for facilities to demystify the investigative process and promote education about investigations.

Response

The PREA Standards require that all allegations of sexual abuse are thoroughly investigated (Standard 115.22). They also make clear that an investigation shall continue even if the alleged abuser or victim resigns or is moved from the facility (Standard 115.71). This fundamental and unequivocal duty to investigate is extremely important to facilitating reporting of incidents of sexual abuse. In discussions with both staff and inmates it is clear that many fear their reports will be ignored or "nothing will happen anyway". Promoting an understanding among both staff and inmate that all reports, even those that are anonymous or come from third parties, will be investigated and a written report prepared will help instill confidence in the investigative function and facilitate reporting.

The investigative response must also be carried out by investigators who are properly trained and independent. The PREA Standards require specialized training for investigators to ensure that they understand the unique characteristics of sexual abuse investigations in a correctional setting (Standard 115.34). Training must include proper evidence collection, interviewing and report writing techniques and the role of first responders. Staff and inmates who report sexual abuse want to be certain that all allegations will be investigated by competent investigators who have

independent authority to complete their investigations. A feeling among staff and inmates that allegations will not be investigated because of the position of those accused or their connection to a Superintendent or other high level agency official will quickly stifle reporting. Independent and competent investigators will facilitate reporting and ensure an appropriate response to reports.

Any response to an allegation must also be conducted in a timely manner. An investigation of sexual abuse must begin as soon as possible after an alleged incident. Physical evidence can be lost as a result of delay. In addition, the memories of victims and witnesses may fade if an investigation is not carried out expeditiously. Once begun, an investigation must be completed in a timely manner. It is unfair to victims and the accused to allow investigations to linger for months or years. Agencies should establish strict timelines for investigations that are adhered to – and communicated to staff and inmates – with limited exceptions for only the most complex cases. If staff and inmates see investigations taking too long they may believe "nothing is happening". They may see the process as "unfair" and feel sympathy for those who have been accused of something for a long period of time with no resolution. Again these feelings will not promote reporting, especially if the report is only based on suspicions.

Communication

Staff and inmates must understand the results of investigations, particularly if they have made an allegation or they are the subject of an allegation. Communication is key to a successful investigative process. If allegations are seen as going into a "black hole" or the rumor mill is the only source of information about investigations staff and inmates will be reluctant to report or get involved with investigations. We cannot eliminate facility rumor mills – they will always exist in any closed environment like a correctional facility. However, they can be combatted with an effective process for communicating investigation results. Those accused of sexual abuse should receive a written report notifying them whether an allegation is substantiated, unsubstantiated or unfounded. In addition, as outlined in the PREA Standards, those making an allegation should also receive notice of the investigative result (Standard 115.73).

The PREA Standards also require reporting to other confinement facilities if an individual reports abuse that occurred during prior confinement (Standard 115.63). Delayed reporting of sexual abuse is not uncommon in corrections. Individuals may not understand or trust the investigative process or may fear retaliation for reporting. Therefore they may wait to report until they are released from a facility – either to the street or through a transfer of some kind. The PREA Standards try to combat some of this fear by requiring facilities to monitor the conduct and treatment of inmates or staff who have reported or suffered sexual abuse to see if retaliation has occurred and to remedy such retaliation if it does occur (Standard 115.67).

On a broader level, both staff and inmates should have an understanding about the type of investigations that have been conducted and the results. Agencies and facilities should establish a method for gathering data and documentation about sexual abuse incidents and investigations in order to discover and address potential issues and to communicate information on investigations to outside entities. These communications should also include information on referral of criminal cases for prosecution and the results of any successfully prosecuted cases. Successful prosecutions will serve as an effective deterrent for those who may be tempted to engage in sexual abuse.