

§ 115.121

28 CFR Ch. I (7–1–12 Edition)

the agency's ability to protect detainees 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 detainees from sexual abuse.

RESPONSIVE PLANNING

§ 115.121 Evidence protocol and forensic medical examinations.

(a) To the extent the agency is responsible for investigating allegations of sexual abuse in its lockups, 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. As part of the training required in § 115.131, employees and volunteers who may have contact with lockup detainees shall receive basic training regarding how to detect and respond to victims of sexual abuse.

(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 evidentiarily 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) If the detainee is transported for a forensic examination to an outside hospital that offers victim advocacy services, the detainee shall be permitted to use such services to the ex-

tent available, consistent with security needs.

(e) 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 (d) of this section.

(f) The requirements in paragraphs (a) through (e) 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 lockups; and

(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in lockups.

§ 115.122 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) If another law enforcement agency is responsible for conducting investigations of allegations of sexual abuse or sexual harassment in its lockups, the agency shall have in place a policy to ensure that such allegations 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, including a description of responsibilities of both the agency and the investigating entity, on its Web site, or, if it does not have one, make available the policy through other means. The agency shall document all such referrals.

(c) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in lockups shall have in place a policy governing the conduct of such investigations.

(d) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in lockups shall have in place a policy governing the conduct of such investigations.

Department of Justice

§ 115.141

TRAINING AND EDUCATION

§ 115.131 Employee and volunteer training.

(a) The agency shall train all employees and volunteers who may have contact with lockup detainees to be able to fulfill their responsibilities under agency sexual abuse prevention, detection, and response policies and procedures, including training on:

(1) The agency's zero-tolerance policy and detainees' right to be free from sexual abuse and sexual harassment;

(2) The dynamics of sexual abuse and harassment in confinement settings, including which detainees are most vulnerable in lockup settings;

(3) The right of detainees and employees to be free from retaliation for reporting sexual abuse or harassment;

(4) How to detect and respond to signs of threatened and actual abuse;

(5) How to communicate effectively and professionally with all detainees; and

(6) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

(b) All current employees and volunteers who may have contact with lockup detainees shall be trained within one year of the effective date of the PREA standards, and the agency shall provide annual refresher information to all such employees and volunteers to ensure that they know the agency's current sexual abuse and sexual harassment policies and procedures.

(c) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received.

§ 115.132 Detainee, contractor, and inmate worker notification of the agency's zero-tolerance policy.

(a) During the intake process, employees shall notify all detainees of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment.

(b) The agency shall ensure that, upon entering the lockup, contractors and any inmates who work in the lockup are informed of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment.

§ 115.133 [Reserved]

§ 115.134 Specialized training: Investigations.

(a) In addition to the general training provided to all employees and volunteers pursuant to § 115.131, 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 lockups shall provide such training to their agents and investigators who conduct such investigations.

§ 115.135 [Reserved]

SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS

§ 115.141 Screening for risk of victimization and abusiveness.

(a) In lockups that are not utilized to house detainees overnight, before placing any detainees together in a holding cell, staff shall consider whether, based on the information before them, a detainee may be at a high risk of being sexually abused and, when appropriate, shall take necessary steps to mitigate any such danger to the detainee.

(b) In lockups that are utilized to house detainees overnight, all detainees shall be screened to assess their risk of being sexually abused by other detainees or sexually abusive toward other detainees.

(c) In lockups described in paragraph (b) of this section, staff shall ask the detainee about his or her own perception of vulnerability.