

The final PREA regulations are codified at 28 C.F.R. 115. The full text and summary of changes was published in the Federal Register at 77 FR 37105. This is also available online here: <https://www.federalregister.gov/articles/2012/06/20/2012-12427/national-standards-to-prevent-detect-and-respond-to-prison-rape>.

The regulations are organized with definitions at the beginning, 28 C.F.R. 115.5, 28 C.F.R. 115.6, and then separated by the standards for different types of facilities, prisons (28 C.F.R. 115.11 et seq.), lockups (28 C.F.R. 115.111 et seq.), community confinement facilities (28 C.F.R. 115.211 et seq.), and juvenile detention facilities (28 C.F.R. 115.311 et seq.).

The full text of key LGBTI provisions is below.

### CROSS-GENDER SEARCHES

#### §§ 115.15, 115.115, 115.215, 115.315 Limits to cross-gender viewing and searches.

- a. The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.
- b. As of August 20, 2015, or August 21, 2017 for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.
- c. The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.
- d. 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 exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.

- e. The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.
- f. The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

### TRAINING

#### §§ 115.31, 115.231, 115.331 Employee training

- a. The agency shall train all employees who may have contact with inmates on:  
...
  9. How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates;

### SCREENING

#### §§ 115.41, 115.241 Screening for risk of victimization and abusiveness.

- a. All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.
- b. Intake screening shall ordinarily take place within 72

hours of arrival at the facility.

- c. Such assessments shall be conducted using an objective screening instrument.
- d. The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization:

...

- 7. Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
- 8. Whether the inmate has previously experienced sexual victimization;
- 9. The inmate's own perception of vulnerability; and

...

Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section.

The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

#### **§ 115.341 Obtaining information from residents.**

Within 72 hours of the resident's arrival at the facility and periodically throughout a resident's confinement, the agency shall obtain and use information about each resident's personal history and behavior to reduce the risk of sexual abuse by or upon a resident.

Such assessments shall be conducted using an objective screening instrument.

At a minimum, the agency shall attempt to ascertain information about:

...

- 2. Any gender nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender, or intersex, and whether the resident may therefore be vulnerable to sexual abuse;

...

- 10. The resident's own perception of vulnerability;

This information shall be ascertained through conversations with the resident during the intake process and medical and mental health screenings; during classification assessments; and by reviewing court records, case files, facility behavioral records, and other relevant documentation from the resident's files.

The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents.

## **HOUSING & ASSIGNMENTS BASED ON VULNERABILITY**

### **§ 115.42 Use of screening information.**

- a. The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.
- b. The agency shall make individualized determinations about how to ensure the safety of each inmate.
- c. In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.
- d. Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.
- e. A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.
- f. Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
- g. The agency shall not place lesbian, gay, bisexual,

transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.

**§ 115.242 Use of screening information (content is the same as 115.42 but does not have (d))**

**§ 115.342 Placement of residents in housing, bed, program, education, and work assignments.**

- a. The agency shall use all information obtained pursuant to § 115.341 and subsequently to make housing, bed, program, education, and work assignments for residents with the goal of keeping all residents safe and free from sexual abuse.
- b. Residents may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other residents safe, and then only until an alternative means of keeping all residents safe can be arranged. During any period of isolation, agencies shall not deny residents daily large-muscle exercise and any legally required educational programming or special education services. Residents in isolation shall receive daily visits from a medical or mental health care clinician. Residents shall also have access to other programs and work opportunities to the extent possible.
- c. Lesbian, gay, bisexual, transgender, or intersex residents shall not be placed in particular housing, bed, or other assignments solely on the basis of such identification or status, nor shall agencies consider lesbian, gay, bisexual, transgender, or intersex identification or status as an indicator of likelihood of being sexually abusive.
- d. In deciding whether to assign a transgender or intersex resident to a facility for male or female residents, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety, and whether the placement would present management or security problems.
- e. Placement and programming assignments for each transgender or intersex resident shall be reassessed

at least twice each year to review any threats to safety experienced by the resident.

- f. A transgender or intersex resident's own views with respect to his or her own safety shall be given serious consideration.
- g. Transgender and intersex residents shall be given the opportunity to shower separately from other residents.
- h. If a resident is isolated pursuant to paragraph (b) of this section, the facility shall clearly document:
  1. The basis for the facility's concern for the resident's safety; and
  2. The reason why no alternative means of separation can be arranged.
- i. Every 30 days, the facility shall afford each resident described in paragraph of this section a review to determine whether there is a continuing need for separation from the general population.

## **PROTECTIVE CUSTODY**

**§ 115.43 Protective custody.**

- a. Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.
- b. Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:
  1. The opportunities that have been limited;
  2. The duration of the limitation; and
  3. The reasons for such limitations.
- c. The facility shall assign such inmates to involuntary segregated housing only until an alternative means

of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.

- d. If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:
  - 1. The basis for the facility's concern for the inmate's safety; and
  - 2. The reason why no alternative means of separation can be arranged.
- e. Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.

supervisors, investigators, and medical or mental health practitioners.

- d. The review team shall:
  - 1. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
  - 2. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
  - 3. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
  - 4. Assess the adequacy of staffing levels in that area during different shifts;
  - 5. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
  - 6. Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1) through (d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.
- e. The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

## AUDITS & OVERSIGHT

### §§ 115.11, 115.111, 115.211, 115.311 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.

- a. An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.
- b. An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.
- c. Where an agency operates more than one facility, each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards.

### §§ 115.86, 115.186, 115.286, 115.386 Sexual abuse incident reviews.

- a. The facility shall conduct a sexual abuse incident review 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.
- b. Such review shall ordinarily occur within 30 days of the conclusion of the investigation.
- c. The review team shall include upper-level management officials, with input from line

### § 115.401 Frequency and scope of audits.

- a. During the three-year period starting on August 20, 2013, and during each three-year period thereafter, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once.
- b. During each one-year period starting on August 20, 2013, the agency shall ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, is audited.
- c. The Department of Justice may send a recommendation to an agency for an expedited audit if the Department has reason to believe that a particular

facility may be experiencing problems relating to sexual abuse. The recommendation may also include referrals to resources that may assist the agency with PREA-related issues.

- d. The Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit.
- e. The agency shall bear the burden of demonstrating compliance with the standards.
- f. The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type.
- g. The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.
- h. The auditor shall have access to, and shall observe, all areas of the audited facilities.
- i. The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).
- j. The auditor shall retain and preserve all documentation (including, e.g., video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request.
- k. The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators.
- l. The auditor shall review a sampling of any available videotapes and other electronically available data (e.g., Watchtour) that may be relevant to the provisions being audited.
- m. The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees.
- n. Inmates, residents, and detainees shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.
- o. Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.

**§ 115.501 State determination and certification of full compliance.**

- a. In determining pursuant to 42 U.S.C. 15607(c)(2) whether the State is in full compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits.
- b. The Governor's certification shall apply to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch.