Investigations

Policies to Ensure Referrals of Allegations for Investigations

Standard 115.322 requires **agencies** to ensure that an administrative or criminal investigation is completed for all allegations of **sexual abuse** and **sexual harassment**, and requires the **agency** to have a policy ensuring that all allegations of **sexual abuse** and **sexual harassment** are referred to an **agency** with the legal authority to conduct criminal investigations. The standard requires the **agency** to document all such referrals and to post their policy on their website (or otherwise make it available to the public). Additionally, the policy must describe the investigative responsibilities of the **agency** and the investigating entity, if the **agency** itself does not have the legal authority to investigate allegations. Finally, the standard requires all state entities and DOJ components responsible for conducting investigations of **sexual abuse** or **harassment** to have in place a policy governing the conduct of such investigations.

The DOJ clarifies that an **agency** need not definitively determine whether behavior is criminal before referring it for investigation; it need only refer allegations of potentially criminal behavior (p. 79). The DOJ also recommends that **agencies** explore the viability of entering into memoranda of understanding with outside investigative **agencies** and with prosecutorial **agencies** (p. 77).

Specialized Training: Investigations

Standard 115.334 lists the topics to be included in the training of all investigators conducting investigations of **sexual abuse** in confinement settings, including investigators employed by **agencies**, state entities, and DOJ components. The standard requires **agencies** to maintain documentation of the training.

The DOJ clarifies that training on the topic of distinguishing between abusive and consensual sexual contact should be considered part of the relevant training in conducting **sexual abuse** investigations in confinement settings as mandated by the standard, and states that the National Resource Center on Prison Rape will assist in the provision of specialized training to investigators (pp. 86-87).

Reporting to Other Confinement Facilities

In the event that a **resident** alleges that **sexual abuse** occurred at another **facility**, Standard 115.363 requires **agencies** to document those allegations and report to the head of the **facility** or appropriate office of the **agency** where the abuse is alleged to have occurred as soon as possible, but no later than 72 hours after receiving the notification,. Additionally, the standard requires any **facility** or **agency** office that receives that notification to ensure that the allegation is investigated in accordance with PREA standards.

The DOJ notes that it does not expect **facilities** to be able to identify the appropriate investigative staff at other **facilities**, especially at **facilities** operated by other **agencies**. When a **facility** is uncertain about whom to contact, it may simply contact the **facility** head (pp. 120-121).

Staff First Responder Duties

Standard 115.364 outlines requirements for **security staff** members who are the first to respond to a report that a **resident** was sexually abused. The standard lists four steps, including steps to separate the alleged victim and abuser, preserve any crime scenes, and collect any physical evidence. The standard also outlines the actions to be taken by first responders who are not **security staff**.

Coordinated Response

Standard 115.365 requires **facilities** to develop written institutional plans to coordinate the actions taken in response to incidents of **sexual abuse**. The plans should coordinate actions of **staff** first responders, **medical** and **mental health practitioners**, investigators, and **facility** leadership.

The DOJ clarifies that this standard only requires **facilities** to coordinate actions among those involved, not to take actions outside the scope of their authority (p. 123). Additionally, the DOJ recommends a number of items to include in the written institutional plan (p. 123), and encourages **facilities** to formalize the composition of their response teams. Finally, there is some guidance around the auditing of this standard (p. 124).

Post-Allegation Protective Custody

Standard 115.368 requires the **agency** to comply with the requirements of Standard 115.342 (see the Resident Screening section) in any use of segregated housing to protect a **resident** who is alleged to have suffered **sexual abuse**.

Criminal and Administrative Agency Investigations

Standard 115.371 has a number of requirements for **agencies** with the legal capability of conducting their own investigations into allegations of **sexual abuse** and **sexual harassment**. These requirements address when investigations occur, who conducts the investigations, what the investigators do, how they record their actions, when they conduct compelled interviews of employees, how they assess victim and witness credibility, when they refer allegations for prosecution, and how long **agencies** should retain records, among other things. Additionally, this standard requires all state entities and DOJ components conducting such investigations to comply with this standard.

Finally, this standard requires all **agencies** that rely on outside investigative entities (for investigating **sexual abuse**) to cooperate with these entities during the course of an investigation. Such **agencies** must also remain informed about the progress of the investigation that is conducted by the outside entity.

The DOJ provides guidance on when an **agency** should consider administrative investigations (violation of internal **agency** rules) versus criminal investigations, as well as the use of the polygraph. The retention period of records is addressed (pp. 131-133).

Evidentiary Standard for Administrative Investigations

Standard 115.372 requires **agencies** to impose a standard no higher than a preponderance of the evidence in determining whether allegations of **sexual abuse** or **sexual harassment** are **substantiated**.

Reporting to Residents

Standard 115.373 has a number of **agency** requirements following a determination that an allegation was **substantiated**, **unsubstantiated**, or **unfounded**. Unless an allegation is determined to be **unfounded**, at the conclusion of the investigation the **agency** must inform the **resident** who made the allegation of **sexual abuse** of the status of the accused **staff** abuser. 'Status' includes whether the **staff** member is posted within the **resident's** unit; whether the **staff** member is employed at the **facility**; and whether the **staff** member has been indicted or convicted of a charge related to **sexual abuse** within the **facility**. The **agency** is similarly required to inform the **resident** of indictments or convictions of alleged **resident** abusers.

The DOJ specifies that this reporting requirement does not require an **agency** to explain the reasons for a **staff** member's posting or employment status to the alleged victim. Additionally, the **agency** is not required to gather information regarding indictments or convictions; the **agency** must only inform the **resident** upon learning the information (p. 135). Finally, the DOJ encourages **agencies** to share other information such as remedial actions taken or updates on investigation status as a best practice (p. 136).

Click here for additional information about the conduct of investigations.

Interventions and Disciplinary Sanctions for Residents

Standard 115.378 states that **agencies** may subject **residents** who are found guilty of engaging in **resident**-on-**resident sexual abuse**, either through an administrative investigation or criminal investigation, to disciplinary sanctions. The standard establishes requirements to determine the type and level of sanction that can be imposed. Additionally, if the **facility** offers therapy, counseling, or other interventions designed to address and correct underlying reasons for **sexual abuse**, the standard requires the **facility** to consider offering participation in such interventions to the offending **resident**.

The standard prohibits disciplining a **resident** for sexual contact with **staff** unless it is found that the **staff** member did not consent to the contact. Additionally, the standard prohibits **agencies** from considering a **resident** report of **sexual abuse** made in good faith based upon a reasonable belief that the alleged conduct occurred to constitute false reporting or lying. It also prohibits

agencies from assuming that sexual activity between **residents** is **sexual abuse** unless it is determined that the activity was coerced.

The DOJ explains that **staff** should make individualized assessments regarding **resident** behavior, and not label every **resident** caught having sex with another **resident** as the abuser (pp. 140-141).

Sexual Abuse Incident Reviews

Standard 115.386 requires **facilities** to conduct a **sexual abuse** incident review at the conclusion of every **sexual abuse** investigation (except those investigations determined to be **unfounded**), including those in which the allegation has not been **substantiated**. The standard dictates when this review should occur, who conducts the review, and what actions the review team should take over the course of the review. The standard requires **facilities** to develop and implement recommendations for improvement, or to document the reasons why recommendations were not implemented.

The DOJ clarifies the term "upper-level management official" in the standards summary (p. 154).

Resources

- National Institute of Corrections Staff Perspective. *Investigating Sexual Assaults in Corrections.* (nicic.gov/Library/022444)
- National Institute of Corrections and Washington College of Law Project on Prison Rape. *Tools for Prevention, Investigation and Discipline of Staff Sexual Misconduct in Custodial Settings.* (http://nicic.gov/Library/024078)
- The Center for Innovative Public Policies, Inc. *Training for Investigators of Staff Sexual Misconduct.* (http://www.cipp.org/pdf/ssm1.PDF)
- National Institute of Corrections and The Moss Group. *Correctional Investigators Job Analysis.* (http://nicic.gov/Library/021984)
- Office of Justice Programs (USDOJ). *Crime Scene Investigation: A Reference for Law Enforcement.* (www.ncjrs.gov/pdffiles1/nij/200160.pdf)
- Office of Justice Programs (USDOJ). *Eyewitness Evidence Trainer Manual for Law Enforcement.* (www.ncjrs.gov/nij/eyewitness/188678.pdf)