



# Attachment D-1

BOARD OF STATE AND  
COMMUNITY CORRECTIONS

WORKING GROUP ON SEXUAL ASSAULT

**FSO** FACILITIES  
STANDARDS  
AND OPERATIONS

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## Executive Summary: Overview

The Board of State and Community Corrections (BSCC) is mandated by statute to establish minimum standards for California's local detention facilities and review those standards biennially (Pen. Code §6030). During the regulation revision process in 2016, workgroups and public members expressed concern that the Board elected not to incorporate the Prison Rape Elimination Act (PREA) standards into California's Titles 15 & 24 Minimum Standards for Local Detention Facilities. Some parties advocated that PREA should be wholly incorporated into Titles 15/24 while others argued that incorporation was unnecessary as PREA existed as its own requirement. Others argued that adopting PREA was infeasible as the BSCC was not resourced to conduct federally certified PREA audits.

At a regular meeting, the Board directed BSCC staff to convene a workgroup of subject matter experts to review the PREA standards outside the biennial review process and evaluate whether aspects of PREA should be considered for inclusion into Title 15 & 24 as minimum standards. The first task was to consider the PREA Prisons and Jails Standards against Titles 15 and 24 Adult Facility Minimum Jail Standards.

The workgroup met on January 18 & 19, 2017 to consider each PREA standard, and made a recommendation as to whether each standard, or an aspect of it, can or should be included in Titles 15 & 24.

Staff has consolidated those recommendations. A summary of recommended changes follows in the next section while details of each recommendation are in the body of this report.

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## Executive Summary – Workgroup’s Recommendations

The following PREA standards were recommended to be revised or initiated as new Title 15 or Title 24 regulations:

1. 115.11 (Zero Tolerance) revises Title 15 §1029 (Policy Manual); adds requirement for Zero Tolerance policy.
2. 115.13 (Supervision and Monitoring) revises Title 15 §1029 (Policy Manual); adds requirement to include security measures specific to the prevention of sexual assault and sexual harassment.
3. 115.18 (Upgrades) revises Title 24 §13-102(c)(6) (Design Requirements); adds consideration of design and space as it relates to the prevention of sexual abuse and harassment.
4. 115.33 (Inmate Education) revises Title 15 §1069 (Inmate Orientation); adds requirement to inform inmates of the agency’s Zero Tolerance policy on sexual abuse and sexual harassment.
5. 115.41 (Screening for Risk) revises Title 15 §1050 (Classification Plan); includes the risk of sexual assault and victimization to criteria for which inmates will be assessed.
6. 115.42 (Use of Screening Information) revises Title 15 §1050 (Classification Plan): directs staff, while making gender-based decisions in housing and programming assignments, to give individualized consideration in determining the solution which best protects the inmate’s safety.
7. 115.51 (Inmate Reporting); Workgroup recommends the Board consider a new regulation offering a confidential method for inmates to report sexual abuse or harassment.
8. 115.54 (Third Party Reporting); Workgroup recommends the Board consider a new regulation offering a method to receive third-party reports of sexual abuse and harassment.
9. 115.67 (Agency Protection Against Retaliation) revises Title 15 §1029 (Policy and Procedures Manual) to require agencies to have policy and procedures to detect, prevent and respond to retaliation against any staff member or inmate after reporting abuse.
10. 115.81 (Medical and Mental Health Screenings) revises Title 15 §1206 (Health Care Procedures Manual); requires timely medical and mental health screenings, access to related services, and no-cost treatment for inmate victims of sexual abuse.
11. 115.87 (Data Collection); The Workgroup recommends that the board consider implementing a regulation or process mandating that agencies report, and BSCC gathers, data, both aggregate and individualized, on in-custody sexual abuse and harassment incidents as recommended by this PREA standard.

## Statement from Workgroup Members

Workgroup members were asked to openly discuss their impressions of PREA implementation in an open message to the Board. Their comments follow:

- PREA is important not only as a humanitarian measure but a solid risk management tool for agencies of all sizes.
- PREA is a nation-wide, one-size-fits-all solution to a complex problem. California already has some of the PREA protections in place and other alternative means to achieve similar results. Title 15 and 24 regulations maintain a base line of service and protection; a condition not shared by all states.
- PREA auditing and reporting is a new process and data is not yet available. The workgroup recommends repeating this process in 3-5 years, after data is available for review.
- Some workgroup members stated the position that BSCC should incorporate all PREA requirements into Title 15 because they are legal requirements, they will increase compliance, and because selective incorporation was likely to cause confusion and make things more complicated for jails.
- Some members expressed strong beliefs that PREA Standard 115.15, dealing with cross-gender viewings and searches, should be implemented in full. They added that failure to comply with these requirements are particularly critical to the safety and dignity of transgender inmates.

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## Individual PREA Standards and Workgroup Recommendations

### Prevention Planning

#### **PREA Standard §115.11 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.

**Associated Title 15/24 Regulation: Title 15 §1029 Policy and Procedure Manual** (text below)

#### **Workgroup Notes/Recommendations**

Section A: Majority of workgroup agreed that Section A – Zero Tolerance Toward Sexual Abuse is a reasonable and necessary requirement and is already a generally accepted practice statewide. They recommend that a regulation be added to Title 15 requiring a zero-tolerance policy toward sexual abuse and sexual harassment in the facilities.

Section B: Some members of the group believed that the Zero-tolerance policy (above) sufficiently addressed this standard and did not agree to impose Section B (PREA Coordinator) or Section C (PREA Manager) but to encourage and allow agencies the flexibility to identify staff that will be responsible for implementation of the Zero Tolerance Policy. Workgroup encouraged BSCC inspectors to identify the equivalent of the PREA Coordinator during each inspection. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup is not recommending its incorporation.

#### **Proposed Revision to Regulation:**

#### **The workgroup recommends the following action:**

Revise **Title 15 §1029 Policy and Procedures Manual** be amended to read:

#### **§1029. Policy and Procedures Manual.**

Facility administrator(s) shall develop and publish a manual of policy and procedures for the facility. The policy and procedures manual shall address all applicable Title 15 and Title 24 regulations and shall be comprehensively reviewed and updated at least every two years. Such a manual shall be made available to all employees.



(a) The manual for Temporary Holding, Type I, II, and III facilities shall provide for, but not be limited to, the following:

- (1) Table of organization, including channels of communications.
- (2) Inspections and operations reviews by the facility administrator/manager.
- (3) Policy on the use of force.
- (4) Policy on the use of restraint equipment, including the restraint of pregnant inmates as referenced in Penal Code Section 6030(f).
- (5) Procedure and criteria for screening newly received inmates for release per Penal Code sections 849(b)(2) and 853.6, and any other such processes as the facility administrator is empowered to use.
- (6) Security and control including physical counts of inmates, searches of the facility and inmates, contraband control, and key control. Each facility administrator shall, at least annually, review, evaluate, and make a record of security measures. The review and evaluation shall include internal and external security measures of the facility.
- (7) Emergency procedures include:
  - (A) fire suppression preplan as required by section 1032 of these regulations;
  - (B) escape, disturbances, and the taking of hostages;
  - (C) civil disturbance;
  - (D) natural disasters;
  - (E) periodic testing of emergency equipment; and,
  - (F) storage, issue, and use of weapons, ammunition, chemical agents, and related security devices.
- (8) Suicide Prevention.
- (9) Segregation of Inmates.
- (10) Zero Tolerance in the Prevention of Sexual Assault.
- (11) The policies and procedures required in subsections (6) and (7) may be placed in a separate manual to ensure confidentiality.

(b) The manual for court holding facilities shall include all of the procedures listed in subsection (a), except number (5).

