

PRISON RAPE ELIMINATION ACT



COMMUNITY CONFINEMENT STANDARDS POLICY

Revised January 21, 2016

Transitions Inc.

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**PRISON RAPE ELIMINATION ACT NATIONAL STANDARDS – TRANSITIONS INC.
COMMUNITY CONFINEMENT**

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§ 115.5 General definitions.

For purposes of this part, the term—

Agency means Transitions Incorporated, which has direct responsibility for the operation of all Transition’s facilities that confine clients.

Agency head means the CEO of the agency.

Client means any person assigned to a facility under the control of Transitions Inc. for the purpose of receiving treatment and/or confinement. Client can also mean inmate, parolee or probationer depending on classification. All individuals are referred to as client while in a Transitions Inc. treatment program.

Community confinement facility means a community treatment center, halfway house, alcohol or drug rehabilitation center 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.

Contractor means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency.

Employee means a person who works directly for the agency.

Exigent circumstances means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.

Facility means a Transition’s building that is used by the agency for the confinement and/or treatment of clients.

Facility head means the program director.

Full compliance means compliance with all material requirements of each standard except for de minimis violations, or discrete and temporary violations during otherwise sustained periods of compliance.

Gender nonconforming means a person whose appearance or manner does not conform to traditional societal gender expectations.

Intern means a person who is not compensated by the agency, but provides services to clients. Services can vary depending on the type of intern. Interns that provide roles similar to employees, such as conducting groups, must receive the full PREA training.

Intersex means a person who's sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

Medical practitioner means a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A "qualified medical practitioner" refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

Mental health practitioner means a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A "qualified mental health practitioner" refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

Pat-down search means a running of the hands over the clothed body of client by an employee to determine whether the individual possesses contraband.

Point Person means the Associate Operations Director assigned to oversee a particular facility.

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 1 year, or a felony.

Sanctions means any disciplinary action brought on by the agency to an employee. Employees involved in substantiated PREA incidents will be terminated. Employees found to have had knowledge of a PREA incident but failed to act in accordance with policy may also be suspended or terminated.

Staff means an employee of Transitions Inc.

Strip search means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia.

Transgender means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.

Substantiated allegation means an allegation that was investigated and determined to have occurred.

Unfounded allegation means an allegation that was investigated and determined not to have occurred.

Unsubstantiated allegation means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

Volunteer means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.

§ 115.6 Definitions Related to Sexual Abuse.

Sexual abuse includes—

- (1) Sexual abuse of a client by another client; AND
- (2) Sexual abuse of a client by a staff member, contractor, intern or volunteer.

Sexual abuse of a client by another client includes any of the following acts: if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual abuse of a client by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the client:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Contact between the mouth and any body part where the staff member, contractor, intern, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, intern or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, intern or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(6) Any attempt, threat, or request by a staff member, contractor, intern, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;

(7) Any display by a staff member, contractor, intern, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of a client, and

(8) Voyeurism by a staff member, contractor, intern or volunteer.

Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of a client by staff for reasons unrelated to official duties, such as peering at a client who is using a toilet to perform bodily functions; requiring a client to expose his or her buttocks, genitals, or breasts; or taking images of all/part of an client's naked body or of an client performing bodily functions.

Sexual harassment includes—

(1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one client directed toward another; and

(2) Repeated verbal comments or gestures of a sexual nature to a client by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Standards for Community Confinement Facilities

Prevention Planning

§ 115.211 Zero Tolerance of Sexual Abuse and Sexual Harassment; PREA Coordinator.

(a) The agency mandates a zero tolerance policy towards all forms of sexual abuse and sexual harassment. The following describes the agency's approach to preventing, detecting, and responding to such conduct. See the agency's sexual assault action plan. 1) Implementation of the overall PREA program for all Transition's facilities is primarily the responsibility of the agency PREA Coordinator. Each facility's Program Director will serve as the facilities PREA manager. This PREA manager is responsible for ensuring agency PREA policies are being followed and reporting all incidents to the agency PREA coordinator. Additional responsibilities include informing the agency PREA Coordinator of any high risk clients, ensure all clients receive monthly PREA training refresher, ensure all staff receive ongoing PREA training at staff meetings at least 4 times per year, and finally to ensure assessment screenings are completed on clients within 72 hours, within 30 days, and when new information is learned or the client is involved in a PREA incident. 2) The agency PREA Coordinator will regularly review staffing plans and PREA policies to make adjustments where necessary (at least annually). The Coordinator will also conduct incident reviews of all PREA incidents. The Coordinator will stay in contact with the state PREA Coordinator regarding any changes in the law.

(b) The agency designates Associate Operations Director Aaron Wagner, as the agency wide PREA coordinator. The coordinator shall have sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its community confinement facilities. Specifically, the job duties related to the role of PREA coordinator will be priority over others.

§ 115.212 – Contracting with other entities for the confinement of residents.

This section is not applicable. Transition’s Inc does not contract with other entities.

§ 115.213 Supervision and Monitoring.

(a) For each facility, the agency has developed a staffing plan that provides for adequate levels of staffing and video monitoring, to protect clients against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, the agency has taken the following in consideration:

- (1) The physical layout of each facility;
- (2) The composition of the client population;
- (3) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
- (4) 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. The agency PREA coordinator must be notified, along with the facility’s point person.

(c) Once each year with the assistance of the agency PREA coordinator, the facility will assess, determine, and document whether adjustments are needed to:

- (1) The staffing plan;
- (2) Prevailing staffing patterns;
- (3) The facility’s deployment of video monitoring systems and other monitoring technologies;
- (4) The resources the facility has available to commit to ensure adequate staffing levels.

§ 115.215 Limits to Cross Gender Viewing and Searches.

(a) Staff shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening). No strip search shall be performed without prior permission from the agency head.

(b) Facilities will not restrict female clients’ access to regularly available programming or

other outside opportunities in order to comply with this provision. The agency requires at least one female on duty at all times for facilities with female clients (WRAP and Ashland). Male staff shall not pat down female clients.

(c) The agency will document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat down searches of female clients. If a strip search or cross gender pat down of a female client is conducted with advanced permission, the program director will immediately notify the agency PREA coordinator.

(d) Clients have the right to shower, perform bodily functions, and change clothing without staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine “house checks.” Staff of the opposite gender must knock and announce their presence when entering an area where clients are likely to be showering, performing bodily functions, or changing clothing. This includes client bedrooms. Specifically, staff should knock, then state “female/male on the floor,” then enter the room.

(e) Staff shall not search or physically examine a transgender or intersex client for the sole purpose of determining the client’s genital status. If the client’s genital status is unknown, it may be determined during conversations with the client, 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 will train staff in how to conduct cross gender pat down searches and searches of transgender and intersex clients, in a professional and respectful manner, and in the least intrusive manner possible consistent with security needs. This training must occur prior to the staff member conducting pat downs on clients. Refresher training will be given annually. The Program Director is responsible for ensuring proper training is occurring.

§ 115.216 Clients with Disabilities and Clients who are Limited English Proficient.

(a) The agency has taken appropriate steps to ensure that clients with disabilities (including clients 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. Specifically, the language line (800-873-9865) can be accessed 24/7 and offers translation of multiple languages to English, via the phone. The agency, not the client, will be responsible for any associated costs. A list of employees with specialized training in languages and sign language has also been created as another resource. If a staff member is not available the agency has several local for hire interpreters available. In addition, the agency has ensured that written materials are provided in formats, such as Spanish, or through methods that ensure effective communication with clients with disabilities, including clients who have intellectual disabilities, limited reading skills, or who are blind or have low vision.

(b) The agency will 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 clients 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 will not rely on client interpreters, client readers, or other types of client assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the client's safety, the performance of first response duties, or the investigation of the client's allegations. The agency PREA Coordinator must be notified within 24 hours if a client is used as an interpreter, reader, or other type of resident assistant. The PREA Coordinator will keep a log of incidents.

§ 115.217 Hiring and Promotion Decisions.

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

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

(1) Perform a criminal background records check; and

(2) Consistent with Federal, State, and local law, will 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 will also perform a criminal background records check before enlisting the services of any contractor who may have contact with clients.

(e) The agency will conduct criminal background records checks at least every five years for current employees and contractors who may have direct contact with clients.

(f) The agency will also ask all applicants and employees who may have contact with clients,

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 also imposes upon employees a continuing affirmative duty to disclose any such misconduct. Employees must report any arrest, citation without an arrest for a misdemeanor or felony, or citation without arrest for a serious violation (such as driving under the influence, alcohol intoxication, public intoxication), within 24 hours to their supervisor.

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

(h) Unless prohibited by law, the agency will 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.

§ 115.218 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 will consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect clients from sexual abuse.

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

Responsive Planning

§ 115.221 Evidence Protocol and Forensic Medical Examinations.

(a) When a sexual abuse incident occurs and physical evidence is involved, staff must follow the agency's evidence protocol. The preferred method of dealing with evidence is to secure the area by keeping staff and clients out. For example, if the incident occurs in a bedroom, the room should be blocked off and no one allowed access. Probation and Parole or the local law enforcement agency handling the investigation will immediately be contacted to secure and take the evidence into their custody. However, if circumstances do not allow for proper securing of the scene, or if law enforcement is not available to respond in a timely manner, staff must secure the evidence in evidence bags. Each facility has been provided evidence bags that must remain in the front office. Staff should use gloves when placing evidence into the bags. Evidence bags should be immediately sealed and the chain of custody on the front of the bag must be filled out. The Program Director is responsible for securing the evidence until it can be turned over to law enforcement. At no time should staff take evidence home, leave it unsecured in a common area, or destroy it.

(b) The agency will offer all victims of sexual abuse access to forensic medical examinations

whether at an outside facility, without financial cost, where medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. St Elizabeth hospitals have several SANE nurses on staff that can handle these types of examinations at the request of law enforcement. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency PREA coordinator will coordinate these efforts with the law enforcement agency handling the investigation.

(c) The agency will attempt to make available to the victim, a victim advocate from a rape crisis center. For Northern Kentucky facilities, referrals will be made to the Women's Crisis Center and/or North Key. For the Ashland facility, referrals will be made to Pathways. If a rape crisis center is not available to provide victim advocate services, the agency shall make available a qualified staff member from a community based organization or a qualified agency staff member.

(d) 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.

(e) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency will request that the investigating agency follow the requirements of paragraphs (a) through (d) of this section.

§ 115.222 Policies to Ensure Referrals of Allegations for Investigations.

(a) The agency will ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment through an institution/action plan. This plan is reviewed annually with existing staff, upon hire of new staff and a copy must remain in the front office of each facility.

(b) The agency will refer to probation & parole, Kentucky State Police, and/or local law enforcement to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. All referrals will be documented in the incident file. The agency has published the PREA policy on its website.

(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.

Training and Education

§ 115.231 Employee Training.

(a) The agency trains all employees who may have contact with clients 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) Clients' right to be free from sexual abuse and sexual harassment;
- (4) The right of clients 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 clients;
- (9) How to communicate effectively and professionally with clients, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming clients; 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 clients at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male clients to a facility that houses only female clients, 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 will provide each employee with refresher training (power point) every year to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. The agency will document, through employee signature on a training form that employees understand the training they have received.

§ 115.232 Volunteer, Intern and Contractor Training.

(a) The agency will ensure that all volunteers, interns and contractors who have contact with clients have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures. Volunteer applications must be forwarded to the main office prior to the volunteer starting to ensure that training has been conducted. Intern application are received and assigned through the main office only.

(b) The level and type of training provided to volunteers, interns and contractors shall be based on the services they provide and level of contact they have with clients, but all volunteers, interns and contractors who have contact with clients are notified of the agency's zero-tolerance

policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

(c) The agency maintains documentation confirming that volunteers, interns and contractors understand the training they have received. Signed training forms must be sent to the agency PREA coordinator upon completion of training to be kept on file.

§ 115.233 Client Education.

(a) During the intake process, clients must receive information explaining the agency's zero tolerance policy regarding sexual abuse and sexual harassment, how to report incidents or suspicions of sexual abuse or sexual harassment, 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. The client must sign the intake form in Credible that he or she understands.

(b) The agency will provide refresher information whenever a client is transferred to a different facility. This is part of the intake process that will occur within 72 hours of arrival.

(c) The agency will provide client education in formats accessible to all clients, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled as well as clients who have limited reading skills. Facilities will keep copies of PREA material in Spanish.

(d) The agency maintains documentation of client participation in these education sessions. Every month, each facility will review the PREA policy with all clients during a house meeting. Each client must sign an attendance form and that form will be sent to the agency PREA coordinator to keep on file. This refresher is in addition to the information clients receive upon intake and/or transfer.

(e) In addition to providing PREA education, the agency ensures that key information is continuously and readily available or visible to clients through posters and facility handbooks. PREA posters with contact phone numbers must be displayed near the pay telephones. At least one poster will be displayed on each level of the facility. The PREA policy will be displayed in a common area at all times in English and Spanish.

§ 115.234 Specialized Training: Investigations.

(a) In addition to the general training provided to all employees pursuant to § 115.231, the agency ensures that its investigators have received training in conducting such investigations. All Program directors and Associate Operations Directors have been sent to the Department of Corrections investigator trainings and are certified investigators. All new program directors are required to obtain investigator status at the first available training class.

(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 PREA coordinator maintains documentation that investigators have completed the required specialized training in conducting sexual abuse investigations.

§ 115.235 Specialized Training: Medical and Mental Health Care.

(a) At this time the agency does not directly employ medical or mental health staff. However, if in the future those specialty positions are created, the agency will ensure that all 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 § 115.231 or for contractors and volunteers under § 115.232, depending upon the practitioner's status at the agency.

Screening for Risk

§ 115.241 Screening for Risk of Victimization and Abusiveness.

(a) All clients will be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other clients or sexually abusive toward other clients.

(b) Intake screenings shall take place within 72 hours of arrival at the facility. If a client is not assessed within this time period, the agency PREA coordinator must immediately be notified with an explanation and plan.

(c) Such assessments shall be conducted using the approved screening instrument.

(d) The intake screening shall consider the following criteria to assess clients for risk of sexual victimization:

- (1) Whether the client has a mental, physical, or developmental disability;

- (2) The age of the client;
- (3) The physical build of the client;
- (4) Whether the client has previously been incarcerated;
- (5) Whether the client's criminal history is exclusively nonviolent;
- (6) Whether the client has prior convictions for sex offenses against an adult or child;
- (7) Whether the client is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
- (8) Whether the client has previously experienced sexual victimization; and
- (9) The client's own perception of vulnerability.

(e) The intake screening considers 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 clients for risk of being sexually abusive.

(f) Within 30 days from the client's arrival at the facility, the facility will reassess the client's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.

(g) A client'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 client's risk of sexual victimization or abusiveness.

(h) Clients 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).

(i) The agency has implemented controls on the dissemination within the facility of responses to questions asked in order to ensure that sensitive information is not exploited to the client's detriment by staff or other clients. Assessments are not to be kept in the clients file, the program director will keep them separate and secure in their office. Staff should not discuss the results of an assessment with anyone but their supervisor.

§ 115.242 Use of Screening Information.

(a) The agency will use information from the risk screening required by § 115.241 to inform staff and if necessary other departments within Transitions, with the goal of keeping separate those clients at high risk of being sexually victimized from those at high risk of being sexually abusive. At any time a high risk client is identified, the program director must notify the agency PREA coordinator. High risk clients will be discreetly identified on the house check form so staff is aware when they conduct their hourly house checks. Each individual high risk client will

be reviewed to determine where to assign them. In most facilities, high risk clients will be assigned bedrooms on the first floor near the staff office. In some cases, high risk clients will be transferred to another facility to avoid possible conflicts. At no time will staff disclose to any client another client's risk level.

(b) The agency shall make individualized determinations about how to ensure the safety of each client. These decisions must be made with the input of the program director and PREA coordinator. High risk clients will be immediately placed in a high risk room. If no room is available or there is a conflict, an alternative room will be assigned. At times it may be determined to transfer the client to another facility for their safety. Any transfers would be made to another Transition's facility, unless unavailable. At that time the PREA coordinator would arrange a transfer to an outside agency.

(c) In deciding whether to assign a transgender or intersex client to a facility for male or female clients, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the client's health and safety, and whether the placement would present management or security problems. At no time should a transgender client be assigned a room without first being reviewed by the PREA coordinator.

(d) A transgender or intersex client's own views with respect to his or her own safety shall be given serious consideration.

(e) Transgender and intersex clients shall be given the opportunity to shower separately from other clients.

(f) The agency shall not place lesbian, gay, bisexual, transgender, or intersex clients in dedicated facilities or bedrooms solely on the basis of such identification or status, unless such placement is in a dedicated facility or bedroom is established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such clients.

§ 115.243 N/A

Reporting

§ 115.251 Client Reporting.

(a) The agency provides multiple internal ways for clients to privately report sexual abuse and sexual harassment, retaliation by other clients or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents. These include verbally in person to any staff person, in writing to any staff person, the main office or DOC, OR via the 800 number to a third party. The 800 number can be found on each floor of the facility and next to pay phones. Clients are free to report to any staff person and can do so anonymously.

(b) The agency also informs clients of at least one way to report abuse or harassment to the Kentucky Department of Corrections, which is able to receive and immediately forward client reports of sexual abuse and sexual harassment to agency officials, allowing the client to remain anonymous upon request. Clients are able to call the 800 number established specifically for PREA reports or they can contact any official with the Department of Corrections in Frankfort. Both numbers are found throughout the facility, posted at all times.

(c) Staff will accept reports made verbally, in writing, anonymously, and from third parties and shall **immediately** document any verbal reports and report to a supervisor. Staff must then follow the agency's action plan to begin the reporting and investigation process.

(d) The agency provides a method for staff to privately report sexual abuse and sexual harassment of clients. Staff may report to their program director or the main office verbally, in writing or by email. They may also use the 800 numbers provided by the Department of Corrections.

§ 115.252 Exhaustion of Administrative Remedies.

(a) The agency has administrative procedures to address client grievances. However, grievances involving sexual abuse will not follow this procedure. In those situations, staff should accept the client's grievance and immediately contact a supervisor to begin the investigation. See Section 3. A grievance related to sexual abuse or harassment must be followed using this policy, NOT the general grievance policy.

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

(2) The agency does not apply time limits on any portion of a grievance, even if it does not allege an incident of sexual abuse.

(3) The agency prohibits the use of the grievance process to attempt to resolve with staff, an alleged incident of sexual abuse. Any allegation of sexual abuse must be reported directly to the program director and agency PREA coordinator immediately. The grievance process is never to be used to address PREA related allegations. However, if a client uses a grievance form to report sexual abuse or harassment, staff must accept it as an alternative method of reporting abuse and immediately follow the agency's action plan.

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

(c) The agency shall ensure that – (1) a client who alleges sexual abuse may submit a grievance or complaint without submitting it to a staff member who is the subject of the complaint

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

(d)(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 clients 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 client 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 client does not receive a response within the time allotted for reply, including any properly noticed extension, the client may consider the absence of a response to be a denial at that level.

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

(2) If a third party files such a request on behalf of a client, 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 client declines to have the request processed on his or her behalf, the agency shall document the client's decision.

(f)(1) The agency has established procedures for the filing of an emergency grievance or complaint alleging that a client is subject to a substantial risk of imminent sexual abuse. In these situations the program director and agency PREA coordinator should be notified immediately. Clients will not have to go through the normal written grievance policy which could take several days.

(2) After receiving an emergency grievance/complaint alleging a client is subject to a substantial risk of imminent sexual abuse, the agency will immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to the Program Director and agency PREA coordinator. The agency PREA coordinator 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 client is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance/complaint.

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

§ 115.253 Client Access to Outside Confidential Support Services.

(a) The agency provides clients with access to outside victim advocates for emotional support services related to sexual abuse by giving clients mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local victim advocacy or rape crisis organization, and by enabling reasonable communication between clients and these organizations, in as confidential a manner as possible. Primarily, the agency will use North Key for these services since we have a memo of understanding and routinely utilize their mental health services. We also utilize the Women's Crisis Center, and for our Ashland facility we refer to Pathways. Counselors will make a referral to North Key or Pathways as soon as it is determined that their services would be beneficial. Clients are given all related appointment time, date and contact information. Clients will fill out a release of information with the referral agency so we can follow-up and aid in the recommendations given to the client.

(b) The facility will inform clients prior to giving them access to North Key or Pathways, 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 has entered into a memorandum of understanding with North Key, and we routinely refer to Pathways, both which are able to provide clients with confidential emotional support services related to sexual abuse. The agency will maintain copies of any agreements.

§ 115.254 Third Party Reporting.

The agency has established a method to receive third-party reports of sexual abuse and sexual harassment. The PREA policy can be found on the agency's website, along with contact information for the agency PREA coordinator. Anyone from the community can submit information on the website or they can call the administrative office. Furthermore, all program directors and staff have been instructed to take all third party reports of sexual abuse and relay the information to the agency PREA coordinator for investigation.

Official Response Following a Client Report

§ 115.261 Staff and Agency Reporting Duties.

(a) The agency requires 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 clients or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. Reporting any of these incidents must be done immediately, even if after hours or on holidays. Reporting must be by phone call if after hours, not email and not text message. If staff is unable to reach the program director within a reasonable amount of time, they should contact their Point Person or the agency PREA Coordinator.

(b) Apart from reporting to designated supervisors, 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 decision. This includes revealing details of the incidents to other staff members not directly involved with the incident.

(c) Unless precluded by Federal, State, or local law, medical and mental health practitioners are required to report sexual abuse pursuant to paragraph (a) and to inform clients 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 person's statute, the agency will report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

(e) Program directors will report all allegations of sexual abuse and harassment, including third party and anonymous reports, to the agency PREA coordinator.

§ 115.262 Agency Protection Duties.

When the agency learns that a client is subject to a substantial risk of imminent sexual abuse, it will take immediate action to protect the client. Program Directors shall immediately notify the agency PREA Coordinator of the risk. Depending on the situation, the client may be moved to a different bedroom or to a different facility.

§ 115.263 Reporting to other Confinement Facilities.

(a) Upon receiving an allegation that a client was sexually abused while confined at another facility, the program director of the facility that received the allegation shall immediately notify the agency PREA Coordinator, who will in turn notify the appropriate office of the agency where the alleged abuse occurred.

(b) Such notification to the other facility shall be provided by the agency PREA Coordinator as soon as possible, but no later than 72 hours after receiving the allegation.

(c) The agency PREA Coordinator will document that notification was made.

(d) Any agency employee that receives such notification from an outside agency shall ensure that the allegation is investigated in accordance with these standards. They must also immediately notify the agency PREA Coordinator.

§ 115.264 Staff First Responder Duties.

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

(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) The responder is required to request that the alleged victim not take any actions that could destroy physical evidence and notify their program director immediately.

§ 115.265 Coordinated Response.

The agency has developed a written institutional/action plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and supervisors. The institutional/action plan is reviewed and updated on a regular basis. A copy must be displayed in the front office of each facility at all times. Each employee has been given a copy of this plan at training.

§ 115.266 Preservation of Ability to Protect Clients 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 clients 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 §§ 115.272 and 115.276; 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.

§ 115.267 Agency Protection against Retaliation.

(a) The agency has established a policy to protect all clients and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from

retaliation by other clients or staff and shall designate which staff members or departments are charged with monitoring retaliation. Staff is required to immediately report to their supervisor any reports, rumors or observations of possible retaliation. Retaliation is not acceptable and will be investigated immediately. Supervisors must immediately notify the agency PREA Coordinator of any such reports. It is the responsibility of each program director to monitor and report any incidents of allegations

(b) The agency will employ multiple protection measures, such as room changes or transfers for client victims or abusers, removal of alleged staff or client abusers from contact with victims, and emotional support services for clients or staff that fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations. These cases will be dealt with individually, considering all factors involved.

(c) For at least 90 days following a report of sexual abuse, the agency will monitor the conduct and treatment of clients or staff who reported the sexual abuse and of clients who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by clients or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any client 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 clients, such monitoring shall also include periodic status checks. The ideal time for these checks are during individual sessions.

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

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

§ 115.268 N/A

Investigations

§ 115.271 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. The agency will only investigate allegations involving clients. If a staff member is allegedly involved, the PREA coordinator will contact the Department of Corrections and request that they conduct the investigation.

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.234.

(c) Investigators will gather and preserve direct and circumstantial evidence, including 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 will conduct interviews only after consulting with the Department of Corrections and law enforcement. The agency would prefer law enforcement conduct interviews when criminal charges may be involved, however we will conduct the interviews if requested.

(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 client or staff. The agency may require a client 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 will 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 agency will not provide a basis for terminating an investigation.

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

§ 115.272 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.

§ 115.273 Reporting to Clients.

(a) Following an investigation into a client's allegation of sexual abuse suffered in an agency facility, the agency shall inform the client as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. This can be verbal notification, but will usually be in written form from the agency PREA coordinator.

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

(c) Following a client's allegation that a staff member has committed sexual abuse against the client, the agency shall subsequently inform the client (unless the agency has determined that the allegation is unfounded) whenever:

(1) The staff member is no longer assigned within the client's facility;

(2) The staff member is no longer employed by the agency;

(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 a client's allegation that he or she has been sexually abused by another client, 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 client is released from the agency's custody.

Discipline

§ 115.276 Disciplinary Sanctions for Staff.

(a) Staff will 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 has engaged in sexual abuse or harassment.

(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.

§ 115.277 Corrective Action for Contractors and Volunteers.

(a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with clients 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 clients, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.

§ 115.278 Disciplinary Sanctions for Clients.

(a) Clients shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the client engaged in client-on-client sexual abuse or following a criminal finding of guilt for client-on-client sexual abuse. In most cases this will be termination from the program.

(b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the client's disciplinary history, and the sanctions imposed for comparable offenses by other clients with similar histories.

(c) The disciplinary process shall consider whether a client's mental disabilities or illness contributed to their behavior when determining what type of sanction should be imposed.

(d) The agency will consider whether to require the offending client to participate in therapy or counseling to correct underlying problems, as a condition of access to programming or other benefits. This can be internal counseling and/or referred to North Key or Pathways.

(e) The agency may discipline a client 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) The agency prohibits all sexual activity between clients and will discipline clients for such activity, whether they fall under PREA or not. The agency will not, however, deem such activity to constitute sexual abuse, if it determines that the activity is not coerced.

Medical and Mental Care

§ 115.281 N/A

§ 115.282 Access to Emergency Medical and Mental Health Services.