(c) The manual for Type IV facilities shall include, in addition to the procedures required in subsection (a), except number (5), procedures for:

- (1) accounting of inmate funds;
- (2) community contacts;
- (3) field supervision;
- (4) temporary release; and
- (5) obtaining health care.

**Fiscal Impact of Recommendation:** None

**Operational Impact of Recommendation:** Policy change; Training and Orientation content for inmates and staff.

**How Will BSCC Verify Compliance With This Revision:** Policy and curriculum review; staff and inmate interviews.

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**PREA Standard §115.12 Contracting with other entities for the confinement of inmates.**

- a) A public agency that contracts for the confinement of its inmates with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards.
- b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Some members of the workgroup believed that this standard is specific to agencies seeking a certified PREA certification and is beyond the scope of a Title 15 inspection. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

**Proposed Revision to Regulation:** None.

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

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**PREA Standard §115.13 Supervision and monitoring.**

(a) The agency shall ensure that each facility it operates shall develop, document, and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:

- (1) Generally accepted detention and correctional practices;
- (2) Any judicial findings of inadequacy;
- (3) Any findings of inadequacy from Federal investigative agencies;
- (4) Any findings of inadequacy from internal or external oversight bodies;
- (5) All components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated);
- (6) The composition of the inmate population;
- (7) The number and placement of supervisory staff;
- (8) Institution programs occurring on a particular shift;
- (9) Any applicable State or local laws, regulations, or standards;
- (10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
- (11) Any other relevant factors.

(b) In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan.

(c) Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by §115.11, the agency shall assess, determine, and document whether adjustments are needed to:

- (1) The staffing plan established pursuant to paragraph (a) of this section;
- (2) The facility's deployment of video monitoring systems and other monitoring technologies; and
- (3) The resources the facility has available to commit to ensure adherence to the staffing plan.

(d) Each agency operating a facility shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. Each agency shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

**Associated Title 15/24 Regulation:**

**Title 15 §1027 Number of Personnel** requires (in part): "A sufficient number of personnel shall be employed in each local detention facility to conduct at least hourly safety checks of inmates through direct visual observation of all inmates and to ensure the implementation and operation of the programs and activities required by these regulations."

**Title 15 §1027** also requires: “In order to determine if there is a sufficient number of personnel for a specific facility, the facility administrator shall prepare and retain a staffing plan indicating the personnel assigned to the facility and their duties.”

**Title 15 §1029 Policy and Procedures Manual Section (a) (6)** requires a policy requiring “Each facility administrator shall, at least annually, review, evaluate and make a record of security measures. The review shall include internal and external security measures of the facility.”

### **Workgroup Notes / Recommendations**

Section A: Some workgroup members reported that all agencies maintain a staffing plan but variances exist. Some agencies plan for optimal staffing to insure inmate safety while others plan for the actual number of staff members assigned. Some members of the workgroup elected not change Title 15’s requirement for a staffing plan which, currently, requires a plan of staff actually assigned to each facility (not the optimum staffing level required by PREA.) Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

Section B: Workgroup discussed this element and its attendant reporting burden on each facility. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

Section C: Workgroup noted that **Title 15 §1029 Policy and Procedures Manuals (a)(6)** already requires “Each facility administrator shall, at least annually, review, evaluate and make a record of security measures. The review and evaluation shall include internal and external security measures of the facility.” Workgroup recommends adding emphasis on inmate and staff’s safety by expanding §1029 as indicated below.

Section D: Some members of the workgroup stated that this activity was already a recognized best-practice and was not a necessary change to Title 15. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

### **Proposed Revision to Regulation:**

The workgroup recommends the following action: Title 15 §1029 (a)(6) Policy and Procedure Manual should be amended to read:

“Security and control including physical counts of inmates, searches of the facility and inmates, contraband control, and key control. Each facility administrator shall, at least annually, review, evaluate, and make a record of security measures. The review and evaluation shall include internal and external security measures of the facility including security measures specific to prevention of sexual assault and sexual harassment.”

**Fiscal Impact of Recommendation:** No fiscal impact

**Operational Impact of Recommendation:** No operational impact.

**How Will BSCC Verify Compliance With This Revision:** Inspect for policy and work product.

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**PREA Standard PREA §115.14 Youthful inmates.**

(a) A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.

(b) In areas outside of housing units, agencies shall either:

- (1) maintain sight and sound separation between youthful inmates and adult inmates, or
- (2) provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.

(c) Agencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.

**Associated Title 15/24 Regulation:** None

**Title 15 §1101. Restrictions on Contact with Adult Prisoners.**

The facility administrator shall establish policies and procedures to restrict contact, as defined in Section 1006, between detained minors and adults confined in the facility.

In situations where brief or accidental contact may occur, such as booking or facility movement, facility staff (trained in the supervision of inmates) shall maintain a constant, side-by-side presence with the minor or the adult to prevent sustained contact.

The above restrictions do not apply to minors who are participating in supervised program activities pursuant to Section 208 (c) of the Welfare and Institutions Code.

**Workgroup Notes / Recommendations**

Some workgroup members stated that a minor housed in an adult institution is rare and already adequately regulated by Title 15 and the federal Juvenile Justice Delinquency Prevention Act (JJDP A.) Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

**PREA Standard §115.15 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 20, 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

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Section A & C: Some workgroup members indicated that these limitations are already imposed by statute (PC §4030) and that therefore a new regulation is unnecessary. Other workgroup members expressed that incorporation was especially important as some jails are not complying with these requirements and that this PREA regulation is particularly important with regard to transgender inmate safety. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

Section B: Some workgroup members stated that this practice is already widely accepted and a new regulation is unnecessary. Other workgroup members expressed that incorporation was especially important as some jails are not complying with these requirements and that this PREA regulation is particularly important with regard to transgender inmate safety. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.



Section D: In discussion, some workgroup members noted that existing statute (Penal Code §4030 Strip and Body Cavity Searches) prohibits cross-gender viewing of unclothed inmates during strip searches. PREA §115.15 #d extends that prohibition to any time of the day (not limited to searches) excluding routine safety checks. Other workgroup members expressed that incorporation was especially important as some jails are not complying with these requirements and that this PREA regulation is particularly important with regard to transgender inmate safety. Some workgroup members expressed that past building standards for jails and holding facilities allowed construction which does not prevent cross-gender viewing to the level prescribed by PREA. Some workgroup members expressed concern that, if this PREA standard was accepted as a Title 15 regulation, many older facilities would be non-compliant and unable to effect a remedy without considerable remodeling or construction. The workgroup encouraged BSCC inspectors to provide technical assistance to local agencies in suggesting curtains or barriers which would meet the intent of this standard without major remodeling. Further, the standard's requirement to announce when a cross-gender staff member is in the area is a growing best-practice trend, but is not found in statute or regulation. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

Section E: Some members of the workgroup stated that the standard is not found in statute or regulation. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

Section F: The workgroup requested staff to refer this issue to the Standards and Training for Corrections (STC) division for further consideration. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

**PREA Standard §115.16 Inmates with disabilities and inmates who are limited English proficient.**

(a) The agency shall take appropriate steps to ensure that inmates with disabilities (including, for example, inmates who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include, when necessary to ensure effective communication with inmates who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In addition, the agency shall ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities, including inmates who have intellectual disabilities, limited reading skills, or who are blind or have low vision. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans With Disabilities Act, 28 CFR 35.164.

(b) The agency shall take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to inmates who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(c) The agency shall 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 §115.64, or the investigation of the inmate's allegations.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Workgroup discussed the common application of these requirements and some members expressed that they were adequately assured by the Americans with Disabilities Act (ADA). Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** None

**Operational Impact of Recommendation:** None

**How Will BSCC Verify Compliance With This Revision:** None

**PREA Standard §115.17 Hiring and promotion decisions.**

(a) The agency shall not hire or promote anyone who may have contact with inmates, and shall not enlist the services of any contractor who may have contact with inmates, who—

(1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);

(2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or

(3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.

(b) The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.

(c) Before hiring new employees who may have contact with inmates, the agency shall:

(1) Perform a criminal background records check; and

(2) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

(d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates.

(e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees.

(f) The agency shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

(g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.

(h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

**Associated Title 15/24 Regulation:** None

### **Workgroup Notes / Recommendations**

Members of the workgroup discussed various hiring processes statewide and some members stated that hiring rules are beyond the purview of facility administrators, most often overseen by Human Resource or Personnel Departments. As such, some members stated that Title 15 has no authority into those operations and is a poor vehicle to implement this PREA standard. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

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**PREA Standard §115.18 Upgrades to facilities and technologies.**

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency’s ability to protect inmates from sexual abuse.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency’s ability to protect inmates from sexual abuse.

**Associated Title 15/24 Regulation:**

**California Building Code, Title 24, Part 1, Section 13-102 Minimum Standards for Local Detention Facilities (Title 24)** contains a lengthy set of definitions, obligations and design specifications imposed on agencies building or remodeling jails or other detention facilities. One section, entitled “Design Requirements,” addresses a variety of jail components from glazing to suicide hazards. Nothing in this regulation directly addresses design or equipment standards to enhance inmate or staff safety from sexual abuse or sexual harassment.

**Workgroup Notes / Recommendations**

Workgroup noted that existing building standards (Title 24) ensure consideration of general inmate and staff safety features but do not compel features for the prevention of sexual abuse and harassment. There is also no mention of the use of technology to help ensure staff and inmate safety by surveillance of blind spots, tracking individual inmates and watching several areas simultaneously. The workgroup recommends new language in the Design Requirements section to compel the agency’s consideration of features that would help prevent sexual abuse and harassment.

**Proposed Revision to Regulation:**

The workgroup recommends that Title 24, Part 1, Section 13-102 Section (c) (6) (10) (which discusses design requirements of new or remodeled jails) to read as:

**“10. Security.** The design should facilitate security and supervision appropriate to the level of inmate custody including consideration of design and space as it relates to the prevention of sexual abuse and harassment.”

**Fiscal Impact of Recommendation:** None

**Operational Impact of Recommendation:** None

**How Will BSCC Verify Compliance With This Revision:** Construction document review at the time of submission.

## Responsive Planning

### **PREA Standard §115.21 Evidence protocol and forensic medical examinations.**

- (a) To the extent 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 proceedings and criminal prosecutions.
- (b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011.
- (c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiary or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.
- (d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.
- (e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.
- (f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.
- (g) The requirements of paragraphs (a) through (f) of this section shall also apply to:
- (1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in prisons or jails; and
  - (2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.

(h) For the purposes of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Workgroup discussed the existence of the California Sexual Abuse in Detention Elimination Act (SADEA), which led to statutes (Penal code §2635 et seq.) applicable to CDCR only and includes some of the protections found in PREA. The workgroup considered the benefit of requiring local agencies to implement the PREA protections from §115.21 or from the SADEA while also recognizing the burden imposed on local agencies, especially small city jails. After much discussion, because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

# Attachment D-1

**PREA Standard §115.22 Policies to ensure referrals of allegations for investigations.**

- (a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.
- (b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its website or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.
- (c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.
- (d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.
- (e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Some workgroup members noted that the applicable topics in this standard are already recognized best-practices and are widely practiced in California. After discussion, because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

Attachment D-1



## Training and Education

### **PREA Standard §115.31 Employee training.**

- (a) The agency shall train all employees who may have contact with inmates on:
- (1) Its zero-tolerance policy for sexual abuse and sexual harassment;
  - (2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
  - (3) Inmates' right to be free from sexual abuse and sexual harassment;
  - (4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
  - (5) The dynamics of sexual abuse and sexual harassment in confinement;
  - (6) The common reactions of sexual abuse and sexual harassment victims;
  - (7) How to detect and respond to signs of threatened and actual sexual abuse;
  - (8) How to avoid inappropriate relationships with inmates;
  - (9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and
  - (10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
- (b) Such training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.
- (c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.
- (d) The agency shall document, through employee signature or electronic verification that employees understand the training they have received.

**Associated Title 15/24 Regulation:** None

#### **Workgroup Notes / Recommendations**

Workgroup discussed training for both Core and non-Core positions. Some members expressed that training for those positions requiring Core training should most-appropriately be required and overseen by the Standards and Training for Corrections division (STC), the BSCC training division. Training for non-Core employees (generally temporary holding and court holding facilities) is designed by local agencies with minimal requirements from BSCC. Generally, some members of the workgroup suggested that the STC division review the PREA standards and determine if any should be included in the Core curriculum. No conclusion was reached with non-Core training for local agencies. Workgroup members noted that the PREA Resource Center has a variety of available training material.

After discussion, because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** None

# Attachment D-1

**PREA Standard §115.32 Volunteer and contractor training.**

(a) The agency shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency’s sexual abuse and sexual harassment prevention, detection, and response policies and procedures.

(b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the agency’s zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

(c) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Workgroup discussed various levels of contact, orientation requirements by existing agencies, and the impact on smaller agencies. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

Attachment D-1

**PREA Standard §115.33 Inmate education.**

(a) During the intake process, inmates shall receive information explaining 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.

(b) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.

(c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility.

(d) 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.

(e) The agency shall maintain documentation of inmate participation in these education sessions.

(f) 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 handbooks, or other written formats.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Workgroup discussed avenues of inmate education and recommends the expansion of the inmate orientation process to include the agency's zero tolerance policy. Group further noted that disabled or limited English proficiency (LEP) inmates are already protected by ADA provisions. Beyond expanding the orientation regulation, because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** Revise Title 15 §1069 (a) to read:

**§1069. Inmate Orientation.**

(a) In Type II, III, and IV facilities, the facility administrator shall develop written policies and procedures for the implementation of a program reasonably understandable to inmates designed to orient a newly received inmate at the time of placement in a living area. Such a program shall be published and include, but not be limited to, the following:

- (1) correspondence, visiting, and telephone usage rules;
- (2) rules and disciplinary procedures;
- (3) inmate grievance procedures;
- (4) programs and activities available and method of application;
- (5) medical services;
- (6) classification/housing assignments;

- (7) court appearance where scheduled, if known; ~~and,~~
- (8) voting, including registration; and,
- (9) agency Zero Tolerance policy against sexual abuse and harassment.

**Fiscal Impact of Recommendation:** None

**Operational Impact of Recommendation:** None

**How Will BSCC Verify Compliance With This Revision:** Review orientation material during on-site inspection.

# Attachment D-1

**PREA Standard §115.34 Specialized Training: Investigations.**

(a) In addition to the general training provided to all employees pursuant to §115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Some workgroup members expressed that this standard impacts the entire local agency, not just the detention operation, and is beyond the scope of Title 15. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A



**PREA Standard §115.35 Specialized Training: Medical and mental health care.**

(a) The agency shall 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 sexual harassment;
- (2) How to preserve physical evidence of sexual abuse;
- (3) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and,
- (4) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.

(d) Medical and mental health care practitioners shall also receive the training mandated for employees under §115.31 or for contractors and volunteers under §115.32, depending upon the practitioner's status at the agency.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Workgroup discussed existing agency's implementation of, and the existing reporting requirements of, medical and mental health professionals. Because some members did not feel incorporation of this regulation was necessary, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

## Screening for Risk of Sexual Victimization and Abusiveness

### **PREA Standard §115.41 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:
- (1) Whether the inmate has a mental, physical, or developmental disability;
  - (2) The age of the inmate;
  - (3) The physical build of the inmate;
  - (4) Whether the inmate has previously been incarcerated;
  - (5) Whether the inmate's criminal history is exclusively nonviolent;
  - (6) Whether the inmate has prior convictions for sex offenses against an adult or child;
  - (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
  - (10) Whether the inmate is detained solely for civil immigration purposes.
- (e) The initial screening shall 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 assessing inmates for risk of being sexually abusive.
- (f) Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.
- (g) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.
- (h) 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.
- (i) 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.

**Associated Title 15/24 Regulation:** None



## Workgroup Notes / Recommendations

Some workgroup members stated that intake screening is already a high priority function of the jails and that BSCC already inspects the classification plans for several criteria. Workgroup recommends a change to Title 15 which will highlight the risk of sexual abuse and sexual harassment during the screening and classification process. Beyond this change, because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

### Proposed Revision to Regulation:

Workgroup recommends that **Title 15 §1050 (a) Classification Plan** be edited to read:

#### **§1050. Classification Plan.**

(a) Each administrator of a temporary holding, Type I, II, or III facility shall develop and implement a written classification plan designed to properly assign inmates to housing units and activities according to the categories of sex, age, criminal sophistication, seriousness of crime charged, physical or mental health needs, assaultive/non-assaultive behavior, risk of sexual assault / victimization and other criteria which will provide for the safety of the inmates and staff, including the risk of sexual assault. Such housing unit assignment shall be accomplished to the extent possible within the limits of the available number of distinct housing units or cells in a facility.

**Fiscal Impact of Recommendation:** None

**Operational Impact of Recommendation:** Minimal: Staff will be expected to expand their areas of questioning and inquiry during intake screening and classification.

**How Will BSCC Verify Compliance With This Revision:** Policy review, document review and staff interviews.

**PREA Standard §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.

**Associated Title 15/24 Regulation:**

**Title 15 §1050. Classification Plan.**

(a) Each administrator of a temporary holding, Type I, II, or III facility shall develop and implement a written classification plan designed to properly assign inmates to housing units and activities according to the categories of sex, age, criminal sophistication, seriousness of crime charged, physical or mental health needs, assaultive/non-assaultive behavior and other criteria which will provide for the safety of the inmates and staff. Such housing unit assignment shall be accomplished to the extent possible within the limits of the available number of distinct housing units or cells in a facility.

The written classification plan shall be based on objective criteria and include receiving screening performed at the time of intake by trained personnel, and a record of each inmate's classification level, housing restrictions, and housing assignments.

Each administrator of a Type II or III facility shall establish and implement a classification system which will include the use of classification officers or a classification committee in order to properly assign inmates to housing, work, rehabilitation programs, and leisure activities. Such a plan shall include the use of as much information as is available about the inmate and from the inmate and shall provide for a channel of appeal by the inmate to the facility administrator. An inmate who has been sentenced to more than 60 days may request a review of his classification plan no more often than 30 days from his last review.

(b) Each administrator of a court holding facility shall establish and implement a written plan designed to provide for the safety of staff and inmates held at the facility. The plan shall include receiving and transmitting of information regarding inmates who represent unusual risk or hazard while confined at the facility, and the segregation of such inmates to the extent possible within the limits of the court holding facility.

**Workgroup Notes / Recommendations**

Workgroup noted that the transgender and intersex population is a very small segment of inmates statewide, but a major consideration when assigning programming and housing. The workgroup agreed that individual inmates should be allowed to provide non-binding suggestions about their housing, based on many factors including their gender identity. The workgroup proposed to incorporate some of this PREA standard into Title 15 as indicated below. Beyond that recommendation, the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

**Proposed Revision to Regulation:**

The workgroup proposes adding the following text to **Title 15 §1050 Classification Plan:**

(c) In deciding whether to assign an 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. An inmate’s own views with respect to his or her own safety shall be given serious consideration.

**Fiscal Impact of Recommendation:** None

**Operational Impact of Recommendation:** Potentially a significant change in housing and programming events for inmates based on their gender identity.

**How Will BSCC Verify Compliance With This Revision:** Policy review and interviews with staff and inmates.

Attachment D-1

**PREA Standard §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.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Some workgroup members noted that restricted housing, and the accompanying loss of programming, is a common byproduct of inadequate housing options for a diverse inmate population. Such a condition is a topic of litigation and is contrary to accepted best practices. Contemporary training includes individualized classification decisions, but not all agencies adopt the practice. After much discussion, the workgroup was divided about whether to recommend incorporation of this regulation into Title 15, but engaged on a lengthy discussion about the merits of the standard and its inclusion into both Title 15 operational regulations and STC's training curriculum. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

# Attachment D-1

## Reporting

### **PREA Standard §115.51 Inmate reporting.**

(a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

(b) The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.

**Associated Title 15/24 Regulation:** None

#### **Workgroup Notes / Recommendations**

Workgroup recommends expanding the methods by which inmates may report abusive conduct to the primary agency (operating the facility) and to, at least, one other entity not affiliated with the primary agency, such as the District Attorney, ombudsman, etc. Workgroup suggests that the communication be private and that inmates be made aware of the process throughout their incarceration. Because the workgroup did not reach consensus on whether other aspects of this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** Without providing exact language, the workgroup recommends that text, similar to the PREA standard's text (below), be included as a new regulation or appended to an existing regulation:

The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

**Fiscal Impact of Recommendation:** Minimum expense to create and train on the new requirement; unknown long-term impact to investigate and act upon complaints that may be submitted.

**Operational Impact of Recommendation:** This regulation might require new curriculum for training of staff and orientation of inmates. It might also require expense in enabling an outside agency to process complaints and forward them to the appropriate desk.

**How Will BSCC Verify Compliance With This Revision:** Policy review, record review, and interviews with staff and inmates.

# Attachment D-1

**PREA Standard PREA §115.52 Exhaustion of administrative remedies.**

(a) An agency shall be exempt from this standard if it does not have administrative procedures to address inmate grievances regarding sexual abuse.

(b) That:

(1) The agency shall not impose a time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse.

(2) The agency may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse.

(3) The agency shall not require an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.

(4) Nothing in this section shall restrict the agency's ability to defend against an inmate lawsuit on the ground that the applicable statute of limitations has expired.

(c) The agency shall ensure that—

(1) An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and

(2) Such grievance is not referred to a staff member who is the subject of the complaint.

(d) That:

(1) The agency shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

(2) Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.

(3) The 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. The agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.

(4) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.

(e) That:

(1) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.

(2) If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(3) If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision.



(f) That:

(1) The agency shall establish procedures for the filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse.

(2) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours, and shall issue a final agency decision within 5 calendar days. The initial response and final agency decision shall document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

(g) The agency may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith.

**Associated Title 15/24 Regulation:**

**Title 15 §1073 Inmate Grievance Procedure**

(a) Each administrator of a Type II, III, or IV facility and Type I facilities which hold inmate workers shall develop written policies and procedures whereby any inmate may appeal and have resolved grievances relating to any conditions of confinement, included but not limited to: medical care; classification actions; disciplinary actions; program participation; telephone, mail, and visiting procedures; and food, clothing, and bedding. Such policies and procedures shall include:

- (1) a grievance form or instructions for registering a grievance;
- (2) resolution of the grievance at the lowest appropriate staff level;
- (3) appeal to the next level of review;
- (4) written reasons for denial of grievance at each level of review which acts on the grievance;
- (5) provision for response within a reasonable time limit; and,
- (6) provision for resolving questions of jurisdiction within the facility.

(b) Grievance System Abuse: The facility may establish written policy and procedure to control the submission of an excessive number of grievances.

**Workgroup Notes / Recommendations**

Some workgroup members noted that **Title 15 §1073 Inmate Grievance Procedure** adequately addresses administrative appeals. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

**PREA Standard §115.53 Inmate access to outside confidential support services.**

(a) The facility shall provide inmates with access to outside victim advocates for emotional support services 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, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.

(b) The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

(c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

After discussion, because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

Attachment D-1

**PREA Standard §115.54 Third-party reporting.**

The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

The Workgroup discussed the avenues available to an inmate, family member, or any other person who becomes aware of an incident of sexual abuse or sexual harassment in a facility. It concluded that no established method of communication (grievance, personal reporting, etc.) provides confidentiality, immediacy and a retrievable record of the report. The Workgroup encouraged the Board to consider imposing a requirement similar to **PREA Standard 115.54 Third-Part Reporting** (above), but did not provide exact wording.

**Proposed Revision to Regulation:** The Workgroup recommends adopting language similar to **PREA Standard 115.54 Third-Party Reporting** into Title 15.

**Fiscal Impact of Recommendation:** Minimal fiscal impact (Posters, phone line, MOU, etc.)

**Operational Impact of Recommendation:** Unknown; may result in increased investigations

**How Will BSCC Verify Compliance With This Revision:** Policy review, file review, interviews with staff and inmates

**Attachment D-1**

## Official Response Following an Inmate Report

### **PREA Standard §115.61 Staff and agency reporting duties.**

(a) The agency shall require all staff to report immediately and according to agency policy any 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; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

(b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.

(c) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.

(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

(e) The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.

**Associated Title 15/24 Regulation:** None

#### **Workgroup Notes / Recommendations**

Workgroup discussed existing mandatory reporting laws, generally accepted best-practices and the previously discussed Zero Tolerance Policy (**PREA Standard 115.11.**) Some members of the workgroup were satisfied that existing policy and federal laws adequately support this standard. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

# Attachment D-1

**PREA Standard §115.62 Agency protection duties.**

When an agency learns that an inmate is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

The Workgroup discussed changes previously recommended to **Title 15 §1050**. Some members stated that, if implemented, the revised regulation will adequately address this standard. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

# Attachment D-1

**PREA Standard §115.63 Reporting to other confinement facilities.**

(a) Upon receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.

(b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

(c) The agency shall document that it has provided such notification.

(d) The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

The Workgroup discussed whether the requirements of this standard would be properly addressed in the agency's Zero Tolerance Policy, separate reporting requirements imposed on medical and mental health professionals by statute, and the practices of law enforcement agencies in the course of investigations. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

**Attachment D-1**

**PREA Standard §115.64 Staff first responder duties.**

(a) Upon learning of an allegation that an inmate was sexually abused, the first security staff member to respond to the report shall be required to:

- (1) Separate the alleged victim and abuser;
- (2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;
- (3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
- (4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Workgroup reviewed the actions mandated by this standard and agrees that they would be best promoted by training. The Workgroup recommends forwarding this standard to the STC division for consideration as Core course curriculum. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

# Attachment D-1

**PREA Standard §115.65 Coordinated response.**

The facility shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

**Associated Title 15/24 Regulation:**

**Title 15 §1029 (e)(7) Policy and Procedures Manual;** requiring policy and procedures to deal with emergencies.

**Workgroup Notes / Recommendations**

Some members of the workgroup expressed that the requirement of this standard is properly addressed in existing Title 15 regulations which require both policy and procedures to respond to emergencies in the facility. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

# Attachment D-1



**PREA Standard §115.66 Preservation of ability to protect inmates from contact with abusers.**

(a) Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

(b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern:

(1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §115.72 and §115.76; or

(2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

Attachment D-1

**PREA Standard §115.67 Agency protection against retaliation.**

(a) The agency shall establish a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff, and shall designate which staff members or departments are charged with monitoring retaliation.

(b) The agency shall employ multiple protection measures, such as 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 for cooperating with investigations.

(c) For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

(d) In the case of inmates, such monitoring shall also include periodic status checks.

(e) If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.

(f) An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.

**Associated Title 15/24 Regulation:**

**§1029. Policy and Procedures Manual** (text may be found below)

**Workgroup Notes / Recommendations**

Workgroup discussed the need to eliminate retaliation for “whistleblowers” in all categories, not only sexual abuse, and noted that federal law may already offer some protection. Workgroup agreed that a regulation was necessary even if a statute existed and recommended that it be included in the previously recommended “Zero Tolerance” amendment in **Title 15 §1029 Policy and Procedures Manual**.

**Proposed Revision to Regulation:** Workgroup recommends **Title 15 §1029. Policy and Procedures Manual** be further amended to read:

**§1029. Policy and Procedures Manual.**

Facility administrator(s) shall develop and publish a manual of policy and procedures for the facility. The policy and procedures manual shall address all applicable Title 15 and Title 24 regulations and shall be comprehensively reviewed and updated at least every two years. Such a manual shall be made available to all employees.

(a) The manual for Temporary Holding, Type I, II, and III facilities shall provide for, but not be limited to, the following:

- 1) Table of organization, including channels of communications.
- 2) Inspections and operations reviews by the facility administrator/manager.
- 3) Policy on the use of force.
- 4) Policy on the use of restraint equipment, including the restraint of pregnant inmates as referenced in Penal Code Section 6030(f).
- 5) Procedure and criteria for screening newly received inmates for release per Penal Code sections 849(b)(2) and 853.6, and any other such processes as the facility administrator is empowered to use.
- 6) Security and control including physical counts of inmates, searches of the facility and inmates, contraband control, and key control. Each facility administrator shall, at least annually, review, evaluate, and make a record of security measures. The review and evaluation shall include internal and external security measures of the facility.
- 7) Emergency procedures include:
  - a. fire suppression preplan as required by section 1032 of these regulations;
  - b. escape, disturbances, and the taking of hostages;
  - c. civil disturbance;
  - d. natural disasters;
  - e. periodic testing of emergency equipment; and,
  - f. storage, issue, and use of weapons, ammunition, chemical agents, and related security devices.
- 8) Suicide Prevention.
- 9) Segregation of Inmates.
- 10) *Zero Tolerance in the Prevention of Sexual Assault. (NOTE: Previously recommended change)*
- 11) Policy and procedure to detect, prevent and respond to retaliation against any staff or inmate after reporting abuse.
- 12) The policies and procedures required in subsections (6) and (7) may be placed in a separate manual to ensure confidentiality.

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** Policy review during biennial site visit.

**PREA Standard §115.68 Post-allegation protective custody.**

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.

**Associated Title 15/24 Regulation: Title 15 §1050 Classification Plan**

**Workgroup Notes / Recommendations**

Some members of the workgroup reviewed existing **Title 15 §1050 Classification Plan** and believe that it adequately affords the protections mandated by this section. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

# Attachment D-1

## Investigations

### **PREA Standard §115.71 Criminal and administrative agency investigations.**

(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to §115.34.

(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(d) When the quality of 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.

(e) The credibility of an alleged 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. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

(f) Administrative investigations

(1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and

(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

(g) Criminal investigations 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.

(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

(j) 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.

(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

(l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

The Workgroup reviewed the standard and some members expressed that it compels conduct by the agency, not simply the detention facility and, as such, it exceeds the authority of Title 15 and cannot be practically applied and evaluated by the BSCC inspectors. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

# Attachment D-1

**PREA Standard §115.72 Evidentiary standard for administrative investigations.**

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

The Workgroup reviewed the standard and some members expressed that it compels conduct by the agency, not simply the detention facility and, as such, it exceeds the authority of Title 15 and cannot be practically applied and evaluated by the BSCC inspectors. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

# Attachment D-1

**PREA Standard §115.73 Reporting to inmates.**

(a) 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 the allegation has been determined to be substantiated, unsubstantiated, or unfounded.

(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.

(c) Following an inmate’s allegation that a staff member has committed sexual abuse against the inmate, the agency shall subsequently inform the inmate (unless the agency has determined that the allegation is unfounded) 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 on a charge related to sexual abuse within the facility; or
- (4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

(d) Following an inmate’s allegation that he or she has been sexually abused by another inmate, the agency shall subsequently inform the alleged victim whenever:

- (1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
- (2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

(e) All such notifications or attempted notifications shall be documented.

(f) An agency’s obligation to report under this standard shall terminate if the inmate is released from the agency’s custody.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

The Workgroup reviewed the standard and some members expressed that it compels conduct by the agency, not simply the detention facility and, as such, it exceeds the authority of Title 15 and cannot be practically applied and evaluated by the BSCC inspectors. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A



How Will BSCC Verify Compliance With This Revision: N/A

# Attachment D-1

## Discipline

### **PREA Standard §115.76 Disciplinary sanctions for staff.**

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.

(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) 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.

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by 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.

**Associated Title 15/24 Regulation:** None

#### **Workgroup Notes / Recommendations**

The Workgroup reviewed the standard and discussed whether it compels conduct by the agency, not simply the detention facility, and whether, as such, it exceeds the authority of Title 15 and cannot be practically applied and evaluated by the BSCC inspectors. Additionally, there was some discussion as to whether previous recommendations regarding the Zero Tolerance policy will partially satisfy this standard. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

**PREA Standard §115.77 Corrective action for contractors and volunteers.**

(a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

(b) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

The Workgroup reviewed the standard and discussed whether it compels conduct by the agency, not simply the detention facility and, as such, exceeds the authority of Title 15 and cannot be practically applied and evaluated by the BSCC inspectors. Additionally, there was some discussion as to whether previous recommendations regarding the Zero Tolerance policy will partially satisfy this standard. Because the workgroup did not reach consensus on whether this section of the regulation should be incorporated into Title 15, the workgroup does not recommend any further action on this standard.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

Attachment D-1

**PREA Standard §115.78 Disciplinary sanctions for inmates.**

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) An agency may, in its discretion, prohibit all sexual activity between inmates and may discipline inmates for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

The Workgroup discussed this standard but some members of the workgroup did not feel that the protections offered were necessary. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

## Medical and Mental Care

### **PREA Standard §115.81 Medical and mental health screenings; history of sexual abuse.**

(a) If the screening pursuant to §115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

(b) If the screening pursuant to §115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.

(c) If the screening pursuant to §115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

(d) 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 necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.

(e) 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.

### **Associated Title 15/24 Regulation:**

§1206. Health Care Procedures Manual. (See text below)

### **Workgroup Notes / Recommendations**

Workgroup agrees that the existing Title 15 regulations do not ensure the provision of medical and mental health services to inmates reporting sexual abuse. The Workgroup recommends adding provisions to Title 15 to ensure that detention facilities have policy to seek out and respond to reports of sexual abuse, regardless whether it occurred in the facility or outside.

### **Proposed Revision to Regulation:**

The workgroup proposes amending **§1206. Health Care Procedures Manual** to read:

The health authority shall, in cooperation with the facility administrator, set forth in writing, policies and procedures in conformance with applicable state and federal law, which are reviewed and updated at least every two years and include but are not limited to:

- (a) summoning and application of proper medical aid;
- (b) contact and consultation with private physicians;
- (c) emergency and non-emergency medical and dental services, including transportation;
- (d) provision for medically required dental and medical prostheses and eyeglasses;

- (e) notification of next of kin or legal guardian in case of serious illness which may result in death;
- (f) provision for screening and care of pregnant and lactating women, including prenatal and postpartum information and health care, including but not limited to access to necessary vitamins as recommended by a doctor, information pertaining to childbirth education and infant care, and other services mandated by statute;
- (g) screening, referral and care of mentally disordered and developmentally disabled inmates;
- (h) implementation of special medical programs;
- (i) management of inmates suspected of or confirmed to have communicable diseases;
- (j) the procurement, storage, repackaging, labeling, dispensing, administration/delivery to inmates, and disposal of pharmaceuticals;
- (k) use of non-physician personnel in providing medical care;
- (l) provision of medical diets;
- (m) patient confidentiality and its exceptions;
- (n) the transfer of pertinent individualized health care information, or individual documentation that no health care information is available, to the health authority of another correctional system, medical facility, or mental health facility at the time each inmate is transferred and prior notification pursuant to Health and Safety Code Sections 121361 and 121362 for inmates with known or suspected active tuberculosis disease. Procedures for notification to the transferring health care staff shall allow sufficient time to prepare the summary. The summary information shall identify the sending facility and be in a consistent format that includes the need for follow-up care, diagnostic tests performed, medications prescribed, pending appointments, significant health problems, and other information that is necessary to provide for continuity of health care. Necessary inmate medication and health care information shall be provided to the transporting staff, together with precautions necessary to protect staff and inmate passengers from disease transmission during transport.
- (o) forensic medical services, including drawing of blood alcohol samples, body cavity searches, and other functions for the purpose of prosecution shall not be performed by medical personnel responsible for providing ongoing care to the inmates.
- (p) for inmates reporting being victimized by sexual assault or abuse, the provision for timely and appropriate medical and mental health screenings, access to medical and mental health services concerning sexual abuse or assault (regardless of location of the incident), and no-cost access to contraception and STC treatment.

**Fiscal Impact of Recommendation:** Uncertain: the proposed change may mandate an expansion of medical and mental health services to inmates.

**Operational Impact of Recommendation:** Uncertain: the proposed policy change may result in additional services to inmates.

**How Will BSCC Verify Compliance With This Revision:** Review of policy.

**PREA Standard §115.82 Access to emergency medical and mental health services.**

(a) Inmate victims of sexual abuse shall receive 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.

(b) 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 shall take preliminary steps to protect the victim pursuant to §115.62 and shall immediately notify the appropriate medical and mental health practitioners.

(c) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.

(d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

**Associated Title 15/24 Regulation:**

**§1206. Health Care Procedures Manual.** (See text in preceding standard)

**Workgroup Notes / Recommendations**

Workgroup consolidated all recommendations for this standard into the recommendations for **Standard 115.81** (preceding section.)

**Proposed Revision to Regulation:** Included in recommendation for **Standard 115.81**.

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A



**PREA Standard §115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.**

(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.

(b) The evaluation and treatment of such victims shall include, as 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.

(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.

(d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

(e) If pregnancy results from the conduct described in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

(f) Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.

(g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(h) All prisons shall attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

**Associated Title 15/24 Regulation:**

§1206. Health Care Procedures Manual. (See text in preceding standard)

**Workgroup Notes / Recommendations**

Workgroup consolidated all recommendations for this standard into the recommendations for **Standard 115.81** (previous section.)

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A



## Data Collection and Review

### **PREA Standard §115.86 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 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)-(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.

**Associated Title 15/24 Regulation:** None

#### **Workgroup Notes / Recommendations**

The Workgroup reviewed the standard and some members expressed that it compels conduct by the agency, not simply the detention facility, and, as such, it exceeds the authority of Title 15 and cannot be practically applied and evaluated by the BSCC inspectors. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

How Will BSCC Verify Compliance With This Revision: N/A

# Attachment D-1

### **PREA Standard §115.87 Data collection**

- (a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.
- (b) The agency shall aggregate the incident-based sexual abuse data at least annually.
- (c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.
- (d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
- (e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.
- (f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

**Associated Title 15/24 Regulation:** None

#### **Workgroup Notes / Recommendations**

Workgroup reviewed agency reporting mandates and noted that agencies are reporting aggregate data to the Department of Justice, but noted that the existing requirements may be insufficient. The Workgroup noted that the state has a strong interest in collecting this data. The Workgroup requests that the Board considers expanding the BSCC's data reporting role to include gathering individualized offense data as presented by this standard.

**Proposed Revision to Regulation:** The workgroup did not agree as to whether this regulation should be adopted in title 15 or whether the Board should consider a new data gathering mechanism.

**Fiscal Impact of Recommendation:** Unknown, because the parameters of the data collection mandate are unknown.

**Operational Impact of Recommendation:** Unknown, because the parameters of the data collection mandate are unknown.

**How Will BSCC Verify Compliance With This Revision:** Unknown, because the parameters of the data collection mandate are unknown.

**PREA Standard §115.88 Data review for corrective action.**

(a) The agency shall review data collected and aggregated pursuant to §115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:

- (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.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.

(c) The agency's report shall 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.

(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

**Associated Title 15/24 Regulation:**

None

**Workgroup Notes / Recommendations**

Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

Attachment D-1

**PREA Standard §115.89 Data storage, publication, and destruction.**

(a) The agency shall ensure that data collected pursuant to §115.87 are securely retained.

(b) The agency shall make 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.

(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.

(d) The agency shall maintain sexual abuse data collected pursuant to §115.87 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

Attachment D-1  
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## Audits

### **PREA Standard §115.93 Audits of standards.**

The agency shall conduct audits pursuant to §115.401–405.

**Associated Title 15/24 Regulation:** None

### **Workgroup Notes / Recommendations**

Some workgroup members expressed that this standard addresses certified PREA audits and is not an appropriate discussion for Title 15 revisions. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

# Attachment D-1

## Auditing and Corrective Action

### **PREA Standard §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.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Some workgroup members expressed that this standard addresses certified PREA audits and is not an appropriate discussion for Title 15 revisions. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

**Attachment D-1**



**PREA Standard §115.402 Auditor qualifications.**

(a) An audit shall be conducted by:

- (1) A member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government);
- (2) A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or
- (3) Other outside individuals with relevant experience.

(b) All auditors shall be certified by the Department of Justice. The Department of Justice shall develop and issue procedures regarding the certification process, which shall include training requirements.

(c) No audit may be conducted by an auditor who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years prior to the agency's retention of the auditor.

(d) 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 PREA audits.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Some workgroup members expressed that this standard addresses certified PREA audits and is not an appropriate discussion for Title 15 revisions. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

**PREA Standard §115.403 Audit contents and findings.**

(a) Each audit shall include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the agency under review.

(b) Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.

(c) For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.

(d) Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and shall include recommendations for any required corrective action.

(e) Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to the agency upon request, and may provide such information to the Department of Justice.

(f) The agency shall ensure that the auditor's final report is published on the agency's website if it has one, or is otherwise made readily available to the public.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Some workgroup members expressed that this standard addresses certified PREA audits and is not an appropriate discussion for Title 15 revisions. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

Attachment D-1

**PREA Standard §115.404 Audit corrective action plan.**

(a) A finding of “Does Not Meet Standard” with one or more standards shall trigger a 180-day corrective action period.

(b) The auditor and the agency shall jointly develop a corrective action plan to achieve compliance.

(c) The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility.

(d) After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.

(e) If the agency does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Some workgroup members expressed that this standard addresses certified PREA audits and is not an appropriate discussion for Title 15 revisions. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

Attachment D-1

**PREA Standard §115.405 Audit appeals.**

(a) An agency may lodge an appeal with the Department of Justice regarding any specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor’s final determination.

(b) If the Department determines that the agency has stated good cause for a re-evaluation, the agency may commission a re-audit by an auditor mutually agreed upon by the Department and the agency. The agency shall bear the costs of this re-audit.

(c) The findings of the re-audit shall be considered final.

**Associated Title 15/24 Regulation:** None

**Workgroup Notes / Recommendations**

Some workgroup members expressed that this standard addresses certified PREA audits and is not an appropriate discussion for Title 15 revisions. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

Attachment D-1

## State Compliance

### **PREA Standard §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.

**Associated Title 15/24 Regulation:** None

#### **Workgroup Notes / Recommendations**

Some workgroup members expressed that this standard addresses certified PREA audits and is not an appropriate discussion for Title 15 revisions. Because the workgroup did not reach consensus on whether this regulation should be incorporated into Title 15, the workgroup did not recommend its incorporation.

**Proposed Revision to Regulation:** None

**Fiscal Impact of Recommendation:** N/A

**Operational Impact of Recommendation:** N/A

**How Will BSCC Verify Compliance With This Revision:** N/A

# Attachment D-1

## Appendix

### Definitions - Facilities<sup>1</sup>

#### PREA DEFINITIONS:

*Community confinement facility* means a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours.

*Jail* means a confinement facility of a Federal, State, or local law enforcement agency whose primary use is to hold persons pending adjudication of criminal charges, persons committed to confinement after adjudication of criminal charges for sentences of one year or less (California jails have since changed in definition), or persons adjudicated guilty who are awaiting transfer to a correctional facility.

*Juvenile facility* means a facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system.

*Lockup* means a facility that contains holding cells, cell blocks, or other secure enclosures that are:  
(1) Under the control of a law enforcement, court, or custodial officer; and  
(2) Primarily used for the temporary confinement of individuals who have recently been arrested, detained, or are being transferred to or from a court, jail, prison, or other agency.

*Prison* means an institution under Federal or State jurisdiction whose primary use is for the confinement of individuals convicted of a serious crime, usually in excess of one year in length, or a felony.

#### PREA STANDARDS

PREA standards are published in four versions:

<b>Prisons and Jails Community Confinement</b>	<b>Lockup</b>	<b>Juvenile Facility</b>
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This workgroup will consider applying PREA's Prisons and Jails standards to California's Type II & III jails.<sup>2</sup> Juvenile (Juvenile Hall) and Lockup (generally, Type I, temporary holding and court holding facilities) standards will be considered in future workgroups. Community confinement facilities in California are not usually operated by local law enforcement and are outside the purview of BSCC.<sup>3</sup>

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<sup>1</sup> PREA Prison and Jail Standards, 115.5 General Definitions

<sup>2</sup> "Type II facility" means a local detention facility used for the detention of persons pending arraignment, during trial, and upon a sentence of commitment. "Type III facility" means a local detention facility used only for the detention of convicted and sentenced persons. (§1006, Title 15)

<sup>3</sup> Penal Code §6031.4(c) local detention facility does not include facilities operated by the Department of Corrections.

## Comparison of Certified PREA Audit and Non-Certified BSCC Inspection

Currently, PREA audits are usually conducted by private party auditors, trained by the PREA Resource Center and certified by the United States Department of Justice. Their work product is a certified PREA audit report which satisfies PREA’s auditing requirements. BSCC currently inspects most county and city jails in the state and reports its results to the state legislature. BSCC inspectors are not certified DOJ auditors. As now constructed, BSCC inspections would not satisfy PREA’s audit requirements.

<b>ACTION</b>	<b>DEPT. OF JUSTICE CERTIFIED AUDIT</b>	<b>BSCC NON-CERTIFIED AUDIT</b>
Satisfies PREA Compliance Mandate	Yes	No
Cost of Audit	Borne by the audited agency.	Borne by the State.
Frequency	Every three years.	Every two years.
Examiner Qualifications	Mostly private parties, PRC-trained and DOJ-certified.	State employees, field trained by BSCC; relevant experience required.
Examiner Background	DOJ background checks (access to protected documents required to do the audit).	BSCC criminal background check.
Audit Report Dissemination	Must be published by audited agency in a method suitable for the general public (usually the agency Web site).	Report is distributed to a small list of interested parties but is widely available by Public Records Act requests.
Levels of Proof Required to Verify Compliance	DOJ expects “triangulation”, or proving compliance with each standard by three independent means (interview, documents, observations, etc.).	BSCC requires enough proof to convince the auditor and withstand appeal by the agency to the Board.
Record Retention	DOJ requires auditor to retain all records used to prove compliance for at least 15 months after the appeal period. Storage to meet federal guidelines for paper and electronic storage.	BSCC retains notes and records at least until the inspection report is mailed. All copies and original agency records are securely shredded by the end of the biennial inspection cycle.
Authority to Access Records	Auditor requests and receives copies of any relevant documents (medical, criminal, personnel). Authority- PREA 115.401	BSCC receives criminal history information as is necessary to conduct inspection. No access to other protected information is allowed. Authority-Title 15 Section 1013
Audit Oversight	DOJ collects all certified audits, spot checks and conducts quality assurance.	BSCC staff oversees inspection process; management-level staff reviews each inspection report for quality assurance.
Penalty for Non-Compliance	Inability to contract for federal inmates; potential for civil liability.	Potential for civil liability. There is no direct sanction for non-compliance.

## Where Do Existing Title 15/24 Regulations Meet PREA Standards

While Title 15 & 24 regulations provide a general “safety net” of minimum standards for California local detention facilities, PREA provides a specific set of rules designed to support an inmate’s sexual safety. There are few Title 15/24 regulations that have a partner in PREA standards. For PREA Prisons and Jails Standards, the following similar requirements are found:

### AREAS OF SIMILIARITY BETWEEN PREA AND TITLE 15/24 REGULATIONS

TITLE 15 / 24 REFERENCE (paraphrased)	PREA REFERENCE (paraphrased)
<p><b>Section 1027 Number of Personnel</b></p> <ol style="list-style-type: none"> <li>1) Agency shall employ staff sufficient to perform at least hourly safety checks and operate all programs and activities required by these regulations.</li> <li>2) Facility shall prepare a staffing plan indicating the personnel assigned and their duties.</li> </ol>	<p><b>115.13 Supervision and Monitoring</b></p> <ol style="list-style-type: none"> <li>1) Develop a staffing plan that provides adequate level of staffing, regardless whether that level is currently provided.</li> <li>2) Comply with the staffing plan, or document any deviations.</li> <li>3) Annually, agency shall assess staffing to determine unmet needs in staffing plan, staffing pattern, video monitoring systems, and other resources.</li> <li>4) Intermediate or higher-level staff are to conduct and document unannounced rounds to deter staff sexual abuse and harassment.</li> </ol>
<p><b>Section 1101 Restrictions on Contact with Adult Prisoners</b></p> <ol style="list-style-type: none"> <li>1) Agency shall restrict contact between minors and confined adults.</li> <li>2) Brief contact is allowed if staff maintains a constant, side-by-side presence.</li> </ol>	<p><b>115.14 Youthful Inmates</b></p> <ol style="list-style-type: none"> <li>1) In a housing area, a youthful inmate may not have sight, sound or physical contact with any adult inmate.</li> <li>2) Outside of a housing area, staff must provide direct supervision whenever youthful inmates have sight, sound or physical contact with adult inmates.</li> <li>3) Agency must make best efforts to avoid placing a youthful inmate in isolation to comply with this standard.</li> </ol>



<b>TITLE 15 / 24 REFERENCE (paraphrased)</b>	<b>PREA REFERENCE (paraphrased)</b>
<p><b>Title 24 Section 1231.3.4 (Showers) &amp; 1231.3.1 (Toilets/Urinals)</b></p> <p>Title 24’s standards for showers and toilets require them to “provide modesty for inmates with staff being able to visually supervise.”</p>	<p><b>115.15 Limits to Cross-Gender Viewing and Searches</b></p> <ol style="list-style-type: none"> <li>1) Limits cross-gender visual body cavity searches and strip searches.</li> <li>2) Prohibits cross-gender pat-down searches of female inmates.</li> <li>3) Requires documentation for cross-gender strip and visual cavity searches and pat-down searches of female inmates.</li> <li>4) Requires policy prohibiting cross-gender viewing of breasts, buttocks or genitalia except when incidental to security checks. Limitation includes viewing directly and indirectly (video) by any staff (custody, support, IT, vendors, etc.).</li> <li>5) Requires staff to announce when entering housing unit of other gender.</li> <li>6) Prohibits physically determining the gender of a transgender.</li> <li>7) Requires training of security staff in how to conduct cross-gender pat-down searches.</li> </ol>
<p><b>Section 1050 Classification Plan</b></p> <ol style="list-style-type: none"> <li>1) Each administrator shall implement a written classification plan according to sex, age, criminal sophistication, seriousness of crime charges, physical and mental health needs, behavior and other criteria which will provide for the safety of inmates and staff.</li> </ol>	<p><b>115.42 Use of Screening Information</b></p> <ol style="list-style-type: none"> <li>1) Agency shall use information, including that received in Standard 115.341, to make placement decisions.</li> <li>2) Placement of transgender inmates shall consider what placement would ensure the inmate’s health and safety.</li> <li>3) Transgender inmates shall be allowed to shower separately.</li> <li>4) Placement may not be made solely on gender identity or status.</li> </ol>
<p><b>Title 15 Section 1073 Inmate Grievances Procedure</b></p> <ol style="list-style-type: none"> <li>1) Inmates may file a grievance related to any condition of confinement.</li> </ol>	<p><b>115.52 Exhaustion of Administrative Remedies (grievances)</b></p> <ol style="list-style-type: none"> <li>1) No time limit to file a grievance of abuse.</li> <li>2) Imposes time limits on agency to resolve grievance.</li> <li>3) Allows third parties to file grievances.</li> <li>4) Agency must establish procedures for an emergency grievance when inmate is in substantial risk of abuse: <ol style="list-style-type: none"> <li>a. Requires rapid response and remedy by agency.</li> </ol> </li> <li>5) Limits disciplinary action against inmate for filing a false grievance.</li> </ol>

TITLE 15 / 24 REFERENCE (paraphrased)	PREA REFERENCE (paraphrased)
<p><b>Title 15 Section 1080 – 1084 Discipline</b></p> <ol style="list-style-type: none"> <li>1) Each facility will establish rules of inmate conduct and a process to investigate and punish violations of rules.</li> <li>2) Punishment may be minor or major and will involve differing punishments, hearings and administrative oversight.</li> </ol>	<p><b>115.78 Disciplinary sanctions for residents</b></p> <ol style="list-style-type: none"> <li>1) An inmate requires a full criminal or administrative investigation, a finding of guilt, and a formal disciplinary process prior to imposing sanctions for inmate-on-inmate sexual abuse.</li> <li>2) Sanctions must be proportional to the offense and commensurate with sanctions imposed for comparable offenses by residents with similar histories.</li> <li>3) Agency must consider the inmate’s mental disability or mental illness when determining sanctions.</li> <li>4) Agency must consider including, and may require attendance by, the abusing inmate in any available therapy, counseling or other interventions offered when appropriate.</li> <li>5) Agency may only discipline an inmate for staff-inmate sexual contact when the staff member did not consent to the acts.</li> </ol>
<p><b>Title 15, Section 1018 Appeal</b>  Agency may appeal an inspection outcome to the Executive Director, or to the Board</p>	<p><b>115.404 Audit Appeals</b></p> <ol style="list-style-type: none"> <li>1) An agency may appeal an audit’s results to DOJ and request a second audit, to be paid for by the agency.</li> <li>2) The second audit’s results are final.</li> </ol>