(a) Client victims of sexual abuse will 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. Depending on the nature of the abuse, clients will be referred to St Elizabeth or Kings Daughters Hospitals (Ashland facility). North Key and Pathways may also be utilized for mental health services if necessary. Program directors will ensure all necessary referrals are made in a timely manner and keep the agency PREA coordinator updated. Staff will follow the agency's action plan unless otherwise directed by the program director or agency PREA coordinator.

(b) Staff first responders shall take preliminary steps to protect the victim pursuant to the agency's action plan and shall immediately notify their program director, who will refer to the appropriate medical and mental health practitioners.

(c) Client victims of sexual abuse 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.

§ 115.283 Ongoing medical and mental health care for sexual abuse victims and abusers.

(a) The agency will offer medical and mental health evaluation and as appropriate, treatment to all clients who have been victimized by sexual abuse in an agency facility. 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. Referrals for evaluation and treatment will be made to North Key or Pathways.

(b) The facility will provide victims with medical and mental health services consistent with the community level of care.

(c) Client victims of sexually abusive vaginal penetration shall be offered pregnancy tests at no cost to the client.

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

(e) Client victims of sexual abuse will be offered tests for sexually transmitted infections as medically appropriate and at no cost to the client.

(f) Treatment services will 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.

(g) The agency will conduct a mental health evaluation of all known client on client abusers within 30 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

Data Collection and Review

§ 115.286 Sexual Abuse Incident Reviews.

(a) The agency will 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 will include some or all of the following employees: the agency PREA coordinator, associate operations directors, the assistant executive director, program directors, treatment supervisors, and investigators.

(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 program director and agency PREA coordinator.

(e) The agency will implement the recommendations for improvement, or shall document its reasons for not doing so.

§ 115.287 Data Collection.

(a) The agency will 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 will 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 will maintain, review, and collect data as needed from all available incident-based documents including reports, investigation files, and sexual abuse incident reviews. This will be gathered by investigators and the agency PREA coordinator. All files will be retained by the agency PREA coordinator at the main office.

(e) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

§ 115.288 Data Review for Corrective Action.

(a) The agency will review data collected and aggregated pursuant to § 115.287 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:

(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) The 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.

(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.

§ 115.289 Data Storage, Publication, and Destruction.

- (a) The agency will ensure that data collected pursuant to § 115.287 are securely retained. The agency PREA coordinator will keep paper copies when possible, along with electronic copies on the agency's server.
- (b) The agency will make all aggregated sexual abuse data, from facilities under its direct control, readily available to the public at least annually through its website.
- (c) Before making aggregated sexual abuse data publicly available, the agency will remove all personal identifiers.
- (d) The agency will maintain sexual abuse data collected pursuant to § 115.287 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

Audits

§ 115.293 Audits of Standards.

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

Auditing and Corrective Action

§ 115.401 Frequency and scope of audits.

- (a) During the 3 year period starting on August 20, 2013, and during each three-year period thereafter, the agency will ensure that each facility is audited at least once.
- (b) During each 1 year period starting on August 20, 2013, the agency will ensure that at least one-third of each facility type operated by the agency is audited. The agency shall bear the burden of demonstrating compliance with the standards.
- (c) The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type.
- (d) The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.
- (e) The auditor shall have access to, and shall observe, all areas of the audited facilities.
- (f) The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).
- (g) 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.

- (h) The auditor shall interview a representative sample of clients and staff.
- (i) The auditor shall review a sampling of any available videotapes and other electronically available data that may be relevant to the provisions being audited.
- (j) The auditor shall be permitted to conduct private interviews with clients.
- (k) Clients shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.
- (l) Auditors shall attempt to communicate with community based or victim advocates who may have insight into relevant conditions in the facility.

§ 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 will 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.

§ 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. The agency PREA coordinator will keep all audit reports.
- (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 client 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 will publish the auditor's final report on the agency's website www.transitionsky.org.

§ 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.

§ 115.405 Audit Appeals.

(a) The 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.